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Monday
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[Three Sessions]

WHEN: April 23, 1996 at 9:00 am
May 14, 1996 at 9:00 am
May 21, 1996 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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Contents

Federal Register
Vol. 61, No. 78
Monday, April 22, 1996

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development and Economic Cooperation Board, 17720–17721

Agricultural Marketing Service
RULES
Dairy products; grading, inspection, and standards:
Nonfat dry milk; spray process, 17547–17550
Hazelnuts grown in Oregon and Washington, 17556–17561
Limes and avocados grown in Florida, 17551–17552
Milk marketing orders:
Central Arizona, 17561–17562
Olives grown in California, 17555–17556
Winter pears grown in Oregon, Washington, and California, 17553–17555
PROPOSED RULES
Cranberries grown in Massachusetts et al., 17586–17587
Fruits, vegetables, and other products, fresh:
Almonds, shelled and in shell, 17580–17586
Milk marketing orders:
Southwest Plains, 17588–17589
Potatoes (Irish) grown in—
Washington, 17587–17588

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Fire ant, imported, 17550–17551

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Georgia-Pacific Corp., 17721–17728
National cooperative research notifications:
Michigan Materials and Processing Institute, 17728
Semiconductor Research Corp., 17728

Army Department
See Engineers Corps

Children and Families Administration
PROPOSED RULES
Head Start Program:
Early Head Start program; implementation of performance standards for grantees and agencies providing services, 17754–17792
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17705–17706
Grants and cooperative agreements; availability, etc.:
Runaway and homeless youth program, 17706
Meetings:
President's Committee on Mental Retardation, 17706

Coast Guard
RULES
Vessel documentation and measurement:
Vessel rebuild standards, 17814–17816

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Technology Administration

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 17689

Customs Service
NOTICES
Trade name recordation applications:
Mega Toys, 17752

Defense Department
See Engineers Corps

Drug Enforcement Administration
RULES
Domestic Chemical Diversion Control Act of 1993; implementation:
List I chemicals; manufacturers, distributors, importers, and exporters; registration; correction, 17566

Education Department
NOTICES
Elementary and secondary education:
Elementary and Secondary Education Act—
Local educational agencies receiving funds; compliance with Head Start performance standards, 17794–17796
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Rehabilitation research and training centers, 17818–17821
Privacy Act:
Computer matching programs, 17690–17691

Employment and Training Administration
PROPOSED RULES
Aliens:
Labor certification process for permanent employment, and researchers employed by colleges and universities, 17610–17614
NOTICES
Job Training Partnership Act:
Pilots and demonstration program, 17729–17732

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
PROPOSED RULES
Consumer products; energy conservation program:
Clothes washers; test procedures, etc., 17589–17603

Engineers Corps
NOTICES
Base realignment and closure:
Surplus Federal property—
Fort Holabird, Baltimore, MD, 17690

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 17576–17577
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 17675–17677
Ohio, 17669–17675
NOTICES
Confidential business information and data transfer, 17699–17700
Right-to-know laws and pollution prevention requirements, Federal compliance; Federal facility workshops, 17700
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 17700–17701

Equal Employment Opportunity Commission
RULES
Federal Sector Equal Employment Opportunity:
Regulatory time limits extension; initial appeals filing, class action appeals, attorney fees motions, prohibited discrimination initial appeals, etc., 17576

Export-Import Bank
NOTICES
Environmental review procedures and guidelines; effective date extension, 17701

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 17701

Federal Aviation Administration
RULES
Airworthiness directives:
Mooney Aircraft Corp., 17562–17564
PROPOSED RULES
Class E airspace, 17606–17608
Restricted areas, 17608–17609
NOTICES
Exemption petitions; summary and disposition, 17748–17749

Federal Communications Commission
NOTICES
Common carrier services:
Telecommunications services between United States and Cuba, 17702–17703
Applications, hearings, determinations, etc.:
AJI Broadcasting, Inc., 17701–17702
College of Southern Idaho, 17702
Davel Broadcasting Group, Inc., 17702

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17691–17692
Electric rate and corporate regulation filings:
Energy Source Power et al., 17692–17694
MidAmerica Energy Co. et al., 17694–17696
Hydroelectric applications, 17696
Meetings; Sunshine Act, 17697–17698
Natural gas certificate filings:
Eastern Shore Natural Gas Co. et al., 17698–17699
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 17692
Northern Natural Gas Co., 17692

Federal Highway Administration
RULES
Engineering and traffic operations:
Design standards for highways—
Geometric design of highways and streets, 17566–17572
NOTICES
Environmental statements; notice of intent:
Caddo Parish, LA, 17749

Federal Housing Finance Board
PROPOSED RULES
Federal home loan bank system:
Directors' compensation and expenses, 17603–17606

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Long Island Railroad et al., 17749–17750
Yolo Shortline Railroad et al., 17750

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 17703
Formations, acquisitions, and mergers, 17703–17704
Formations, acquisitions, and mergers; correction, 17704
Permissible nonbanking activities, 17704–17705

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address change—
ADM Animal Health & Nutrition Division, 17566
Mallinckrodt Veterinary Operations, Inc., 17565–17566
Human drugs:
Sodium content (OTC); labeling provisions, 17798–17806
PROPOSED RULES
Human drugs:
Orally ingested drug products containing calcium, magnesium, and potassium (OTC)—
Labeling provisions, 17807–17812
NOTICES
Dietary Supplement Health and Education Act of 1994; inapplicability to animal products, 17706–17708
Human drugs:
Orphan-drug and biological products—
Designations; cumulative list, 17708
Meetings:
Advisory committees, panels, etc.
Tentative schedule, 17708–17710

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health

NOTICES
Scientific misconduct findings; administrative actions:
Gans, Joan, R.N., 17705

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
PROPOSED RULES
Medicare and Medicaid:
Routine extended care services provided in swing-bed hospital; new payment methodology, 17677–17682
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17710–17711

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Community development block grant program—
Indian tribes and Alaska Native villages, 17715–17716
Indian tribes and Alaskan native villages (FY 1993), 17716–17718

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17728–17729

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 17711–17712

Interior Department
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Employment taxes and collection of income taxes at source:
Bank deposit interest paid to individual who is nonresident alien of U.S. and resident of Canada; information reporting and backup witholding, 17572–17575
PROPOSED RULES
Income taxes, etc.:
Tax withholding on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc., 17614–17667

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Fresh cut flowers from—
Colombia, 17685–17688
Antidumping duty orders and findings:
Determinations not to revoke, 17684–17685

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
Civil Aeronautics Board decisions, recommendations to President; CFR Part removed, 17575–17576
PROPOSED RULES
Persons of Japanese ancestry; redress provisions, 17667–17669

Labor Department
See Employment and Training Administration
See Labor Statistics Bureau
See Mine Safety and Health Administration
See Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Meetings:
Trade Negotiations and Trade Policy Labor Advisory Committee, 17729

Labor Statistics Bureau
NOTICES
Meetings:
Labor Research Advisory Council, 17732

Land Management Bureau
NOTICES
Meetings:
Resource advisory councils—
Dakotas District, 17718
Realty actions; sales, leases, etc.:
Nevada, 17718–17719

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Pace Mining & Processing, Inc., et al., 17732–17734

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Computer Sciences Corp., 17734

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 17712
National Eye Institute, 17712–17713
National Heart, Lung, and Blood Institute, 17713
National Institute of Allergy and Infectious Diseases, 17714
National Institute of Environmental Health Sciences, 17714
National Institute of Mental Health, 17713
National Institute on Aging, 17713–17715
National Institute on Deafness and Other Communication Disorders, 17713
National Institute on Drug Abuse, 17714
Research Grants Division special emphasis panels, 17715

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Summer flounder, 17682–17683
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
Intent to evaluate performance, 17688–17689

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Acadia National Park, ME; Fernald Point site inventory, 17719–17720
Grand Portage National Monument, MN; inventory, 17720

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17734–17735
Applications, hearings, determinations, etc.:
Commonwealth Edison Co.; correction, 17735
Duke Power Co. et al.; correction, 17735
Houston Lighting & Power Co. et al.; correction, 17735–17736
Portland General Electric Co., 17736
Public Service Electric & Gas Co., 17737

Physician Payment Review Commission
NOTICES
Meetings, 17737

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline Safety Advisory Committees, 17750–17751

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 17741–17745
Municipal Securities Rulemaking Board, 17745–17747
Applications, hearings, determinations, etc.:
Baker, Fentress & Co., et al., 17737–17741
Rockwell International Corp., 17741
Titan Corp., 17741

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17747

Social Security Administration
PROPOSED RULES
Supplemental security income:
Aged, blind, and disabled—
U.S. residency, definition; birth, baptismal records as acceptable evidence, etc., 17609–17610

Surface Transportation Board
RULES
Discontinuance of Bus transportation in one State; CFR part removed, 17579
PROPOSED RULES
Railroad contracts:
Specified rail services provision under specified rates and conditions; comment due date extended, 17682
NOTICES
Railroad operation, acquisition, construction, etc.:
Wisconsin & Southern Railroad Co., 17751
Railroad services abandonment:
Consolidated Rail Corp., 17751–17752

Technology Administration
NOTICES
Meetings:
National Medal of Technology Nomination Evaluation Committee, 17689

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 17747–17748

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Research and Special Programs Administration
See Surface Transportation Board
RULES
Civil Aeronautics Board, public meetings; release of internal staff memoranda, 17565
Medals of Honor; award clarification, 17578–17579
National security information; CFR part removed, 17564–17565
Official seal; use, 17577–17578

Treasury Department
See Customs Service
See Internal Revenue Service

Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Grants and cooperative agreements; availability, etc.:
Employment, training, supportive and transitional housing services for homeless veterans; application deadline extension, 17734

Separate Parts In This Issue

Part II
Department of Health and Human Services, Children and Families Administration, 17754–17792

Part III
Department of Education, 17794–17796

Part IV
Department of Health and Human Services, Food and Drug Administration, 17798–17812

Part V
Department of Transportation, Coast Guard, 17814–17816

Part VI
Department of Education, 17818–17821

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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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.

7 CFR
58.....17547
301.....17550
911.....17551
915.....17551
927.....17553
932.....17555
982.....17556
1131.....17561
Proposed Rules:
51.....17580
929.....17586
946.....17587
1106.....17588

10 CFR
Proposed Rules:
430.....17589

12 CFR
Proposed Rules:
932.....17603

14 CFR
39.....17562
311.....17564
399.....17565
Proposed Rules:
71 (2 documents) 17606, 17607
73.....17608

20 CFR
Proposed Rules:
416.....17609
656.....17610

21 CFR
201.....17798
331.....17798
510.....17565
558.....17566
1313.....17566
1316.....17566
Proposed Rules:
201.....17807
331.....17807

23 CFR
625.....17566

26 CFR
1.....17572
31.....17572
602.....17572
Proposed Rules:
1.....17614
31.....17614
35a.....17614
301.....17614
502.....17614
503.....17614
509.....17614
513.....17614
514.....17614
516.....17614
517.....17614
520.....17614
521.....17614

28 CFR
25.....17575
Proposed Rules:
74.....17667

29 CFR
1614.....17576

40 CFR
52.....17576
Proposed Rules:
52 (2 documents) 17669, 17675

42 CFR
Proposed Rules:
413.....17677

45 CFR
Proposed Rules:
1301.....17754
1303.....17754
1304.....17754
1305.....17754
1306.....17754
1308.....17754

46 CFR
67.....17814

49 CFR
3.....17577
79.....17578
1169.....17579
Proposed Rules:
1313.....17682

50 CFR
Proposed Rules:
625.....17682

Rules and Regulations

Federal Register
Vol. 61, No. 78
Monday, April 22, 1996

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–93–03]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Nonfat Dry Milk (Spray Process)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the United States Standards for Grades of Nonfat Dry Milk (Spray Process). The revision reduces existing bacterial standard plate count maximums and incorporates a coliform requirement to reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk. The reduction in the maximum standard plate count is made possible through improved raw milk quality and enhanced processing and sanitation techniques. The inclusion of a maximum coliform count adds to the assurance that post-pasteurization contamination has not occurred. This revision was developed in cooperation with the American Dairy Products Institute and other trade associations.

EFFECTIVE DATE: May 22, 1996.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does 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.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the final rule will not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

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

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk, USDA is changing the U.S. Standards for Grades of Nonfat Dry Milk (Spray Process) as follows:

1. Expand the U.S. Grade Standards To Include a Maximum Coliform Count in USDA-Graded Product

Coliform bacteria, abundantly present in the environment, are destroyed by pasteurization. Post-pasteurization contamination has occurred when coliform bacteria are present in nonfat dry milk. The addition of a coliform requirement into the U.S. grade standard increases the assurance that USDA graded nonfat dry milk is produced and packaged in a sanitary manner.

2. Reduce the Standard Plate Count Requirements

Enumeration of bacteria by the standard plate count method has been a criterium used in the determination of U.S. grade for many years. Improvements in the sanitary production of nonfat dry milk have resulted in a gradual reduction in the number of bacteria present in the product. The revision reduces the allowable bacteria from 50,000 to 40,000 per gram for U.S. Extra Grade and from 100,000 to 75,000 per gram for U.S. Standard Grade. These changes accurately reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk and enhances the image of U.S. products on the world market.

3. Update the Terminology and Format of the Standards

The current U.S. Standards for Grades of Nonfat Dry Milk (Spray Process) were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The revision updates the standards to provide consistency among the various U.S. grade standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When nonfat dry milk is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this revision accurately identifies quality characteristics in nonfat dry milk.

Corollary changes have also been made for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of nonfat dry milk set forth therein with the final revision of the United States Standards for Grades of Nonfat Dry Milk (Spray Process).

Public Comments

On March 6, 1995, the Department published a proposed rule (60 FR 12156) to revise the United States Standards for Grades of Nonfat Dry Milk (Spray Process). The public comment period closed May 5, 1995. One comment was received from a dairy trade association representing the dry milk industry. That comment supported the proposed changes to the standards.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In Subpart B, § 58.205 (a) is revised to read as follows:

§ 58.205 Meaning of words.

* * * * *

(a) *Nonfat dry milk.* The product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions of 21 CFR 131 ''Milk and Cream'' as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

* * * * *

3. Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process) is revised to read as follows:

Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process)[1]

Definitions

Sec.
58.2525 Nonfat dry milk.

U.S. Grades

58.2526 Nomenclature of U.S. grades.
58.2527 Basis for determination of U.S. grade.
58.2528 Specifications for U.S. grades.
58.2529 U.S. grade not assignable.
58.2532 Test methods.

Explanation of Terms

58.2537 Explanation of terms.

Supplement to U.S. Standards for Grades of Nonfat Dry Milk (Spray Process): U.S. Heat Treatment Classification

58.2538 Basis for obtaining heat treatment classification.
58.2539 Nomenclature of U.S. Heat Treatment Classification.
58.2540 Basis for determination of U.S. Heat Treatment Classification.
58.2541 Test method; whey protein nitrogen.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmestic Act.

Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process)[1]

Definitions

§ 58.2525 Nonfat dry milk.

(a) ''Nonfat dry milk'' is the product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions of 21 CFR part 131 ''Milk and Cream'' as issued by the Food and Drug Administration. Nonfat dry milk covered by these standards shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

U.S. Grades

§ 58.2526 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Extra.

(b) U.S. Standard.

§ 58.2527 Basis for determination of U.S. grade.

(a) The U.S. grade of nonfat dry milk is determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count, milkfat content, moisture content, scorched particle content, solubility index, and titratable acidity.

(b) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.

§ 58.2528 Specifications for U.S. grades.

(a) *U.S. Extra Grade.* U.S. Extra Grade nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted nonfat dry milk shall possess a sweet, pleasing, and desirable flavor, but may possess the following flavors to a slight degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Nonfat dry milk shall possess a uniform white to light cream natural color. It shall be free from lumps, except those that readily break up with slight pressure, and be practically free from visible dark particles.

The reconstituted product shall be free from graininess. See Table II of this section.

(3) *Bacterial estimate.* Not more than 40,000 per gram standard plate count. See Table III of this section.

(4) *Milkfat content.* Not more than 1.25 percent. See Table III of this section.

(5) *Moisture content.* Not more than 4.0 percent. See Table III of this section.

(6) *Scorched particle content.* Not more than 15.0 mg. See Table III of this section.

(7) *Solubility index.* Not more than 1.2 ml., except that product classified as U.S. High-heat may have not more than 2.0 ml. See Table III of this section.

(8) *Titratable acidity.* Not more than 0.15 percent (lactic acid). See Table III of this section.

(b) *U.S. Standard Grade.* U.S. Standard Grade nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted nonfat dry milk shall possess a fairly pleasing flavor, but may possess the following flavors to a slight degree: Bitter, oxidized, scorched, storage, or utensil; the following to a definite degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Nonfat dry milk may possess a slight unnatural color. It shall be free from lumps, except those that break readily under moderate pressure, and be reasonably free from visible dark particles. The reconstituted product shall be reasonably free from graininess. See Table II of this section.

(3) *Bacterial estimate.* Not more than 75,000 per gram standard plate count. See Table III of this section.

(4) *Milkfat content.* Not more than 1.50 percent. See Table III of this section.

(5) *Moisture content.* Not more than 5.0 percent. See Table III of this section.

(6) *Scorched particle content.* Not more than 22.5 mg. See Table III of this section.

(7) *Solubility index.* Not more than 2.0 ml., except that product classified as U.S. High-heat may have not more than 2.5 ml. See Table III of this section.

(8) *Titratable acidity.* Not more than 0.17 percent (lactic acid). See Table III of this section.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

Flavor characteristics	U.S. extra grade	U.S. standard grade
Bitter	—	S
Chalky	S	D
Cooked	S	D
Feed	S	D
Flat	S	D
Oxidized	—	S

Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE—Continued

Flavor characteristics	U.S. extra grade	U.S. standard grade
Scorched	—	S
Storage	—	S
Utensil	—	S

- = Not permitted S = Slight D = Definite.

TABLE II.—CLASSIFICATION OF PHYSICAL APPEARANCE WITH CORRESPONDING U.S. GRADE

Physical appearance characteristics	U.S. extra grade	U.S. standard grade
Dry Product:		
Lumpy	Slight	Moderate.
Unnatural color.	—	Slight.
Visible dark particles.	Practically free.	Reasonably free.
Reconstituted Product:		
Grainy	—	Reasonably free.

- = Not permitted.

TABLE III.—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS WITH CORRESPONDING U.S. GRADE

Laboratory tests	U.S. extra grade	U.S. standard grade
Bacterial estimate; Standard plate count; per gram (max)	40,000	75,000
Milkfat content; percent (max)	1.25	1.50
Moisture content; percent (max)	4.0	5.0
Scorched particle content; mg (max)	15.0	22.5
Solubility index; ml (max)	1.2	2.0
U.S. High-heat (max)	2.0	2.5
Titratable acidity (lactic acid); percent (max)	0.15	0.17

§ 58.2529 U.S. grade not assignable.

Nonfat dry milk shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The nonfat dry milk fails to meet or exceed the requirements for U.S. Standard Grade.

(b) The nonfat dry milk has a direct microscopic clump (DMC) count exceeding 100 million per gram.

(c) The nonfat dry milk has a coliform count exceeding 10 per gram.

(d) The nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

§ 58.2532 Test methods.

All required tests shall be performed in accordance with DA Instruction No. 918–RL, ''Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis,'' Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090–6456; the latest revision of ''Official Methods of Analysis of the Association of Official Analytical Chemists''; or the latest edition of ''Standard Methods for the Examination of Dairy Products'', available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

Explanation of Terms

§ 58.2537 Explanation of terms.

(a) *With respect to flavor:*

(1) *Slight.* Detected only upon critical examination.

(2) *Definite.* Not intense but detectable.

(3) *Bitter.* Distasteful, similar to the taste of quinine.

(4) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(5) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(6) *Feed.* Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the nonfat dry milk.

(7) *Flat.* Insipid, practically devoid of any characteristic reconstituted nonfat dry milk flavor.

(8) *Oxidized.* A flavor resembling cardboard and sometimes referred to as ''cappy'' or ''tallowy''.

(9) *Scorched.* A more intensified flavor than ''cooked'' and imparts a burnt aftertaste.

(10) *Storage.* Lacking in freshness and imparting a ''stale'' aftertaste.

(11) *Utensil.* A flavor that is suggestive of improper or inadequate washing and sanitation of milking machines, utensils, or manufacturing equipment.

(b) *With respect to physical appearance:*

(1) *Practically free.* Present only upon very critical examination.

(2) *Reasonably free.* Present only upon critical examination.

(3) *Slight pressure.* Only sufficient pressure to disintegrate the lumps readily.

(4) *Moderate pressure.* Only sufficient pressure to disintegrate the lumps easily.

(5) *Grainy.* Minute particles of undissolved powder appearing in a thin film on the surface of a glass or tumbler.

(6) Lumpy. Loss of powdery consistency but not caked into hard chunks.

(7) *Natural color.* A color that is white to light cream.

(8) *Unnatural color.* A color that is more intense than light cream and is brownish, dull, or grey-like.

(9) *Visible dark particles.* The presence of scorched or discolored specks.

Supplement to U.S. Standards for Grades of Nonfat Dry Milk (Spray Process): U.S. Heat Treatment Classification

§ 58.2538 Basis for obtaining heat treatment classification.

Heat treatment classification is not a U.S. grade requirement except in cases when the higher solubility index specified for U.S. High-heat product is permitted. In all other instances, product submitted for USDA grading may be analyzed for heat treatment classification upon request and the results shown on the grading certificate. Heat treatment classification will be made available only upon a product graded by USDA.

§ 58.2339 Nomenclature of U.S. Heat Treatment Classification.

The nomenclature of U.S. Heat Treatment Classification is as follows:

(a) U.S. High-heat.

(b) U.S. Medium-heat.

(c) U.S. Low-heat.

§ 58.2540 Basis for determination of U.S. Heat Treatment Classification.

The whey protein nitrogen test shall be used in determining the heat treatment classification as follows:

(a) *U.S. High-heat.* The finished product shall not exceed 1.50 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

(b) *U.S. Medium-heat.* The finished product shall exceed 1.50 mg. undenatured whey protein nitrogen per gram of nonfat dry milk and shall be less than 6.00 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

(c) *U.S. Low-heat.* The finished product shall be not less than 6.00 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

§ 58.2541 Test method; whey protein nitrogen.

The whey protein nitrogen test shall be performed in accordance with DA

Instruction 918–RL, ''Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis,'' Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC, 20090–6456, or the latest edition of ''Standard Methods for the Examination of Dairy Products'', available from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005.

Dated: April 16, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–9823 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–063–2]

Imported Fire Ant Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the imported fire ant regulations by designating all or portions of the following as quarantined areas: The entire State of Mississippi; Mecklenburg County in North Carolina; Bradley, Hamilton, McMinn, and Wayne Counties in Tennessee; and Brooks, Cameron, Delta, Dimmit, Duval, Jack, Kenedy, Kinney, Lamar, Mason, McCulloch, Montague, San Saba, Webb, Young, and Zavala Counties in Texas. As amended by this document, the rule expands the quarantined areas and imposes certain restrictions on the interstate movement of quarantined articles from those areas. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–7338; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10, and referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles for the purpose of preventing the artificial spread of the imported fire ant.

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant is not native to the United States. The regulations prevent the imported fire ant from spreading throughout its ecological range within this country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with imported fire ants. The Administrator will designate less than an entire State only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from the infested locality for quarantine purposes.

In an interim rule effective and published in the Federal Register on October 11, 1995 (60 FR 52831–52833, Docket No. 95–063–1), we amended the imported fire ant regulations by designating all or portions of the following as quarantined areas: The entire State of Mississippi; Mecklenburg County in North Carolina; Bradley, Hamilton, McMinn, and Wayne Counties in Tennessee; and Brooks, Cameron, Delta, Dimmit, Duval, Jack, Kenedy, Kinney, Lamar, Mason, McCulloch, Montague, San Saba, Webb, Young, and Zavala Counties in Texas. This action expanded the quarantined areas and imposed certain restrictions on the interstate movement of quarantined articles from those areas. This action was necessary because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant had spread to these areas.

We solicited comments concerning the interim rule for 60 days ending December 11, 1995. We received 1 comment by that date. The comment was from a State Department of Agriculture.

The commenter stated that our description of the new quarantined area in Wayne County, Tennessee, was not clear and could be misread to describe a smaller portion of the county than what the commenter believed we intended. We agree with the commenter and are, therefore, amending the interim rule by revising the description of the quarantined area in Wayne County, Tennessee, to make it clear that it includes that portion of the county south of Highway 64 and that portion of the county west of Longitude 87° 55′.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, the National Environmental Policy Act, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the Federal Register. The interim rule adopted as final by this rule was effective on October 11, 1995. This rule revises the description of the quarantined area in the interim rule. Immediate action is necessary in order to prevent the artificial spread of imported fire ant to noninfested areas of the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.81–3, paragraph (e), the list of quarantined areas is amended by revising the entry for Wayne County, Tennessee, to read as follows:

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

* * * * *

TENNESSEE

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Wayne County. That portion of the county lying south of U.S. Highway 64 and also that portion of the county lying west of Longitude 87° 55′.

* * * * *

Done in Washington, DC, this 15th day of April 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–9833 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV95–911–2IFR]

Limes and Avocados Grown in Florida; Suspension of Certain Volume Regulations and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments; suspension.

SUMMARY: This rule suspends indefinitely certain volume regulation provisions of the marketing order covering limes grown in Florida. This rule indefinitely suspends the pack-out reporting requirements for the marketing orders covering limes and avocados grown in Florida. The marketing orders regulate the handling of limes and avocados grown in Florida and are administered by the Florida Lime Administrative Committee and the Avocado Administrative Committee, respectively. These provisions are not needed due to reduced Florida lime and avocado production. This rule will also reduce handler reporting burdens for both marketing orders.

DATES: Effective April 1, 1996. Comments which are received prior to May 22, 1996, will be considered prior to issuance of any final action.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle and Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456; telephone: 202–720–5127; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This action is issued under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act; and of Marketing Agreements and Marketing Orders No. 911 (7 CFR part 911) and No. 915 (7 CFR part 915) regulating the handling of limes grown in Florida and avocados grown in South Florida, respectively. These agreements and orders are 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 of Agriculture (Department) is issuing this action in conformance with Executive Order 12866.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action will be applicable for the entire 1996 fiscal year which began April 1, 1996, and will continue until amended, suspended, or terminated. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 10 Florida lime handlers subject to regulation under the marketing order covering limes grown in Florida, and about 30 lime producers in Florida. Also, there are approximately 35 handlers of avocados and approximately 95 producers in the regulated area. 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 these handlers and producers may be classified as small entities.

The Florida Lime Administrative Committee (FLAC) met on December 13, 1995, and unanimously recommended a two year suspension of their lime volume regulations and pack-out requirements. However, the Department is revising the FLAC recommendation by suspending both of these requirements indefinitely. The Department has determined that since volume regulations have not been implemented for at least the past five years and lime production has been reduced to low levels these regulations should be suspended indefinitely. The Department does not anticipate that such regulations will be needed in the near future.

Also, the Avocado Administrative Committee (AAC) met on January 10, 1996, and recommended indefinite suspension of their pack-out reporting requirements.

The suspension of §§ 911.53–59 and 911.111 of the lime marketing order volume regulations and pack-out reporting requirements was published in the Federal Register (59 FR 13429, March 22, 1994) and is currently in

effect through March 31, 1996. The suspension of § 915.150 paragraph (d) of the avocado marketing order pack-out reporting requirements was published in the Federal Register (59 FR 30866, June 16, 1994) and is currently in effect through March 31, 1996. This rule suspends these regulations indefinitely.

Sections 911.53–59 (7 CFR 911.53–59) of the lime marketing order cover volume regulations and were used by FLAC to collect and maintain information from handlers, so that it could recommend to the Department that lime volume regulations be issued, when and if needed. FLAC determined that volume regulations will not be needed in the near future, and thus such information will not be needed, because of reduced production due to hurricane damage in 1992.

Concerning pack-out reporting requirements, both FLAC and AAC recommended suspension of their pack-out reporting requirements. Section 911.111 (7 CFR 911.111) and § 915.150 (7 CFR 915.150) contain provisions requiring Florida handlers to file certain reports with either the FLAC or the AAC concerning their Florida lime and avocado shipments, respectively. This action continues the suspension of these provisions since information collected under these provisions is not needed because lime and avocado production is so low. These provisions would require handlers to furnish information on types and number of containers of limes and avocados they pack each day. Sufficient information from other sources is available to meet committee needs during future seasons. Information needed for committee operations, marketing policies, and compliance is available from inspection certificates collected on a daily basis by committee staff. These resources are used to collect such information. Low lime and avocado production has also resulted in a substantial reduction of the both committees' staff and reduction of assessment income. Thus, the continuation of the suspension will reduce administrative costs and work load.

These continued suspensions are a result of damage to the lime and avocado groves caused by Hurricane Andrew in August 1992. For limes, Hurricane Andrew reduced production acreage from approximately 6,500 acres to approximately 1,500 acres with many non-producing trees in the remaining acreage. Production in the 1991–92 season was 1,682,677 bushels. In the 1992–93 season, production prior to the hurricane was 1,146,000 bushels. After the hurricane, in the 1993–94 season, production fell to 228,455 bushels and in the 1994–95 season, it was 283,977 bushels. This was well below the levels reached prior to the hurricane.

For avocados, Hurricane Andrew reduced production acreage from approximately 9,000 acres to less than 6,000 acres with many non-producing trees in the remaining acreage. Production in the 1991–92 season was 1,110,105 bushels. In the 1992–93 season, production fell to 283,000 bushels and in the 1993–94 season it was 174,712 bushels. Although the 1994–95 season recovered to 778,951 bushels, it is well below the levels reached prior to the hurricane.

Therefore, this action reflects the committees' and the Department's appraisal of the need to suspend certain volume regulations and pack-out reporting requirements under the orders, as specified. This rule indefinitely suspends certain reporting requirements for Florida limes and avocados, and lessens the overall reporting and recordkeeping burden under the orders. The Department's view is that this suspension will have a beneficial impact on Florida lime and avocado producers and handlers, since it lessens the reporting burden on handlers and will reduce the committees' expenses incurred under the orders.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0581–0091 and 0581–0078 for limes and avocados respectively.

This action indefinitely suspends the annual reporting burden currently estimated at 210.4 hours for all regulated Florida lime handlers to: (1) Apply for a prorate base and allotment; (2) report daily the percentages, by size category, of the limes packed by them; and (3) report daily the number of containers of limes sold and delivered by them within the State of Florida.

This action also indefinitely suspends the annual reporting burden currently estimated at 130 hours for all regulated Florida avocado handlers who file such reports. Specifically, this would apply to handlers who file: (1) The Avocado Handler Daily Size Report Form; and (2) the Avocado Handlers Weekly Report Form.

After consideration of all relevant matter presented, the information and recommendations submitted by the committees, and other information, it is found that the provisions detailed below, at this time, do not tend to effectuate the declared policy of the Act.

It is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relieves restrictions by suspending certain volume regulation and pack-out reporting requirements under the orders for fresh Florida limes and avocados; (2) Florida lime and avocado handlers are aware of this suspension which was recommended by the committees at public meetings, and they will need no additional time to comply; (3) Florida fresh lime shipments are currently in progress, and they are expected to continue throughout the year; (4) such requirements need to be suspended promptly for both limes and avocados, so they are of maximum benefit to handlers; and (5) this rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final action.

List of Subjects

7 CFR part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—[SUSPENDED IN PART]

2. In part 911, §§ 911.53 through 911.59, and § 911.111 are suspended, indefinitely.

PART 915—[SUSPENDED IN PART]

3. In § 915.150, paragraph (d) is suspended, indefinitely.

Dated: April 16, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–9825 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 927

[Docket No. AO–99–A–6; FV–92–065]

Winter Pears Grown in Oregon, Washington, and California; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for winter pears grown in Oregon, Washington, and California. The amendments were recommended by the Winter Pear Control Committee (WPCC), the agency responsible for local administration of the marketing order, and were favored by winter pear producers in a referendum held from November 1 through November 30, 1995. The amendments will: Redefine ''ship or handle'' to include shipments of winter pears within the production area; update the definition of ''export market'' to recognize that there are now 50 states in the United States; authorize the WPCC to accept voluntary contributions and how such funds may be used; and revise the authority for exempting certain shipments from regulation. These amendments are designed to improve the administration, operation and function of the winter pear marketing agreement and order program.

EFFECTIVE DATE: May 22, 1996.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2522–S, Washington, DC 20090–6456, telephone (202) 720–5127; or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807, telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 16, 1992, and published in the November 20, 1992, issue of the Federal Register (57 FR 54728). Recommended Decision and Opportunity to File Written Exceptions issued on March 15, 1995, and published in the Federal Register on March 21, 1995, (60 FR 14914). Secretary's Decision and Referendum Order issued on June 22, 1995, and published in the Federal Register on June 29, 1995, (60 FR 3376).

This administrative action is governed by the provisions of section 556 and 557 of Title 5 of the United States Code and therefore, is excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601 *et seq.*) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Portland, Oregon, on December 2, 1992, to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon, Washington, and California, hereinafter referred to collectively as the ''order.'' The hearing was held pursuant to the provisions of the Act and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained several amendment proposals submitted by the WPCC established under the order to assist in local administration of the marketing order.

This final rule: (1) Redefines ''ship or handle'' to include shipments of winter pears within the production area; (2) updates the definition of ''export market'' to recognize that there are now 50 states in the United States; (3) authorizes the WPCC to accept voluntary contributions and specifies how such funds may be used; and (4) revises the authority for exempting certain shipments from regulation.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on March 21, 1995, filed with the Hearing Clerk, Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by April 20, 1995. None were filed.

A Secretary's Decision and Referendum Order was issued on June 22, 1995, directing that a referendum be conducted during the period November 1 through November 30, 1995, among winter pear producers to determine whether they favored the proposed amendments to the order. In that referendum, producers voted in favor of all four of the amendment proposals listed on the referendum ballot. All of the proposed amendments were favored by more then the requisite two-thirds of the producers voting in the referendum by number and volume.

The amended marketing agreement was subsequently mailed to all winter pear handlers throughout the production area for their approval. The marketing agreement was signed by handlers of more than 50 percent of the volume of winter pears handled by all handlers during the representative period of July 1, 1994, through June 30, 1995.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers under this order, are defined as those with annual receipts of less than $5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the

proposed amendments to the order would have on small businesses.

During the 1995–96 crop year, approximately 90 handlers were regulated under Marketing Order No. 927. In addition, there are about 1,980 growers of winter pears in the regulated area. The Act provides for the application of uniform rules on regulated handlers. Since handlers covered under the winter pear marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders, and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

All of the order amendments are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. The benefits are expected to outweigh any costs associated with the amendments. Accordingly, it is determined that the amendments to the order will not have a significant economic impact on growers or handlers.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements that may result from the amendments will be submitted to the Office of Management and Budget (OMB) for approval.

List of Subjects in 7 CFR Part 929

Marketing agreements, Pears, Reporting and recordkeeping requirements.

Order Amending the Order for Winter Pears Grown in Oregon, Washington, and California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Agreement and Order No. 927 (7 CFR part 927), covering winter pears grown in Oregon, Washington, and California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in production area; and

(5) All handling of winter pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of growers who are not engaged in processing, distribution, or shipping of winter pears covered by the said order, as hereby amended) who during the period of July 1, 1994, through June 30, 1995, handled 50 percent or more of the volume of such winter pears covered by the said order, as amended and hereby further amended have signed a marketing agreement; and

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum and represented at least two-thirds of the volume of such commodity in the referendum, all such producers during the period June 1, 1994, through June 30, 1995 (which has been deemed to be a representative period), having been engaged within the production area in the production of winter pears for fresh market.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon, Washington, and California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Secretary's Decision issued on June 22, 1995, and published in the Federal Register on June 29, 1995, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.8 is revised to read as follows:

§ 927.8 Ship or handle.

Ship or *handle* means to sell, deliver, consign or transport pears, within the production area or between the production area and any point outside thereof: *Provided,* That the term ''handle'' shall not include the transportation of winter pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market.

3. Section 927.10 is revised to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon, Washington, and California.

4. Section 927.12 is revised to read as follows:

§ 927.12 Export market.

Export market means any destination which is not within the 50 states, or the District of Columbia, of the United States.

5. In § 927.41, paragraph (a) is revised to read as follows:

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears.

Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

6. Section 927.45 is added to read as follows:

§ 927.45 Contributions.

The Control Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to section 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Control Committee shall retain complete control of their use.

7. Section 927.47 is revised to read as follows:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety of pears.

8. In § 927.52, paragraph (b)(1) is revised to read as follows:

§ 927.52 Prerequisites to Control Committee recommendations.

* * * * *

(b) * * *

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

* * * * *

9. In § 927.65, paragraph (b) is revised to read as follows:

§ 927.65 Exemption from regulation.

* * * * *

(b) The Control Committee may prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

* * * * *

Dated: April 16, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–9828 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 932

[Docket No. FV96–932–1FIR]

Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting without change, the provisions of an interim final rule, that authorized expenses and established an assessment rate for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1996 fiscal year. The Committee is responsible for local administration of the marketing order which regulates the handling of the California Olives. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: Effective beginning January 1, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone 209–487–5901; or Tershirra T. Yeager, Marketing Order Administration Branch, F&V, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456; telephone 202–720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Marketing Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives during the 1996 fiscal year, beginning January 1, 1996, through December 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 5 handlers of olives grown in California who are subject to regulation under the order and approximately 1,350 producers of olives in the regulated area. 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. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

The order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable olives handled during the appropriate crop year, which for this season is August 1, 1995, through July 31, 1996. The budget of expenses for the 1996 fiscal year was prepared by the Committee and submitted to the Department for approval. The Committee consists of handlers and producers. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by actual receipts of olives by handlers during the crop year. Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The recommended budget and rate of assessment is usually acted upon by the Committee after the crop year begins and before the fiscal year starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on December 14, 1995, and recommended 1996 marketing order expenditures of $2,600,785 for its budget. This is $280,865 less in expenses than the previous year. The major budget categories for the 1996 fiscal year include administration ($388,350), research ($213,000), and market development ($1,999,435).

The Committee also recommended an assessment rate of $28.26 per ton covering olives from the appropriate crop year. This is $1.78 less than last year's assessment rate of $30.04. The assessment rate, when applied to actual handler receipts of 62,182 tons from the 1995 olive crop year, would yield $1,757,726 in assessment income. This along with approximately $829,000 from the Committee's authorized reserves will be adequate to cover estimated expenses. Reserve funds forwarded from the 1995 fiscal year are estimated at $210,000 which is within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule was issued on February 12, 1996, and published in the Federal Register (61 FR 6306; February 20, 1996). That rule provided a 30-day comment period which ended March 21, 1996. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this final 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 rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996 fiscal year began on January 1, 1996, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable olives handled during the fiscal year; (3) handlers are aware of this rule which was recommended by the Committee at a public meeting; and (4) an interim final rule was published in the Federal Register providing a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 932 are amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 61 FR 6306 on February 20, 1996, is adopted as a final rule without change.

Dated: April 16, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–9827 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 982

[Docket No. AO–205–A7; FV94–982–1FR]

Hazelnuts Grown in Oregon and Washington; Order Further Amending Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule further amends the marketing agreement and order for hazelnuts grown in Oregon and Washington (order). The amendments change order provisions regarding: Volume control; nomination and membership of the Hazelnut Marketing Board (Board); fiscal operations; and the administration and operation of the program. These changes were favored by hazelnut producers in a mail referendum held from November 27 through December 15, 1995. The amendments will improve the administration, operation, and functioning of the marketing order program by bringing the program more in line with current industry operating practices.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone 503–326–2724, FAX 503–326–7440; or Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, PO Box 96456, Washington, DC 20090–6456; telephone 202–720–6862; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on February 24, 1994, and published in the Federal Register on February 28, 1994 (59 FR 9425). Recommended Decision and Opportunity to File Written Exceptions issued on May 24, 1995, and published in the Federal Register on June 7, 1995 (60 FR 30170). Secretary's Decision and Referendum Order issued October 23, 1995, and published in the Federal Register on October 31, 1995 (60 FR 55333).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice

Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

The final rule was formulated on the record of a public hearing held in Newberg, Oregon, on March 8, 1994, to consider the proposed amendment of the Marketing Agreement and Order No. 982, regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to collectively as the ''order.'' Notice of the hearing was published in the February 28, 1994, issue of the Federal Register (59 FR 9425).

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Hazelnut Marketing Board (Board), established under the order to assist in local administration of the program.

The proposals pertained to: (1) Changing the name of the commodity covered under the order from ''filberts'' to ''hazelnuts''; (2) for the purposes of inshell volume regulation, allowing the Board, with USDA approval, to make changes in the domestic market distribution area and providing the Board with the flexibility to recommend appropriate hazelnut releases for use until new crop hazelnuts are available for marketing; (3) increasing Board members' terms of office to two years and limiting the number of consecutive terms a member may serve from six terms to three; (4) changing voting procedures for nominating members to the Board, including changes to criteria used for nominating handler members and for weighing handlers' votes when electing nominees; (5) removing the ''verbatim'' reporting requirement on Board marketing policy meetings, and allowing Board telephone votes to remain unconfirmed until the next public Board meeting; (6) allowing the Board, with USDA approval, to establish different identification standards for inspected and certified hazelnuts; (7) changing procedures for establishing bonding requirements for deferred restricted obligations and allowing the Board to use defaulted bond payments to purchase excess restricted credits from handlers; (8) clarifying that mail order sales outside the production area are not exempt from order requirements; and (9) allowing the Board to accept advance assessment payments, provide discounts for such payments, borrow money, and accept voluntary contributions.

Upon the basis of evidence introduced at the hearing and the record thereof, the Acting Assistant Secretary, Marketing and Regulatory Programs, on October 23, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Secretary's Decision and Referendum Order, directing that a referendum be conducted during the period November 27 through December 15, 1995, among producers of Oregon and Washington hazelnuts to determine whether they favored the proposed amendments to the order. In the referendum, all amendment proposals were favored by more than two-thirds of the producers voting in the referendum. Accordingly, all proposed amendments are included in this order further amending the order.

The amended marketing agreement was subsequently mailed to all hazelnut handlers in the production area for their approval. The marketing agreement was signed by hazelnut handlers representing more than 50 percent of the volume of hazelnuts handled by all handlers during the representative period of July 1, 1994, to June 30, 1995.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agriculture Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

There are approximately 25 handlers regulated under Marketing Order No. 982. In addition, there are approximately 1,000 producers of hazelnuts in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the hazelnut marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

For discussion of the anticipated impact on small businesses, the amendments have been grouped into program categories. Amendments concerning the order's marketing and volume control programs will: Change the name of the commodity to ''hazelnuts'' (§ 982.4 and every other place it appears in part 982); establish the trade demand area as the continental United States and allow the Board to make changes in the inshell trade acquisition area, with approval of the Secretary (§ 982.16); provide the Board the flexibility to release up to 15 percent of the average three year inshell trade acquisitions for desirable carryout (§ 982.40); correct the current language that determines handler credit for ungraded hazelnuts (§ 982.51); establish the bonding rate for deferred restricted obligations at the estimated value of restricted credits for the current marketing year and allow the Board to use defaulted bond payments to purchase excess restricted credits (§ 982.54); and clarify that mail order sales outside the production area are not exempt from order requirements (§ 982.57). These amendments are

designed to assist the Board in its domestic and export marketing efforts. The amendments allow the Board to make program and management decisions that are more consistent with changing market conditions and to better respond to changing marketing needs. Because the Board acts in the best interests of the industry, increased Board decision-making flexibility should benefit the industry and, thus, small businesses in the industry.

Regarding nomination and Board membership, the amendments will: Change from one to two years the length of Board member and alternate member terms of office (§ 982.33); limit the number of consecutive terms members and alternate members may hold to three 2-year terms (§ 982.33); and make conforming changes and a correction in the qualifications for nominating members (§§ 982.30 and 982.32). The amendments are designed to ease the burden of conducting nomination meetings every year and enhance the Board's efficiency. The amendments are administrative in nature and will not impose additional costs on small businesses.

Other amendments to the order's administrative procedures and operations will: Allow Board telephone votes to remain unconfirmed in writing until the next public Board meeting (§ 982.37); remove the ''verbatim'' reporting requirement on Board marketing policy meetings (§ 982.39); allow the Board to accept advance assessment payments and provide discounts for such payments (§ 982.61); and allow the Board to accept voluntary contributions (new § 982.63). These amendments are intended to improve the operations of the Board, lessen the administrative burden on Board members and staff, and improve management of the order's financial resources. As such, the changes will have negligible, if any, economic impact on small entities.

Finally, one amendment provides the Board with the authority to establish more up-to-date identification standards (§ 982.46), which will make order identification and certification provisions consistent with current industry practices and provide handlers more flexibility in meeting identification requirements.

All of these changes are designed to enhance the administration and functioning of the order to the benefit of the industry. Accordingly, it is determined that the revisions of the order will not have a significant economic impact on handlers or producers.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), any reporting and recordkeeping requirements that may result from these amendments will be submitted to OMB for approval.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing Agreements, Nuts, Reporting and recordkeeping requirements.

Order Further Amending the Order Regulating the Handling of Hazelnuts Grown in Oregon and Washington

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the amendments to Marketing Agreement and Order No. 982 (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, as hereby further amended, regulates the handling of hazelnuts grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of hazelnuts grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective upon publication.

A later effective date would unnecessarily delay the implementation of the order amendments and the improvement in operation of the marketing order program. The Board, producers, and handlers need as much time as possible to make plans to implement the amended order and discuss any needed changes to the regulations and Board operating procedures. Also, the order amendments include a change in the term of office for Board members and alternates and a change in the voting procedures for nominations. The industry will soon begin conducting nominations for a term of office beginning July 1, 1996, and these new procedures need to be in effect before nominations begin.

In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective upon publication, and that it would be contrary to the public interest to delay the effective date of these order amendments for 30 days after publication in the Federal Register (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping hazelnuts covered by the said order, as amended, as hereby further amended) who, during the period July 1, 1994, through June 30, 1995, handled 50 percent or more of the volume of such hazelnuts covered by the said order, as amended, as hereby further amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period July 1, 1994, through June 30, 1995 (which has been deemed to be a representative period), have been engaged within the Oregon and Washington production area in the production of such hazelnuts for fresh market.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of hazelnuts grown in Oregon and Washington, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby further amended as follows:

The provisions of the proposed marketing order amendments further amending the order contained in the Secretary's Decision issued on October 23, 1995, and published in the Federal Register on October 31, 1995 (60 FR 55333), shall be and are the terms and provisions of this order further amending the order, and are set forth in full herein.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 982 the heading is revised and all references to ''filbert'', ''filberts'', ''filbert/hazelnut'', ''filberts/hazelnuts'' are revised to read as ''hazelnut'', ''hazelnuts'', ''hazelnut'', and hazelnuts'', respectively.

3. Section 982.4 is revised to read as follows:

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus.

4. Section 982.16 is revised to read as follows:

§ 982.16 Inshell trade acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

5. Section 982.30 is amended by revising paragraphs (a), introductory text, (b)(1), (b)(2), and (b)(3) to read as follows:

§ 982.30 Establishment and membership.

(a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) * * *

(1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

* * * * *

6. In § 982.32, paragraphs (a), (b), (c) and (f) are revised to read as follows:

§ 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.

(b) Nominations for successor handler members and alternate members specified in § 982.30(b) (1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate handler member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee for that respective position.

* * * * *

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

* * * * *

7. In § 982.33, paragraph (b) is revised to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* The term of office of Board members and their alternates shall be for two years beginning on July 1 and ending on June 30, but they shall serve until their respective successors are selected and have qualified: *Provided,* That beginning with the 1996–97 marketing year, no member shall serve more than three consecutive two-year terms as member and no alternate member shall serve more than three consecutive two-year terms as alternate unless specifically exempted by the Secretary. Nomination elections for all Board grower and handler member and alternate positions shall be held every two years.

* * * * *

8. In § 982.37, paragraph (b) is revised to read as follows:

§ 982.37 Procedure.

* * * * *

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That any votes (except mail votes) so cast shall be confirmed at the next regularly scheduled meeting. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

* * * * *

9. In § 982.39, paragraph (i) is revised to read as follows:

§ 982.39 Duties.

* * * * *

(i) To furnish to the Secretary a report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

§ 982.40 [Amended]

10. In § 982.40, paragraph (c)(2) introductory text is amended by removing the word ''shall'' in the third sentence and adding in its place the word ''may''.

11. Section 982.46 is amended by revising paragraph (b) to read as follows:

§ 982.46 Inspection and certification.

* * * * *

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

* * * * *

§ 982.51 [Amended]

12. In § 982.51, paragraph (a) is amended by removing the word ''percent'' at the end of the first sentence.

13. Section 982.52 is amended by revising paragraph (b) to read as follows:

§ 982.52 Disposition of restricted hazelnuts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent exportation into the area designated in § 982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

* * * * *

14. Section 982.54 is amended by revising paragraphs (b), (c), (d), (e) and (f) to read as follows:

§ 982.54 Deferment of restricted obligation.

* * * * *

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred restricted obligation poundage multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate shall be an amount per pound as established by the Board. Such bonding rate shall be based on the estimated value of restricted credits for the current marketing year. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding marketing year shall continue in effect. The Board should make any necessary adjustments once such new rates are fixed.

(d) *Restricted credit purchases.* Any sums collected through default of a handler on the handler's bond shall be used by the Board to purchase restricted credits from handlers, who have such restricted credits in excess of their needs, and are willing to part with them. The Board shall at all times purchase the lowest priced restricted credits offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the restricted credits to be purchased.

(e) *Unexpended sums.* Any unexpended sums which have been collected by the Board through default of a handler on the handler's bond, remaining in the possession of the Board at the end of a marketing year, shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of restricted credits as provided in paragraph (d) of this section.

(f) *Transfer of restricted credit purchases.* Restricted credits purchased as provided for in this section shall be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation. The quantity delivered to each handler shall be that quantity represented by sums collected through default.

* * * * *

15. In § 982.57, paragraph (b) is revised to read as follows:

§ 982.57 Exemptions.

* * * * *

(b) *Sales by growers direct to consumers.* Any hazelnut grower may sell hazelnuts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such hazelnuts in the area of production directly to end users at such grower's ranch or orchard or at roadside stands and farmers' markets. The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards and require such reports, certifications, and other conditions, as are necessary to ensure that such hazelnuts are disposed of only as authorized. Mail order sales are not exempt sales under this part.

16. Section 982.58 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 982.58 Research, promotion, and market development.

(a) * * * The expenses of such projects shall be paid from funds collected pursuant to § 982.61, § 982.63, or credited pursuant to paragraph (b) of this section.

* * * * *

17. Section 982.61 is amended by designating the current text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 982.61 Assessments.

(a) * * *

(b) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the Board may accept the payment of assessments in advance, and may also borrow money for such purpose. Further, payment discounts may be authorized by the Board upon the approval of the Secretary to handlers making such advance assessment payments.

18. A new § 982.63 is added to read as follows:

§ 982.63 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 982.58. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

Dated: April 16, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–9824 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1131

[DA–96–03]

Milk in the Central Arizona Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document continues to suspend certain provisions of the Central Arizona Federal milk marketing order during April 1, 1996, through March 31, 1997. The continued suspension eliminates the requirement that a cooperative association ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of a manufacturing plant operated by the cooperative. United Dairymen of Arizona, a cooperative association that represents nearly all of the producers who supply milk to the market, requested the suspension. The suspension is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: April 1, 1996, through March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 7, 1996; published March 13, 1996 (61 FR 10288).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Central Arizona marketing area.

Notice of proposed rulemaking was published in the Federal Register on March 13, 1995 (61 FR 10288) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of April 1, 1996, through March 31, 1997, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1131.7(c), the words ''50 percent or more of'', ''(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)'' and ''or the previous 12-month period ending with the current month.''

Statement of Consideration

This rule continues to suspend certain provisions of the Central Arizona order for the months of April 1996 through March 1997. The suspension removes the requirement that a cooperative association that operates a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or the previous 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

The order permits a cooperative association's manufacturing plant, located in the marketing area, to be a pool plant if at least 50 percent of the producer milk of members of the cooperative association is physically received at pool plants of other handlers during the current month or the previous 12-month period ending with the current month.

Continuation of the current suspension of this shipping requirement was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA states that the continued pool status of their manufacturing plant is threatened if the suspension is not continued. UDA contends that the same marketing conditions that warranted the suspension last year still exist. UDA maintains that members who increased their milk production to meet the projected demands of fluid handlers for distribution into Mexico continue to suffer the adverse impact of the collapse of the Mexican peso.

During the past year, there has been an increase in producer milk while handler requirements for bulk milk deliveries has decreased. This decrease is primarily a result of reduced Class I sales by Central Arizona handlers in Mexico because of the continued devaluation of the Mexican peso. Pool status of UDA's manufacturing plant will not be maintained absent continuation of the suspension. Thus, costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area.

UDA again requested that the suspension be granted for an indefinite period beginning in April 1996. After reviewing the marketing conditions of the Central Arizona marketing area and their relationship with the uncertain value of the Mexican peso, this

suspension will be for a one-year period.

Accordingly, it is appropriate to suspend the aforesaid provisions beginning April 1, 1996, through March 31, 1997.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in title 7, part 1131, are amended as follows:

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1131.7 [Temporarily Suspended in Part]

2. In § 1131.7(c), the words ''50 percent or more of'', ''(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)'' and ''or the previous 12-month period ending with the current month.'' are suspended for the months of April 1, 1996, through March 31, 1997.

Dated: April 16, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–9826 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–102–AD; Amendment 39–9575; AD 95–26–16 R1]

Airworthiness Directives; Mooney Aircraft Corporation Model M20J Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 95–26–16 R1, which was sent previously to all known U.S. owners and operators of certain Mooney Aircraft Corporation (Mooney) Model M20J airplanes. This AD requires repetitively inspecting the alternate air door assembly to ensure a cotter pin exists and is secure, and replacing the cotter pin if it does not exist or is not secure. It also provides the option of incorporating an alternate air door plate assembly of improved design as terminating action for the repetitive inspections. Priority letter AD 95–26–16 R1 was prompted by a fatal accident involving one of the affected airplanes where the alternate air door became lodged in the air intake of the fuel injector causing engine failure. The actions specified by this AD are intended to prevent the alternate air door from separating from the airplane and restricting air flow to the engine.

DATES: Effective May 16, 1996, to all persons except those to whom it was made immediately effective by priority letter AD 95–26–16 R1, issued January 5, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 1996.

Comments for inclusion in the Rules Docket must be received on or before June 17, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–102–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information related to this AD may be obtained from the Mooney Aircraft Corporation, Box 72, Kerrville, Texas 78028; or may be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alma Ramirez-Hodge, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5147; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION: On December 22, 1995, the FAA issued priority letter AD 95–26–16 to require repetitively inspecting the alternate air door assembly to ensure a cotter pin exists and is secure on certain Mooney Model M20J airplanes, and replacing the cotter pin with a part number MS 24665–132 if it does not exist or is not secure. A fatal accident involving a Mooney Model M20J airplane with reported engine failure in flight at 6,000 feet prompted the FAA to issue priority letter AD 95–26–16.

After the reported engine failure, the pilot attempted to vector the airplane to the nearest airport and crashed into a wooded lot. Investigation of the accident revealed that the alternate air door bolt separated from its fastener, which allowed the alternate air door to lodge in the air intake of the fuel injector, resulting in restricted air flow to the engine.

An FAA review of service history on Mooney Model M20J airplanes revealed four other incidents involving the alternate air door separating and becoming lodged in the intake of the fuel injector. These include two reports of rough engine operation while in flight with emergency landing, an aborted take-off because of engine power loss, and a service difficulty report found during a 100-hour time-in-service (TIS) inspection.

After the issuance of priority letter AD 95–26–16, Mooney developed an alternate air door plate assembly of improved design that, when incorporated on Mooney Model M20J airplanes, prevents the alternate air door assembly from separating from the airplane and restricting air flow to the engine. Mooney Service Bulletin (SB) M20–250B and SB M20–253A, both dated December 1995, specify procedures for modifying the alternate air door assembly on Mooney Model M20J airplanes. This modification consists of incorporating the following parts of improved design:

—Plate assembly, part number (P/N) 600355–507;
—Four rivets, P/N MS20426AD3;
—A cotter pin, P/N MS24665–132;
—A self-locking castellated nut, P/N MS17825–4; and
—A washer, P/N AN960–416.

After examining all information related to the subject accident and incidents, including the referenced service information, the FAA determined that (1) priority letter AD 95–26–16 should allow the option of incorporating an alternate air door plate assembly of improved design as terminating action for the repetitive inspections; and (2) AD action should be taken to prevent the alternate air door on certain Mooney Model M20J airplanes from separating and restricting air flow to the engine.

Since an unsafe condition has been identified that is likely to exist or develop on other Mooney Model M20J airplanes of the same type design, the FAA revised priority letter AD 95–26–16 to provide the option of incorporating the above-referenced modification as terminating action for the requirement of repetitively inspecting the alternate air door assembly.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make priority letter AD 95–26–16 R1 effective immediately by individual letters issued on January 5, 1996, to all known U.S. operators of certain Mooney Model M20J airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–102–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–26–16 R1 Mooney Aircraft Corporation: Amendment 39–9575; Docket No. 95–CE–102–AD. Revises priority letter AD 95–26–16, issued December 22, 1995.

Applicability: Model M20J airplanes (serial numbers 24–0001 through 24–3250 and 24–3252 through 24–3374), 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 request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to further flight after the effective date of this AD, except to those operators receiving this action by priority letter issued January 5, 1996, which made these actions effective immediately upon receipt.

To prevent the alternate air door from separating and restricting air flow to the engine, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Inspect the alternate air door assembly in accordance with the procedures contained in the Appendix to this AD to ensure that the cotter pin exists and is secure. If the cotter pin exists and is secure, reinspect the alternate air door assembly in accordance with the procedures contained in the Appendix to this AD at intervals not to exceed 10 hours time-in-service (TIS) until the modification specified in paragraph (b)(2) of this AD is accomplished.

(b) If, during any of the inspections required by this AD, the cotter pin is found missing or is not secure, prior to further flight, accomplish one of the following:

(1) Replace the cotter pin with a part number MS 24665–132 cotter pin, and reinspect the alternate air door assembly at intervals not to exceed 10 hours TIS; or

(2) Modify the alternate air door assembly. Accomplish these actions in accordance with the INSTRUCTIONS section of Mooney Service Bulletin (SB) M20–250B or SB M20–253A, both dated December 1995, as applicable. This modification consists of incorporating the following parts of improved design:

(i) plate assembly, part number (P/N) 600355–507;

(ii) four rivets, P/N MS20426AD3;
(iii) a cotter pin, P/N MS24665–132;
(iv) a self-locking castellated nut, P/N MS17825–4; and
(v) a washer, P/N AN960–416.

Note 3: If the alternate air door assembly has been modified in accordance with Mooney SB M20–250A or SB M20–253, both dated May 10, 1992, then the only parts required to be incorporated are the following:

—A cotter pin, P/N MS24665–132;
—A self-locking castellated nut, P/N MS17825–4; and
—A washer, P/N AN960–416.

(c) Incorporating the modification specified in paragraph (b)(2) of this AD eliminates the requirement for the repetitive inspection requirement of this AD and may be incorporated at any time.

(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.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(f) The modification required by this AD shall be done in accordance with Mooney Service Bulletin M20- 250B or Mooney Service Bulletin M20–253A, both dated December 1995, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Mooney Aircraft Corporation, Box 72, Kerrville, Texas 78028. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This AD (95–26–16 R1) revises priority letter AD 95–26–16.

(h) This amendment (39–9575) becomes effective on May 16, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–26–16 R1, issued January 5, 1996, which contained the requirements of this amendment.

Appendix to AD 95–26–16 R1

I. INSPECTION PROCEDURES FOR AIRCRAFT PRIOR TO RETROFIT ACTION OF SERVICE BULLETINS M20–250, ORIGINAL ISSUE; M20–250, REVISION A; OR M20–253, ORIGINAL ISSUE.

1. Remove top cowling from aircraft per M20J Service and Maintenance manual, reference Section 71–11–00.

2. Remove the induction air filter from upper induction housing.

3. Use mirror and flashlight to inspect cotter pin security through threaded portion of bolt of the alternate air door.

4. Check security and condition of seal to alternate air door assembly, and replace the seal if cracked.

5. If cotter pin is in place and secure, replace cowling per Section 71–11–00 of Service and Maintenance manual.

6. If cotter pin is missing or not secure, replace with a part number MS 24665–132 cotter pin.

II. INSPECTION PROCEDURES FOR AIRCRAFT AFTER RETROFIT ACTION OF SERVICE BULLETINS M20–250, REVISION A; OR M20–253, ORIGINAL ISSUE.

1. Remove top cowling from aircraft per M20J Service and Maintenance manual, reference Section 71–11–00.

2. Looking up from bottom of engine compartment, use mirror and flashlight to inspect cotter pin security through castellated nut and threaded portion of bolt of the alternate air door spring-loaded assembly.

3. Check security and condition of seal to alternate air door assembly, and replace the seal if cracked.

4. If cotter pin is in place and secure, replace cowling per Section 71–11–00 of Service and Maintenance manual.

5. If cotter pin is missing or is not secure, replace with a part number MS 24665–132 cotter pin.

Issued in Kansas City, Missouri, on April 10, 1996.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9357 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Part 311

[Docket No. OST–96–1259; Notice 96–9]

RIN 2105–AC40

National Security Information; Removal of Regulations

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: DOT is removing regulations regarding National Security Information that it inherited from the Civil Aeronautics Board because they merely reference DOT's own rules on the same subject. This action is taken on the Department's initiative in response to the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: May 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: In 1985, the Civil Aeronautics Board (CAB) ceased to exist and many of its functions and resources were transferred to DOT. Since both CAB and DOT had administrative regulations on many common subjects, as a service to persons accustomed to using the CAB regulations, those regulations were revised to reference the DOT regulations. Enough time has passed that the duplicative references can be removed. This document removes 14 CFR Part 311, CAB's regulatory part covering classification and declassification of national security information and materials, in favor of DOT's at 49 CFR Part 8, to which Part 311 has referred for many years. As part of the President's Regulatory Reinvention Initiative, we will be removing other duplicative or obsolete parts in separate rulemakings. Because these changes are editorial in nature and do not change the substantive requirements, the Department finds that notice and comment are unnecessary and contrary to the public interest.

Analysis of Regulatory Impacts

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. There is no economic impact as a result of this change. Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the rule does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects in 14 CFR Part 311

Classified information.

PART 311—[REMOVED]

In accordance with the above and under the authority of 49 U.S.C. 40113, DOT removes 14 CFR Part 311.

Issued in Washington, DC, on this 1st day of April, 1996.

Federico Peña,

Secretary.

[FR Doc. 96–9703 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–62–P

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14 CFR Part 399

[Docket No. OST–96–1260; Notice 96–10]

RIN 2105–AC42

Release of Internal Staff Memoranda Relating to Public Meetings of the Civil Aeronautics Board

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: DOT is removing provisions concerning release of internal staff memorandum after public meetings of the Civil Aeronautics Board (CAB). The CAB was sunset in 1985 and the provisions no longer have any relevancy. This action is taken on the Department's initiative in response to the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: Effective May 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: In 1985, the Civil Aeronautics Board (CAB) ceased to exist and many of its functions and resources were transferred to DOT. Some of its regulations, although no longer relevant, have remained in the Code of Federal Regulations. Specifically, § 399.102 of title 14, Code of Federal Regulations, has no relevancy to DOT The section specifically sets forth procedures peculiar to an agency that, like the CAB, was subject to the Government in the Sunshine Act, which does not apply to DOT. We are, therefore, removing the section because this procedure is not used at DOT. Analogous information may continue to be sought under the Freedom of Information Act. As part of the President's Regulatory Reinvention Initiative, we will be removing other duplicative or obsolete parts in separate rulemakings. Because these changes are editorial in nature and do not change the substantive requirements, the Department finds that notice and comment are unnecessary and contrary to the public interest.

Analysis of Regulatory Impacts

This amendment is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. There is no economic impact as a result of this change. Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the rule does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

In accordance with the above, DOT amends 14 CFR Part 399 as follows:

PART 399—[AMENDED]

1. The authority citation to Part 399 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40109, 40113, 40114, 40115, 41101, 41102, 41104, 41105, 41106, 41107, 41108, 41109, 41110, 41301, 41302, 41303, 41304, 41305, 41306, 41307, 41309, 41310, 41501, 41503, 41504, 41506, 41507, 41508, 41509, 41510, 41511, 41701, 41702, 41705, 41706, 41707, 41708, 41709, 41711, 41712, 41713, 41901, 41902, 41903, 41904, 41905, 41906, 41907, 41908, 41909, 41910, 41911, 41912, 42111, 42112, 46101, 46102, 46301, 46501.

§ 399.102 [Removed]

2. Section 399.102 is removed.

Issued in Washington, DC, on this 1st day of April, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–9702 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Agribusiness Marketers, Inc., to Mallinckrodt Veterinary Operations, Inc.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Agribusiness Marketers, Inc., 2667 West Dual, Baton Rouge, LA 70815, has informed FDA of a change of sponsor name and address to Mallinckrodt Veterinary Operations, Inc., 421 East Hawley St., Mundelein, IL 60060.

Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name and address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Agribusiness Marketers, Inc.,'' and by alphabetically adding a new entry for ''Mallinckrodt Veterinary Operations, Inc., 421 East Hawley St., Mundelein, IL

60060.....015563'' and in the table in paragraph (c)(2) in the entry for ''015563'' by removing the sponsor name ''Agribusiness Marketers, Inc.,'' and adding in its place ''Mallinckrodt Veterinary Operations, Inc., 421 East Hawley St., Mundelein, IL 60060.''

Dated: April 4, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–9779 Filed 4–19–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor name for a new animal drug application (NADA) from MAC–PAGE, Inc., to ADM Animal Health & Nutrition Div.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 6, 1994 (59 FR 50828), FDA published a final rule amending the animal drug regulations to reflect the change of sponsors for all NADA's held by Central Soya, P. O. Box 1400, Fort Wayne, IN 46801–2508, including MAC–PAGE, Inc., 1600 South Wilson Ave., Dunn, NC 28334, a wholly-owned subsidiary of Central Soya, transferred to Premiere Agri Technologies, Inc. The subsidiaries retained their names and drug labeler codes. In the Federal Register of September 11, 1995 (60 FR 40752), FDA published a final rule amending the animal drug regulations to reflect the change of sponsor name from Premiere Agri Technologies, Inc., and the names of all wholly-owned subsidiaries, to ADM Animal Health & Nutrition Div., P.O. Box 2508, Fort Wayne, IN 46801–2508. Both final rules, which reflected these changes, inadvertently did not include NADA 131–957 (Tylosin). This document corrects that error. Accordingly, FDA is amending the regulations in 21 CFR 558.625 to reflect the change of sponsor.

List of Subject in 21 CFR Part 558

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

2. Section 558.625 *Tylosin* is amended in paragraph (b)(79) by removing ''047427'' and adding in its place ''012286''.

Dated: April 4, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–9784 Filed 4–19–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1313 and 1316

[DEA No. 112C]

Implementation of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200); Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published on Thursday, June 22, 1995 (60 FR 32447). The regulations related to the registration, recordkeeping and reporting requirements for manufacturers, distributors, importers and exporters of listed chemicals.

EFFECTIVE DATE: April 22, 1996.

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: The final regulations that are the subject of these corrections implement the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) (DCDCA). The regulations amend Title 21, Code of Federal Regulations, to add a new Part 1309 and revise certain sections in Parts 1310, 1313 and 1316. As published, the final regulations contain errors that could cause confusion in the regulated industry.

Accordingly, the publication June 22, 1995 of the final regulations to implement the DCDCA, which were the subject of Federal Register Document 95–14978, is corrected as follows:

PART 1313—[CORRECTED]

1. On page 32465, in the first column, the section heading which reads ''§ 1312.32 Requirement of authorization for international transactions.'' is corrected to read ''§ 1313.32 Requirement of authorization for international transactions.''

PART 1316—[CORRECTED]

2. On page 32465, in the third column, amendment Number 1 immediately following PART 1316—[AMENDED] is corrected to read as follows:

1. The authority citation for Part 1316, Subpart A is amended to read as follows:

Authority: 21 U.S.C. 822(f), 830(a), 871(b), 880, 958(f), 965.

Dated: April 16, 1996.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 96–9813 Filed 4–19–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 95–12]

RIN 2125–AD38

Design Standards for Highways; Geometric Design of Highways and Streets

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The National Highway System (NHS) was established by the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568). To reflect the establishment of the NHS, the FHWA is revising several areas of the text in its regulation governing design standards for highways; updating the listing of standards; relocating the guides and references; and adopting as its interim

policy for the design standards which apply to highway construction and reconstruction projects on the NHS, a 1994 revision of the American Association of State Highway and Transportation Officials' (AASHTO) publication, ''A Policy on Geometric Design of Highways and Streets'' (Policy). The primary reason for development of the new Policy was to convert the numerical values in AASHTO's 1990 Policy to the metric system (SI). With the recent enactment of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568), conversion to the metric system by the States now must take place by September 30, 2000. Almost all of the States are continuing their conversion to metric to meet the previously established deadline of September 30, 1996. This regulation will assure the States and other FHWA partners that the metric conversions used to formulate their plans will be consistent with the values adopted by the FHWA.

DATES: This interim final rule is effective May 22, 1996. Comments must be received on or before June 21, 1996. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 7, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–12, Federal Highway Administration, Office of the Chief Counsel, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard. The current design standards are on file at the Office of the Federal Register in Washington, DC, and are available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, appendix D. Copies of the current AASHTO publications are also available for purchase from the American Association of State Highway and Transportation Officials, suite 249, 444 North Capitol Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Seppo I. Sillan, Geometric and Roadside Design Branch, Federal-Aid and Design Division, Office of Engineering (202) 366–0312, or Mr. Wilbert Baccus, Office of Chief Counsel (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The text changes in 23 CFR part 625 reflect the establishment of the National Highway System (NHS) by the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568) (NHS Act) as the basic highway network in the United States. References to ''Federal-aid highway projects'' have accordingly been changed to ''NHS projects.'' The standards, policies, and standard specifications that have been approved by the FHWA for application on all projects on the NHS are incorporated by reference in 23 CFR part 625.

Section 625.3(d) of the rule provides that these Federal design standards apply to all projects on the NHS, regardless of funding source. Under prior law, Federal standards applied to most projects solely as a condition of receipt of Federal grant funds. The change, applying Federal standards even to NHS projects wholly funded by a State, is based on provisions in both the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) (ISTEA) and the NHS Act, and is consistent with the purpose for which the NHS was established. In 23 U.S.C. 109(c), as amended by § 304 of the NHS Act, the Secretary is required, in cooperation with the State highway departments, to approve design and construction standards on the NHS. These provisions mirror the language and assignment of responsibility appearing in 23 U.S.C. 109(b), which has long been interpreted to require the Secretary to establish design standards for the Interstate System without regard for funding source. In expanding the Secretary's authority to all roads on the NHS, Congress sought to accommodate interstate commerce by ensuring a uniform, safe, interconnected system of principal arterial routes.

Federal-aid projects not on the NHS are to be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards. This change implements section 1016(d) of the ISTEA, which added a new subsection (p) to 23 U.S.C. 109 requiring non-NHS projects to meet State standards.

The AASHTO is an organization which represents the 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those agencies. The Secretary of the United States Department of Transportation (DOT) is an ex officio member, and DOT officials participate in various AASHTO activities as nonvoting representatives. Among other functions, the AASHTO develops and issues standards, specifications, policies, guides and related materials for use by the States for highway projects. Many of the standards, policies and standard specifications approved by the FHWA and incorporated in 23 CFR 625 were developed and issued by the AASHTO. Revisions made to such documents by the AASHTO are independently reviewed and adopted by the FHWA before they are applied to NHS projects.

Recently the AASHTO revised the publication ''A Policy on Geometric Design of Highways and Streets'' (Policy). The primary reason for development of the new document was to convert the numerical values in the 1990 Policy to the metric system (SI). The FHWA's Metric Conversion Policy, published in the Federal Register on June 11, 1992, provided that newly authorized Federal-aid construction contracts must be only in metric units by September 30, 1996. Although this date will have to be changed to September 30, 2000, to comply with the recently enacted NHS Act, almost all of the States are continuing their conversion to metric to meet the previously established deadline of September 30, 1996. This rulemaking is intended to assure the States and other FHWA partners that the metric conversions used to formulate their plans will be consistent with the values adopted by the FHWA. Another reason for revising the Policy is to provide the latest design criteria. A more detailed discussion of the changes in the revised Policy is included later in this preamble.

In 1992, the FHWA initiated a phased 5-year plan to convert its activities and business operations to the metric system of weights and measures, as required by the Metric Conversion Act of 1975, Pub. L. 100–418, 102 Stat. 1107, 1451 (Metric Act). Section 3 of this Act set a deadline date of September 30, 1992, for each Federal Government agency to begin using International System of Units (SI) in procurements, grants, and other business-related activities, except to the extent that such use is impractical or would likely cause significant inefficiencies or loss of markets to United States firms.

In order to comply with the Metric Act, the FHWA developed a list of deadlines for converting to the metric system, which was published on June

11, 1992, at 57 FR 24843. This notice established that all newly authorized Federal-aid contracts must use only metric units by September 30, 1996. Although this date will have to be changed to September 30, 2000, to comply with the recently enacted NHS Act, almost all of the States are continuing their conversion to metric to meet the previously established deadline of September 30, 1996. In order to comply with the above deadline, and because it often takes several years between the time when designs are initiated and when projects are authorized, States have already begun to design projects using the metric system. Accordingly, the AASHTO developed and published the new Policy which uses only metric values for geometric design. Through this rulemaking the FHWA is adopting metric conversion values established by the AASHTO in this new Policy.

The new Policy has replaced the previous version of this Policy, which was published by the AASHTO in 1990 and adopted by the FHWA in a final rule published in the Federal Register on April 29, 1993 (58 FR 25939). The new Policy will constitute FHWA's policy on the geometric design of projects on the NHS. The 1994 Policy also takes the place of the publication entitled ''Interim Selected Metric Values for Geometric Design,'' AASHTO 1993, which was adopted by FHWA in a final rule published in the Federal Register on December 10, 1993 (58 FR 64897).

Although the standards contained in the Policy apply to the Interstate System, specific guidance applicable to highways on the Interstate System is included in another AASHTO publication, ''A Policy on Design Standards—Interstate System.'' The current edition of that publication will be converted to the metric system in the near future.

Generally, the criteria in the functional chapters on local roads and streets and on collectors (Chapters V and VI of the Policy) are not applicable to projects on the NHS. However, if highway segments functionally classified as less than principal arterials are incorporated in the NHS by virtue of being Strategic Highway Network (STRAHNET) Connectors or Intermodal Connectors, the standards used may be those appropriate for the functional classification of the segment taking into account the type of traffic using the segment.

Summary of Changes

The following revisions have been made to the list of standards, policies, and standard specifications in § 625.4:

1. ''A Policy on Geometric Design of Highways and Streets,'' AASHTO 1990, has been updated to indicate the 1994 edition.

2. ''Interim Selected Metric Values for Geometric Design,'' AASHTO 1993, has been deleted because metric values are now included in ''A Policy on Geometric Design of Highways and Streets.''

3. ''A Policy on U-Turn Median Openings on Freeways,'' AASHTO 1960, has been deleted. This document is no longer applicable and not available from AASHTO.

4. ''A Policy on Access Between Adjacent Railroads and Interstate Highways,'' AASHTO 1960, has been deleted. This document is no longer applicable and not available from AASHTO.

5. ''Water Supply and Sewage Treatment at Safety Rest Areas,'' FHWA, 23 CFR part 650, subpart E, has been deleted. The safe drinking water requirements of this regulation have been superseded by the national primary drinking water regulations promulgated by the U.S. Environmental Protection Agency (40 CFR part 141) and the States to comply with safe drinking water legislation.

6. ''Standard Specifications for Highway Bridges,'' Thirteenth Edition, AASHTO 1983, has been updated to indicate the fifteenth edition published in 1992 and ''Interim Specifications—Bridges,'' AASHTO 1984 through 1988, has been updated to indicate the 1993 through 1995 editions.

7. ''AASHTO LRFD Bridge Design Specifications,'' AASHTO 1994, has been added. These improved load and resistance factor design specifications are an alternative to the long- standing ''Standard Specifications for Highway Bridges,'' AASHTO.

8. ''Bridge Welding Code, ANSI/AASHTO/AWS D1.5–88,'' AASHTO has been updated to indicate the 1995 edition.

9. ''Reinforcing Steel Welding Code'' has been updated to indicate the new name and current edition, ''Structural Welding Code—Reinforcing Steel,'' 1992.

10. ''Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals,'' AASHTO, has been updated to indicate the 1994 edition.

Section 625.5, Guides and References, contains a listing of references which are informational or guidance in character. This section is being removed from 23 CFR part 625 and will appear instead in the ''Federal-Aid Policy Guide'' (FAPG). The FAPG is an organized, looseleaf, single source documentation of the FHWA's current policies, regulations and nonregulatory procedural guidance information related to the Federal-aid highway program. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

The remaining discussion in this section describes the changes in the new edition of the Policy. There were a number of changes that were made throughout the Policy. These include the following:

1. All dimensions were converted to the metric system.

2. Slope is expressed in nondimensional ratios. The vertical component is shown first and then the horizontal.

3. Superelevation is expressed in percent.

4. The more descriptive terms ''traveled way,'' ''roadway,'' ''lane,'' and ''highway'' have been substituted for the term ''pavement'' where appropriate; however, where the term ''pavement'' refers to a type of surface it is retained.

The following paragraphs provide a brief synopsis of the information that is included in each of the 10 chapters of the Policy and, as appropriate, any significant additions, revisions or deletions beyond those listed above made to the currently approved 1990 AASHTO Policy in the 1994 Policy.

Chapter I—Highway Functions

In this chapter the concept of functional classification is presented and the various components considered in detail. This serves as an introduction to functional classification and an explanation of how the concept is employed in the publication. There are no significant changes made in this chapter other than identification of the NHS as a new administrative system.

Chapter II—Design Controls and Criteria

Those characteristics of vehicles, pedestrians, and traffic that act as criteria for design of various highway and street functional classes are covered in this chapter. The coverage of capacity is revised to agree with the Transportation Research Board's revised chapters of the ''Highway Capacity Manual.'' (At the time this part of the new Policy was undergoing revision, in mid-1993, a number, but not all, of the chapters in the manual had been revised.)

More emphasis is placed on accommodating elderly persons based on information that has been published and studies that have been conducted since the old Policy was published. More information on bicycle transportation and characteristics has

been included. The concept of ''access management,'' which refers to setting access standards for various types of highways and incorporating access standards into legislation, has been added to the section on ''Access Control.'' The terminology used in the Americans with Disabilities Act (ADA), Pub. L. 101–336, 104 Stat. 327, and its implementing regulations has been incorporated in the discussion on designing highways and facilities to meet the needs of persons with disabilities.

Chapter III—Elements of Design

The basic elements of design, such as sight distance, horizontal alinement, superelevation, widths of turning roadways, vertical alinement, maximum grades and climbing lanes are covered in this chapter. Significant revisions to the chapter include the following:

1. In order to eliminate confusion as to which values are used to calculate lengths of vertical and horizontal curves, only the calculated values of stopping and passing sight distance are shown. These unrounded values are used in calculating lengths of vertical curves and, then, the lengths of vertical curves are rounded, as was done in the old Policy.

2. Degree of curve is eliminated; curve criteria is based only on radius.

3. The term ''crown'' has been replaced by more appropriate terminology such as ''cross slope'' in most places.

4. The information on distribution of superelevation and superelevation runoff for curves with radius greater than minimum for low-speed urban streets has been eliminated and a recommendation that as much superelevation and as long runoff lengths as possible be provided even on curves greater than minimum is included.

5. The values for the minimum middle ordinate on the inside of horizontal curves needed to provide horizontal stopping sight distance are based on computed values rather than rounded values.

6. The information on design and capacity of climbing lanes for two-lane and multilane highways has been revised based on the new, revised chapters of the ''Highway Capacity Manual.''

7. The information on truck escape ramps has been updated based on the latest published information.

8. The new Policy notes that personal computers can be used to assist designers in developing vertical and horizontal alinements.

9. The section on ''Maintenance of Traffic Through Construction Areas'' has been revised to be consistent with the ''Manual on Uniform Traffic Control Devices.''

10. The references on highway drainage have been revised to refer to the latest publications.

Chapter IV—Cross Section Elements

The elements of a highway, such as pavement cross slope, traffic lanes, shoulders, medians, frontage roads, and roadsides are discussed in this chapter. Significant revisions to the chapter include the following:

1. More information on design to accommodate bicyclists has been added.

2. The information on design of and use of curbs has been revised.

3. The section on design of pedestrian facilities has been modified somewhat to conform to the ADA implementing regulations.

Chapter V—Local Roads and Streets

The design guidance applicable to those roads functionally classified as local rural roads and local urban streets is covered in this chapter. Significant revisions include the following:

1. Traffic volume criteria in the tables for design speed, traveled way, shoulder width, and width and design loading for bridges is presented on the common basis of average daily traffic (ADT). This is based on recent research which concluded the existing practice of mixing ADT and design hour volume (DHV) was confusing.

2. The values for minimum widths of traveled way and shoulder for local roads having various ranges of ADT have been modified based on National Cooperative Highway Research Program (NCHRP) Report 362, ''Roadway Width for Low Traffic Volume Roads.'' In particular, a 5.4 m traveled way is now permitted for highways with ADT's of under 400. For rural local roads with ADT's of 400 to 1500 the lane and shoulder widths may be adjusted to a minimum roadway width of 9.0 m.

Chapter VI—Collector Roads and Streets

The design guidance applicable to those roads functionally classified as rural collector roads and urban collector streets is covered in this chapter. Significant revisions to the chapter include the following:

1. Traffic volume criteria in the tables for design speed, traveled way, shoulder width, and width and design loading for bridges is presented on the common basis of ADT. This is based on recent research which concluded the existing practice of mixing ADT and DHV was confusing.

2. The values for minimum widths of traveled way and shoulder for rural collector roads having various ranges of ADT have been modified based on NCHRP Report 362, ''Roadway Width for Low Traffic Volume Roads.'' In particular, 2.7 m lane widths are now permitted for highways with ADT's of 250 or less and design speeds of 60 km/h or less.

3. Traveled ways of a minimum width of 6.6 m are permitted to remain on reconstructed highways with any ADT provided the alinement is adequate and the safety records are satisfactory.

4. More information on design to accommodate bicycles is included.

Chapter VII—Rural and Urban Arterials

The basis for design of the principal and minor arterial road systems in rural and urban areas is presented in this chapter.

The only significant change between the old and new Policy was to modify the table providing minimum widths of traveled way and shoulder based on information in NCHRP Report 362. Traffic volume criteria in the table is only in terms of ADT (either current or projected) and the width of traveled way for ADT's of 400 to 2000 and design speeds of under 100 km/h have been reduced slightly.

Chapter VIII—Freeways

The various types of freeways, their design elements, controls, criteria and cross-sectional elements are covered in this chapter. The only significant change to this chapter was to eliminate specific right-of-way widths for the freeway cross sections. It is not considered necessary to specify a total right-of-way width since this is the sum of the individual cross-sectional elements.

Chapter IX—At-Grade Intersections

The basic types of intersections and the elements involved in their designs, primarily those concerning the accommodation of turning movements, are described in this chapter. The following are the major changes in the chapter:

1. Information on design to accommodate bicycles has been added.

2. A discussion concerning the provision of free-flow right turns where speed change lanes are not provided and where pedestrians and bicyclists are a consideration has been added.

3. Another Case dealing with stopped vehicles turning left from a major highway has been added to the discussion on intersection control.

4. The section on sight distance at ramp terminals was eliminated because

sight distance at these locations is calculated in the same manner as at any other intersection.

5. The section on railroad grade crossings was revised to add information on highway intersections adjacent to railroad grade crossings.

Chapter X—Grade Separations and Interchanges

The basic types of interchanges and grade separations, along with the design of their features, are discussed in this chapter. The following are the significant changes in this chapter:

1. Information on single point diamond interchanges was added.
2. Information on the accommodation of pedestrians at interchanges was added.
3. A discussion on ramp metering was added.
4. Most of the information on models was eliminated because models and model types are illustrative only and not directly related to design criteria.

Review Procedure

Based on an analysis of public comments received, and its own independent review, the FHWA will reexamine the acceptability of modifications adopted by this rule.

Rulemaking Analysis and Notices

Section 553(b)(3)(B) of the Administrative Procedure Act provides that agencies may dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest.

The FHWA has determined that publication of a notice of proposed rulemaking would be contrary to the public interest. The FHWA's Metric Conversion Policy provides that newly authorized Federal Lands and Federal-aid construction contracts be formulated solely in metric units by September 30, 1996. Although this date will have to be changed to September 30, 2000, to comply with the recently enacted NHS Act, almost all of the States are continuing their conversion to metric to meet the previously established deadline of September 30, 1996. The Metric Conversion Policy was developed as required by Section 3 of the Metric Act, which mandates that all Federal Government agencies begin using the International System of Units in procurements, grants, and other business-related activities. Planning for Federal Lands and Federal-aid construction projects is already well underway, and States and other FHWA partners need to know now that the metric conversions used to formulate their plans will match the FHWA's conversions. Thus the FHWA believes that implementation of AASHTO's new Policy, which uses only metric values, should be accomplished as soon as possible. Adoption of the metric values in the new Policy now provides necessary certainty and continuity for States and other FHWA partners including highway construction contractors and consultants.

The FHWA has also determined that prior notice and opportunity to comment are unnecessary. The text changes in 23 CFR part 625 only reflect the establishment of the National Highway System. The significant change is incorporation of the new Policy and the metric values contained therein. The FHWA has determined, however, that the metric values used in the new AASHTO Policy are essentially the same as the English measurements already adopted by the FHWA pursuant to notice and comment rulemaking. That rulemaking appeared in the Federal Register on April 29, 1993, wherein FHWA adopted AASHTO's old Policy. On December 10, 1993, FHWA adopted AASHTO's ''Interim Selected Metric Values for Geometric Design,'' which were meant to provide the States with metric values for the most critical elements of geometric design. Other changes to the old Policy that have been incorporated into the new Policy for the most part merely clarify the meaning of certain terminology, incorporate the latest geometric design information, or correct some minor errors in the old Policy.

Accordingly, the FHWA anticipates that prior notice and opportunity for comment will most likely not result in the receipt of useful information. Nonetheless, public comment is solicited on this action. Comments received will be carefully considered in evaluating whether any change to this action is needed.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. The metric values selected in the new Policy are functionally equivalent to the English system measurements contained in the old Policy previously adopted by notice and comment rulemaking. Although the new Policy contains new material, the basic criteria remain essentially the same. In all practicality, the new Policy reflects the criteria, for the most part, which have been in use in designing Federal-aid highways. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–345, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As stated above, the FHWA made this determination based on the fact that metric values in the new Policy are functionally equivalent to the English system values they replace and the new material in the new Policy reflects criteria which for the most part is presently in use.

Executive Order 12612 (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 this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and

October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: April 8, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending Chapter I of title 23, Code of Federal Regulations as follows:

1. Part 625 is revised to read as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

Sec.
625.1 Purpose.
625.2 Policy.
625.3 Application.
625.4 Standards, policies, and standard specifications.

Authority: 23 U.S.C. 109, 315, and 402; sec. 1073 of Pub. L. 102–240, 105 Stat. 1914, 2012; 49 CFR 1.48 (b) and (n).

§ 625.1 Purpose.

To designate those standards, policies, and standard specifications that are acceptable to the Federal Highway Administration (FHWA) for application in the geometric and structural design of highways.

§ 625.2 Policy.

(a) Plans and specifications for proposed National Highway System (NHS) projects shall provide for a facility that will—

(1) Adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and

(2) Be designed and constructed in accordance with criteria best suited to accomplish the objectives described in paragraph (a)(1) of this section and to conform to the particular needs of each locality.

(b) Resurfacing, restoration, and rehabilitation (RRR) projects, other than those on the Interstate system and other freeways, shall be constructed in accordance with standards which preserve and extend the service life of highways and enhance highway safety. Resurfacing, restoration, and rehabilitation work includes placement of additional surface material and/or other work necessary to return an existing roadway, including shoulders, bridges, the roadside, and appurtenances to a condition of structural or functional adequacy.

(c) An important goal of the FHWA is to provide the highest practical and feasible level of safety for people and property associated with the Nation's highway transportation systems and to reduce highway hazards and the resulting number and severity of accidents on all the Nation's highways.

§ 625.3 Application.

(a) Applicable standards. (1) Design and construction standards for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the NHS (other than a highway also on the Interstate System) shall be those approved by the Secretary in cooperation with the State highway departments. These standards may take into account, in addition to the criteria described in § 625.2(a), the following:

(i) The constructed and natural environment of the area;

(ii) The environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity; and

(iii) Access for other modes of transportation.

(2) Federal-aid projects not on the NHS are to be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

(b) The standards, policies, and standard specifications contain specific criteria and controls for the design of NHS projects. Deviations from specific minimum values therein are to be handled in accordance with procedures in paragraph (f) of this section. If there is a conflict between criteria in the documents enumerated in § 625.4 of this part, the latest listed standard, policy, or standard specification will govern.

(c) Application of FHWA regulations, although cited in § 625.4 of this part as standards, policies, and standard specifications, shall be as set forth therein.

(d) This regulation establishes Federal standards for work on the NHS regardless of funding source.

(e) The Division Administrator shall determine the applicability of the roadway geometric design standards to traffic engineering, safety, and preventive maintenance projects which include very minor or no roadway work. Formal findings of applicability are expected only as needed to resolve controversies.

(f) Exceptions. (1) Approval within the delegated authority provided by FHWA Order M1100.1 may be given on a project basis to designs which do not conform to the minimum criteria as set forth in the standards, policies, and standard specifications for:

(i) Experimental features on projects; and

(ii) Projects where conditions warrant that exceptions be made.

(2) The determination to approve a project design that does not conform to the minimum criteria is to be made only after due consideration is given to all project conditions such as maximum service and safety benefits for the dollar invested, compatibility with adjacent sections of roadway and the probable time before reconstruction of the section due to increased traffic demands or changed conditions.

§ 625.4 Standards, policies, and standard specifications.

The documents listed in this section are incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and are on file at the Office of the Federal Register in Washington, DC. They are available as noted in paragraph (d) of this section. The other CFR references listed in this section are included for cross reference purposes only.

(a) Roadway and appurtenances. (1) A Policy on Geometric Design of Highways and Streets, AASHTO 1994. (See § 625.4(d)(1))

(2) A Policy on Design Standards—Interstate System, AASHTO 1991. (See § 625.4(d)(1))

(3) The geometric design standards for resurfacing, restoration, and rehabilitation (RRR) projects on NHS highways other than freeways shall be the procedures and the design or design criteria established for individual projects, groups of projects, or all nonfreeway RRR projects in a State, and as approved by the FHWA. The other geometric design standards in this section do not apply to RRR projects on NHS highways other than freeways, except as adopted on an individual State basis. The RRR design standards shall reflect the consideration of the traffic, safety, economic, physical, community, and environmental needs of the projects.

(4) Erosion and Sediment Control on Highway Construction Projects, refer to 23 CFR part 650, subpart B.

(5) Location and Hydraulic Design of Encroachments on Flood Plains, refer to 23 CFR part 650, subpart A.

(6) Procedures for Abatement of Highway Traffic Noise and Construction Noise, refer to 23 CFR part 772.

(7) Accommodation of Utilities, refer to 23 CFR part 645, subpart B.

(8) Pavement Design, refer to 23 CFR part 626.

(b) Bridges and structures. (1) Standard Specifications for Highway Bridges, Fifteenth Edition, AASHTO 1992. (See § 625.4(d)(1))

(2) Interim Specifications—Bridges, AASHTO 1993. (See § 625.4(d)(1))

(3) Interim Specifications—Bridges, AASHTO 1994. (See § 625.4(d)(1))

(4) Interim Specifications—Bridges, AASHTO 1995. (See § 625.4(d)(1))

(5) AASHTO LRFD Bridge Design Specifications, First Edition, AASHTO 1994 (U.S. Units). (See § 625.4(d)(1))

(6) AASHTO LRFD Bridge Design Specifications, First Edition, AASHTO 1994 (SI Units). (See § 625.4(d)(1))

(7) Standard Specifications for Movable Highway Bridges, AASHTO 1988. (See § 625.4(d)(1))

(8) Bridge Welding Code, ANSI/AASHTO/AWS D1.5–95, AASHTO. (See § 625.4(d) (1) and (2))

(9) Structural Welding Code—Reinforcing Steel, ANSI/AWS D1.4–92, 1992. (See § 625.4(d)(2))

(10) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, AASHTO 1994. For use on NHS projects, the requirement for maximum change in velocity in Section 7, Breakaway Supports, may be 16 fps in lieu of the 15 fps contained in the AASHTO specifications. (See § 625.4(d)(1))

(11) Navigational Clearances for Bridges, refer to 23 CFR part 650, subpart H.

(c) Materials. (1) General Materials Requirements, refer to 23 CFR part 635, subpart D.

(2) Standard Specifications for Transportation Materials and Methods of Sampling and Testing, parts I and II, AASHTO 1995. (See § 625.4(d)(1))

(3) Sampling and Testing of Materials and Construction, refer to 23 CFR part 637, subpart B.

(d) Availability of documents incorporated by reference. The documents listed in § 625.4 are incorporated by reference and are on file and available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. These documents may also be reviewed at the Department of Transportation Library, 400 Seventh Street, SW, Washington, DC, in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7, appendix D. Copies of these documents may be obtained from the following organizations:

1. American Association of State Highway and Transportation Officials (AASHTO), Suite 249, 444 North Capitol Street, NW, Washington, DC 20001.

2. American Welding Society (AWS), 2501 Northwest Seventh Street, Miami, FL 33125.

[FR Doc. 96–9559 Filed 4–19–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31 and 602

[TD 8664]

RIN 1545–AL99

Information Reporting and Backup Withholding

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide rules regarding the reporting on Form 1042–S of certain bank deposit interest paid with respect to a United States bank account to an individual who is a nonresident alien of the United States and a resident of Canada. The IRS has determined that information concerning those deposits would be of significant use in furthering its compliance efforts, which include exchange of tax information with Canada.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–0096. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper is approximately .10 hour, depending on individual circumstances.

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

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations to be added to the Income Tax Regulations (26 CFR part 1) under section 6049 of the Internal Revenue Code (Code). The final regulations provide rules regarding reporting on Form 1042–S of certain bank deposit interest paid with respect to a United States bank account to a nonresident alien individual who is a resident of Canada.

Proposed regulations on this subject were set forth, at §§ 1.6049–5(e)(2), 1.6049–6(e)(6), and 31.3406(a)–3(b)(1), in a notice of proposed rulemaking published in the Federal Register (53 FR 5991) on February 29, 1988 [INTL–52–86 (1988–1 C.B. 892)]. The IRS received comments on the proposed regulations and held a public hearing on June 15, 1989. Having considered the comments and the statements made at the hearing, the IRS and the Treasury Department adopt the proposed regulations as modified by this Treasury decision.

Explanation of Provisions

A. Reporting of Payments to Canadians

This Treasury decision requires reporting on a Form 1042–S of certain interest paid on deposits maintained at a bank's office within the United States when paid to a nonresident alien individual who is a resident of Canada. However, interest on certain bearer certificates of deposit targeted to foreign persons is excepted from the reporting requirement if the interest is paid outside the United States. This final regulation makes an exception to the current rule, based on § 1.6049–5(b), that certain interest amounts paid to non-U.S. persons is not subject to reporting if a statement certifying non-U.S. status is furnished to the payor or middleman on a Form W–8 (Certificate of Foreign Status), as described in § 1.6049–5(b)(2)(iv). However, although bank deposit interest paid to Canadians is made subject to reporting under this final regulation, backup withholding

under section 3406 is not required. Further, in response to suggestions from commentators that segregating interest amounts on the basis of residence would be burdensome, this final regulation allows payors voluntarily to report on a Form 1042–S payments to all foreign persons receiving bank deposit interest without segregating on the basis of residency.

The payor determines whether a payee is a Canadian resident based on the address in the country of permanent residence required to be provided on the Form W–8. However, if the payor has actual knowledge that the payee is a U.S. person, Form 1099 reporting provisions apply.

See proposed regulations published elsewhere in this issue of the Federal Register regarding proposed changes to the notice of proposed rulemaking published in the Federal Register on February 29, 1988.

B. Comments on Canadian Reporting Provisions

Commentors stated that imposing information reporting with respect to deposits of nonresident aliens may undercut the competitiveness of U.S. banks. The IRS and Treasury considered these comments but, in light of our obligations under the United States-Canada income tax treaty and the reporting by Canadian banks of U.S. depositor interest to Canadian tax authorities, have decided to finalize these proposed regulations.

In response to comments that the reporting requirement be delayed, or at least that a transition period be allowed, because of the time required to identify Canadian account holders and to modify processing systems for reporting purposes, the new reporting requirement will be phased in over a three-year period, starting with payments made on or after January 1, 1997. On or after that date, payors will identify Canadian account holders as Forms W–8 are received from new depositors or renewed by existing depositors. Upon identifying account holders as Canadians, payors must begin reporting bank deposit interest paid to those persons.

Commentors also requested that the IRS develop and permit Form 1042–S reporting on magnetic diskette, as is allowed for Form 1099 filings; permit the Form 1042–S to be the transmittal document for the Form 1042–S filing; and allow financial institutions to file separate tapes or diskettes for each area of the bank, rather than bank-wide. These filing changes have previously been made by the IRS and require no further action.

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 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.

Drafting Information

The principal author of these regulations is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Sections 1.6049–4 also issued under 26 U.S.C. 6049 (a), (b), (c), and (d).

Section 1.6049–5 also issued under 26 U.S.C. 6049 (a), (b), (c), and (d). * * *

Par. 2. Section 1.6049–4 is amended by:

1. Removing the reference ''(b)(3)'' and adding ''(b)(3) and (b)(5)'' in its place in the first sentence of paragraphs (b)(1) and (b)(2) introductory text.

2. Revising the first sentence of paragraphs (b)(3) and (b)(4).

3. Adding paragraph (b)(5).

4. Removing the authority citation at the end of the section.

The revisions and addition read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(b) * * *

(3) * * * Except as provided in paragraph (b)(5) of this section, every person acting as a middleman (as defined in paragraph (f)(4) of this section) shall make an information return on Forms 1096 and 1099 for the calendar year. * * *

(4) * * * Except as provided in paragraph (b)(5) of this section, every person carrying on the banking business who makes payments of interest to another person (whether or not aggregating $10 or more) during a calendar year with respect to a certificate of deposit issued in bearer form shall make an information return on Forms 1096 and 1099. * * *

(5) *Interest payments to Canadian nonresident alien individuals*—(i) *General rule.* In the case of interest paid to a Canadian nonresident alien individual (as described in § 1.6049–8(a)), the payor or middleman shall make an information return on Form 1042–S for the calendar year in which the interest is paid. The payor or middleman shall prepare and transmit Form 1042–S at the time and in the manner prescribed by section 1461 and the regulations under that section and by the form and its accompanying instructions. See § 1.6049–6(e)(4) for furnishing a copy of the Form 1042–S to the payee. To determine whether an information return is required for original issue discount, see §§ 1.6049–5(c) and 1.6049–8(a).

(ii) *Effective date.* Paragraph (b)(5)(i) of this section shall be effective for payments made after December 31, 1996 with respect to a Form W–8 (Certificate of Foreign Status) furnished to the payor or middleman after that date.

* * * * *

Par. 3. Section 1.6049–5 is amended by:

1. Revising the introductory text of paragraph (b)(1).

2. Revising the last sentence in paragraph (c).

3. Removing authority citation at the end of the section.

The revisions read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) * * * (1) * * * Subject to the provisions of § 1.6049–8, the term *interest* does not include:

* * * * *

(c) * * * Original issue discount on an obligation (including an obligation with a maturity of not more than 6 months from the date of original issue) held by a nonresident alien individual or foreign corporation is interest described in paragraph (b)(1)(vi) (A) or (B) of this section and, therefore is not interest subject to reporting under section 6049 unless it is described in § 1.6049–8(a) (relating to bank deposit interest paid to a Canadian nonresident alien individual).

Par. 4. Section 1.6049–6 is amended by:

1. Redesignating paragraph (e)(4) as paragraph (e)(5).

2. Adding new paragraph (e)(4).

The addition reads as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) * * *

(4) *Special rule for amounts described in § 1.6049–8(a) paid after December 31, 1996.* In the case of amounts described in § 1.6049–8(a) (relating to payments of interest to Canadian nonresident alien individuals) paid after December 31, 1996, any person who makes a Form 1042–S under section 6049(a) and § 1.6049–4(b)(5) shall furnish a statement to the recipient. The statement shall include a copy of the Form 1042–S required to be prepared pursuant to § 1.6049–4(b)(5) and a statement to the effect that the information on the Form is being furnished to the United States Internal Revenue Service and may be furnished to Canada.

* * * * *

Par. 5. Section 1.6049–8 is added to read as follows:

§ 1.6049–8 Interest and original issue discount paid to residents of Canada.

(a) *Interest subject to reporting requirement.* For purposes of §§ 1.6049–4, 1.6049–6 and this section and except as provided in paragraph (b) of this section, the term *interest* means interest paid to a Canadian nonresident alien individual after December 31, 1996, where the interest is described in section 871(i)(2)(A) with respect to a deposit maintained at an office within the United States. For purposes of the regulations under section 6049, a Canadian nonresident alien individual is an individual who resides in Canada and is not a United States citizen. The payor or middleman may rely upon the permanent residence address (as defined in section 1441 and the regulations under that section) as stated on the Form W–8 (described in section 6049 and the regulations under that section) in order to determine whether the payment is made to a Canadian nonresident alien individual. Amounts described in this paragraph (a) are not subject to backup withholding under section 3406. See § 31.3406(g)–1(d) of this chapter.

(b) *Interest excluded from reporting requirement.* The term *interest* does not include an amount that is paid by the issuer or its agent outside the United States with respect to an obligation that is described in paragraph (b) (1) or (2) of this section.

(1)(i) The obligation is not in registered form (within the meaning of section 163(f) and the regulations thereunder); is part of a larger single public offering of securities; and is described in section 163(f)(2)(B).

(ii) Unless it has actual knowledge to the contrary, a middleman may treat an obligation as if it is described in section 163(f)(2)(B) if the obligation or coupon therefrom, whichever is presented for payment, contains the statement described in section 163(f)(2)(B)(ii)(II) and the regulations thereunder.

(2)(i) The obligation has a face or principal amount of not less than $500,000, and satisfies the requirements described in paragraphs (b)(2)(i) (A), (B), and (C) of this section.

(A) The obligation satisfies the requirements of sections 163(f)(2)(B) (i) and (ii)(I) and the regulations thereunder (as if it were a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(D)).

(B) If the obligation is in registered form, it is registered in the name of an exempt recipient described in § 1.6049–4(c)(1)(ii).

(C) The obligation has on its face and on any detachable coupons the following statement (or a similar statement having the same effect): ''By accepting this obligation or coupon, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in the regulations under section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in the regulations under section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).''

(ii) Unless the middleman has actual knowledge to the contrary, it may treat an obligation as satisfying the requirements of sections 163(f)(2)(B) (i) and (ii)(I) and the regulations thereunder if the obligation or a coupon therefrom, whichever is presented for payment, contains the statement in paragraph (b)(2)(i)(C) of this section.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 5a. The authority for part 31 continues to read in part as follows:

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

Par. 6. Section 31.3406(g)–1 is amended by adding paragraph (d) to read as follows:

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(d) *Reportable payments made to Canadian nonresident alien individuals.* A payment of interest made to a Canadian nonresident alien individual under § 1.6049–8(a) of this chapter is not subject to withholding under section 3406.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. Section 602.101, paragraph (c) is amended by removing the entry ''§ 31.3406(a)–1–§ 31.3406(i)–1'' and adding entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1. 6049–6	1545–0096
* * * * *	
31.3406(a)–1	1545–0112
31.3406(a)–2	1545–0112
31.3406(a)–3	1545–0112
31.3406(a)–4	1545–0112
31.3406(b)(2)–1	1545–0112
31.3406(b)(2)–2	1545–0112
31.3406(b)(2)–3	1545–0112
31.3406(b)(2)–4	1545–0112
31.3406(b)(2)–5	1545–0112
31.3406(b)(3)–1	1545–0112
31.3406(b)(3)–2	1545–0112
31.3406(b)(3)–3	1545–0112
31.3406(b)(3)–4	1545–0112
31.3406(b)(4)–1	1545–0112
31.3406(c)–1	1545–0112
31.3406(d)–1	1545–0112
31.3406(d)–2	1545–0112
31.3406(d)–3	1545–0112
31.3406(d)–4	1545–0112

CFR part or section where identified and described	Current OMB control No.
31.3406(e)–1	1545–0112
31.3406(f)–1	1545–0112
31.3406(g)–1	1545–0096 1545–0112
31.3406(g)–2	1545–0112
31.3406(g)–3	1545–0112
31.3406(h)–1	1545–0112
31.3406(h)–2	1545–0112
31.3406(h)–3	1545–0112
31.3406(i)–1	1545–0112

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: March 27, 1996

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc 96–9456 Filed 4–15–96; 10:14 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG Order No. 2002–95]

RIN 1105–AA41

Removal of 28 CFR Part 25—Recommendations to the President on Civil Aeronautics Board Decisions

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule removes 28 CFR part 25—Recommendations to the President on Civil Aeronautics Board Decisions—from the Code of Federal Regulations. Part 25 is unnecessary, and its removal will help to streamline the Code of Federal Regulations.

DATES: This final rule is effective April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Howard Blumenthal, Assistant Chief, Legal Policy Section, Antitrust Division, Room 3121 Main Justice Building, 10th & Pennsylvania Avenue NW., Washington, DC 20530; telephone (202) 514–2513.

SUPPLEMENTARY INFORMATION: Title 28 CFR part 25 contains Department of Justice (''Department'') regulations setting forth procedures for receiving comments from private parties on possible recommendations by the Department to the President concerning decisions by the Secretary of Transportation (''Secretary'') submitted for Presidential approval pursuant to 49 U.S.C. 41307 and 41509. (At the time this regulation was promulgated, these duties were performed by the Civil Aeronautics Board (''CAB'') pursuant to 49 U.S.C. 1461, but the CAB's authority in this regard was subsequently transferred to the Secretary.) Under 49 U.S.C. 41307 and 41509, the Secretary must submit for Presidential review decisions made by the Secretary to issue, deny, amend, revoke, etc., certificates to domestic or foreign air carriers to provide foreign air transportation, or to suspend, cancel, or reject tariffs for foreign air transportation. The President may disapprove decisions of the Secretary only for reasons based on foreign relations or national defense considerations. E.O. 12597, 52 FR 18335 (1987), provides that the Department, along with certain other Executive Branch agencies, may make recommendations to the President concerning such decisions by the Secretary for reasons relating to the national defense or foreign relations. Any other concerns that the Department may have with the Secretary's decisions, including those related to regulatory policy, are to be presented to the Department of Transportation (''DOT'') in accordance with the procedures of DOT.

Under section 8 of E.O. 12597, ''[d]epartments and agencies * * * *that regularly make recommendations* in connection with the [above described] presidential review * * * shall * * * (a) establish public dockets for all written communications * * * between their officers and employees and private parties in connection with the preparation of such recommendations; and (b) prescribe such other procedures governing oral and written communications as they deem appropriate.'' (Emphasis added.) Essentially, 28 CFR part 25 provides that public comments concerning possible Department recommendations shall be in writing whenever possible, shall be submitted in duplicate, and shall, unless such communications are entitled to confidential treatment or are publicly available from DOT, be placed in a public docket established in the Legal Procedures Unit of the Antitrust Division.

The Department has had no occasion to make recommendations to the President concerning the national defense or foreign relations implications of the issuance of certificates to provide foreign air transportation or the rejection of tariffs for foreign air transportation, nor has it received comments from private parties on any such possible recommendations, for at least the last seven years. Furthermore, the Department does not anticipate doing so on a regular basis in the future. Thus, 28 CFR part 25 is not required to be promulgated by E.O. 12597, and its inclusion in the Code of Federal Regulations is unnecessary. Private parties wishing to submit comments to the Department concerning possible recommendations by the Department under 49 U.S.C. 41307 and 41509 will be informed of the proper procedures to follow, and a public docket for comments will be created, on an ad hoc basis should such an occasion ever arise. Therefore, the Department is removing 28 CFR part 25.

Administrative Procedure Act, 5 U.S.C. 553

Because this regulation imposes no new requirements or restrictions, the Department of Justice finds good cause for exempting it from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Air transportation, Antitrust.

Accordingly, for the reasons set forth in the preamble and pursuant to 28 U.S.C. 509, 510, and 5 U.S.C. 301, in Title 28 of the Code of Federal Regulations, part 25 is removed.

Dated: December 14, 1995.

Janet Reno,

Attorney General.

[FR Doc. 96–9749 Filed 4–19–96; 8:45 am]

BILLING CODE 4410–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal sector equal employment opportunity provisions concerning the time limit for a complainant to file an appeal with the Merit Systems Protection Board (Board) following an agency's final decision on a mixed case complaint. The rule is being amended because the Board lengthened the time limits for filing a timely appeal from a complaint raising issues of prohibited discrimination.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Daniel T. Riordan, Senior Attorney, Advice and External Litigation Division, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, D.C. 20507; telephone (202) 663–4669 or (202) 663–7026 (TDD). Copies of this final rule are also available in the following formats: Large print, braille, audio-tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at (800) 669–3362 (Voice) or (800) 800–3302 (TDD).

SUPPLEMENTARY INFORMATION: This change in the EEOC's procedures came about as a result of the Board's revision of its procedures for accepting appeals following a final decision by an agency on a mixed case complaint. The Board enlarged the time limit for accepting such appeals in a final rule at 59 FR 31109, June 17, 1994, which amended 5 CFR § 1201.154(b)(1) of its regulations. The Board changed the time limit for filing initial appeals to bring the Board's procedures more in line with the legal and regulatory time limits for filing with the Federal Courts and EEOC, and also to make the Board's appellate processes more accessible to Federal employees. 59 FR 31109. EEOC is therefore amending its regulation to conform with the new time limit established by the Board.

We are issuing a final rule rather than a notice of proposed rulemaking because we have determined, for good cause, that publication of a proposed rule and solicitation of comments is not necessary. The Board initially announced this change as a proposed rule at 59 FR 18764, April 20, 1994, and asked for comments; a significant majority of the comments received favored or were not opposed to the change.

Regulatory Procedures

Executive Order 12866

The Commission has determined that this regulatory action is not ''significant'' as defined by Executive Order 12866, and is therefore not subject to review by the Office of Management and Budget.

Regulatory Flexibility Act

In addition, the Commission also certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Aged, Equal employment opportunity, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination.

Gilbert F. Casellas,

Chairman.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission is amending 29 CFR Part 1614 as follows:

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

1. The authority citation for 29 CFR Part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

§ 1614.302 [Amended]

2. Section 1614.302 is amended by removing the number ''20'' in paragraphs (d)(1)(ii) and (d)(3) and adding in their place the number ''30.''

[FR Doc. 96–9570 Filed 4–19–96; 8:45 am]

BILLING CODE 6750–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH97–1; FRL–5462–2]

Interim Final Determination That State Has Corrected the Deficiency; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Interim final determination.

SUMMARY: In the proposed rules section of this Federal Register, USEPA has proposed conditional approval of the State of Ohio's New Source Review (NSR) program rules. Based on the proposed conditional approval, USEPA is making an interim final determination by this action that Ohio has corrected the deficiency for which a sanctions clock began on October 21, 1994. This action will defer application of the offset sanction and defer the application of the highway sanction. Although this action is effective upon publication, USEPA will take comment and will publish a final rule taking into consideration any comments received on this interim final rule.

DATES: This action will be effective April 22, 1996. Comments must be received by May 22, 1996.

ADDRESSES: Comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. The State submittal and USEPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, Permits and Grants Section, Air Programs Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. (312) 353–4761.

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 1993 the State submitted an NSR plan revision request which USEPA disapproved in full on September 24, 1994 (59 FR 48392). The USEPA's disapproval action started an

18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (CAA) and a 24-month clock for promulgation of a Federal implementation plan under section 110(c)(1) of the CAA. The State subsequently submitted a revised program on April 12, 1996. In the proposed rules section of this Federal Register, USEPA has proposed conditional approval of the State of Ohio's submittal of its NSR requested State Implementation Plan revision.

II. USEPA Action

Based on the proposed conditional approval set forth in the proposed rules section of this Federal Register, USEPA believes that it is more likely than not that the State has corrected the original disapproval deficiency that started the sanction clock and, therefore, is taking this interim final action finding that the State has corrected the disapproval deficiency, effective on publication. This action does not stop the sanction clock that started for this area on October 21, 1994. However, this action will defer the application of the offsets sanction and will defer the application of the highway sanction. See 59 FR 39832 (Aug. 4, 1994) codified at 40 CFR 52.31. If USEPA takes final action conditionally approving the State's submittal, such action will continue any deferral of the offset and highway sanctions. When the State meets its commitment and USEPA takes final action fully approving the State's submittal meeting those commitments, such action will permanently stop the sanctions clock and will permanently lift any applied, stayed or deferred sanctions.

At this time, USEPA is also providing the public with an opportunity to comment on this final action. If, based on the comments on this action and the comments on USEPA's proposed conditional approval of the State's submittal, USEPA determines that the State's submittal is not approvable and this final action was inappropriate, USEPA will take further action to disapprove the State's submittal and to find that the State has not corrected the original disapproval deficiency. Such action will retrigger the sanctions consequences as described in the sanctions rule. *See* 59 FR 39832.

III. Administrative Requirements

Because USEPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, USEPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] *See* 5 U.S.C. 553(b)(B). The USEPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The USEPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clock. Therefore, it is not in the public interest to initially apply sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, USEPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while USEPA completes its rulemaking process on the approvability of the State's submittal. In addition, USEPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA 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.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the CAA. Therefore, I certify that it does not have an impact on any small entities.

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA 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 a State, local and/or tribal government(s) in the aggregate. The USEPA must also develop a plan with regard to small governments that would be significantly or uniquely affected by the rule.

Because this direct final rule is estimated to result in the expenditure by State, local and tribal governments or the private sector of less than $100 million in any one year, USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost effective, or least burdensome alternative because small governments will not be significantly or uniquely affected by this rule, USEPA is not required to develop a plan for small governments. Further, this final rule only defers the imposition of sanctions; it imposes no new requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 15, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–9913 Filed 4–19–96; 8:45 am]

BILLING CODE 6560–50–P

[1] As previously noted, however, by this action USEPA is providing the public with a chance to comment on USEPA's determination after the effective date and USEPA will consider any comments received in determining whether to reverse such action.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 3

[Docket No. OST–96–1264; Notice 96–11]

RIN 2105–AC39

Use of the Official Seal

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: DOT is removing from the Code of Federal Regulations regulations governing what uses may be made of its Official Seal and which officials have the authority to affix it because the regulations duplicate internal directives that are available to the public. This action is taken on the Department's initiative in response to the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: May 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: Since its establishment in 1967, DOT has had an Official Seal, which indicates official action of DOT and must be judicially noticed. These same provisions appear in DOT's internal directives, which are public documents. To eliminate duplication, the regulations regarding appropriate uses of the Seal and identification of which officials of DOT may affix it will be removed from the Code of Federal Regulations but continue to appear in the internal directives. Because these changes are editorial in nature and do not change the substantive requirements, the Department finds that notice and comment are unnecessary and contrary to the public interest.

Analysis of Regulatory Impacts

This amendment is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. There is no economic impact as a result of this change. Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the rule does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects in 49 CFR Part 3

Seals and insignia.

In accordance with the above, DOT amends 49 CFR Part 3 as follows:

PART 3—[AMENDED]

1. The authority citation to Part 3 is revised to read as follows:

Authority: 49 U.S.C. 102(e).

§§ 3.3 and 3.5 [Removed]

2. Sections 3.3 and 3.5 are removed.

Issued in Washington, DC, on this 1st day of April, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–9701 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–62–P

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49 CFR Part 79

[Docket No. OST–96–1258; Notice 96–8]

RIN 2105–AC41

Medals of Honor

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: DOT is clarifying its regulations regarding award of Medals of Honor for bravery in land transportation accidents/incidents. This action is taken on the Department's initiative in response to the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: May 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: Acting through DOT, the President of the United States may award a bronze medal for bravery to any person who, by extreme daring, risks his/her life in trying to prevent, or to save the life of a person in, a grave accident in the United States that involves an interstate rail carrier or a motor vehicle being operated on public highways. See 49 U.S.C. 80504. The regulations implementing this authority were last amended in 1968. DOT is revising them in order to simplify language and otherwise make them easier to understand. Because these changes are editorial in nature and do not change the substantive requirements, the Department finds that notice and comment are unnecessary and contrary to the public interest.

Analysis of Regulatory Impacts

This amendment is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. There will be no economic impact as a result of this change. Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the rule does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects in 49 CFR Part 79

Decorations, Medals, Awards.

In accordance with the above, DOT revises 49 CFR Part 79, to read as follows:

PART 79—MEDALS OF HONOR

Sec.
79.1 Scope.
79.3 Application.
79.5 Investigation.
79.7 Award.
79.9 Design.

Authority: 49 U.S.C. 80504.

§ 79.1 Scope.

(a) This Part implements 49 U.S.C. 80504, which authorizes the President of the United States to award a bronze medal for bravery to any person who, by extreme daring, risks his/her life in trying to prevent, or to save the life of a person in, a grave accident/incident in the United States that involves an interstate rail carrier or a motor vehicle being operated on public highways.

(b) The actions for which the medal may be awarded must reflect such unusual daring and bravery that a person would not normally be expected to perform them as a regular part of his/her regular work or vocation.

§ 79.3 Application.

(a) Any person may apply for the award of the medal described in § 79.1, but only on behalf of another person, by writing to the Secretary of Transportation, Attention: Medals of Honor, within two (2) years of the action that is the subject of the application.

(b) Although no application form is required, the following information must be provided:

(1) Name, address, and telephone number of the person submitting the application.

(2) Name, address, and telephone number of the person on whose behalf the application is submitted.

(3) Date, time, place, and weather conditions of the action that is the subject of the application.

(4) Identification of rail or motor carrier involved, or of operator of motor vehicles involved.

(5) Identification of any public or private authority that investigated the accident/incident involved.

(6) Name, address, and telephone number of any witness to the action that is the subject of the application.

(7) Detailed description of the action that is the subject of the application, including why the person submitting the application thinks that the action merits the extraordinary recognition embodied in the Medal of Honor.

(c) An application and any documentary or other evidence supporting it must be supported by oath or affirmation, or by the signer's acknowledgment that a knowingly false statement is punishable as perjury.

§ 79.5 Investigation.

The Department of Transportation may make any investigation of an application that it deems appropriate, including the taking of testimony under oath or affirmation.

§ 79.7 Award.

If the Secretary of Transportation decides that it is warranted, the Secretary shall award the Medal on behalf of and in the name of the President of the United States.

§ 79.9 Design.

The Department is authorized to adopt and revise the existing designs for the award, rosette, and ribbon provided for by statute.

Issued in Washington, DC, on this 1st day of April, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–9704 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–62–P

Surface Transportation Board

49 CFR Part 1169

[STB Ex Parte No. 544]

Removal of Obsolete Regulations for Discontinuance of Bus Transportation in One State

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is removing from the Code of Federal Regulations obsolete regulations concerning discontinuance of bus transportation in one state.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA) abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204 of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act.''

Under the Bus Regulatory Reform Act of 1982 (the Bus Act), state regulation of bus exit was relaxed. As here pertinent, section 16 of the Bus Act (codified at 49 U.S.C. 10935) provided a mechanism for bus companies to seek ICC permission to discontinue service on intrastate routes that form part of interstate routes when they have been denied permission by state regulatory bodies to discontinue such service.[1] *In Preemption of State Regulations—Regular-Route Exit*, 133 M.C.C. 20 (1982), the ICC issued rules, found at 49 CFR 1169, to implement this statutory provision.

Pursuant to the ICCTA, 49 U.S.C. 10935 has been repealed. Because the section 10935 statutory basis for the part 1169 regulations for discontinuance of bus transportation in one state has been repealed, we are removing the now obsolete part 1169 regulations.[2]

Because this action merely reflects, and is required by, the enactment of the Act and will not have an adverse effect on the interests of any person, this action will be deemed to be effective as of January 1, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1169

Administrative practice and procedure, Buses, Motor Carriers.

Decided: April 9, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams ,

Secretary.

PART 1169—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended by removing part 1169.

[FR Doc. 96–9788 Filed 4–19–96; 8:45 am]

BILLING CODE 4915–00–P

[1] Under 49 U.S.C. 10935, discontinuance means total cessation of service or reducing the level of service to less than one trip per weekday (excluding Saturdays and Sundays).

[2] We note that the repeal was not intended to reintroduce state regulation. Rather, under the preemption provisions of old 49 U.S.C. 11501(e), which were amended and recodified at 49 U.S.C. 14501(a), interstate or intrastate scheduling changes, including discontinuance and the reduction of the level of service on a carrier's interstate routes, are preempted from state regulation. The new law, we also note, leaves unchanged the ability of states to require notice, not to exceed 30 days, of schedule changes and discontinuances. As before, states may regulate intrastate commuter bus operations and strictly intrastate routes.

Proposed Rules

Federal Register
Vol. 61, No. 78
Monday, April 22, 1996

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–95–305]

Shelled Almonds and Almonds in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would revise the United States Standards for Grades of Shelled Almonds and the United States Standards for Grades of Almonds in the Shell. The Almond Board of California's Grades Subcommittee (ABCGS) recommends changes ''to better reflect the requirements of today's almond industry.'' The ABCGS specifically requests changes to the foreign material tolerances; the tolerance for live insects inside the shell; removing the language ''appearance of the lot'' from all definitions in the standards; combining tolerances for chipping and scratching and split and broken in the U.S. Standard Sheller Run grade; revising current definitions; and adding new definitions.

The Agricultural Marketing Service (AMS), in cooperation with industry, and other interested parties develops and improves standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

DATES: Comments must be postmarked or courier dated on or before July 21, 1996.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049 South Building, Washington, DC 20090–6456. FAX number (202) 720–8871. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is issuing this proposed rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Shelled Almonds and U.S. Standards for Grades of Almonds In The Shell will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed 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 the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Shelled Almonds and United States Standards for Grades of Almonds in the Shell are issued in accordance with the provisions of the Agricultural Marketing Act of 1946. The standards were last revised in August 1960 and July 1964, respectively. The ABCGS has requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices.

The definition of ''similar varietal characteristics'' in § 51.2117 of the current U.S. Standards for Grades of Shelled Almonds states that the ''kernels are similar in shape and appearance. For example, long types shall not be mixed with short types, or broad types mixed with narrow types, and bitter almonds shall not be mixed with sweet almonds. Color of the kernels shall not be considered, since there is often a marked difference in skin color of kernels of the same variety.'' The ABCGS recommended adding two designations to this definition — ''one type'' and ''California.'' This would affect all of the grades that have a requirement for ''similar varietal characteristics'' (only the U.S. No. 1 Pieces grade has no such requirement). The ''one type'' designation would retain the current definition of similar varietal characteristics. The ''California'' designation would allow for more than one variety of blanchable type almonds to be mixed, including up to 25 percent of the ''Nonpareil'' or similar type, and meet the definition of ''similar varietal characteristics, California'' designation. Lots not designated as either type would be considered ''one type.''

The industry commonly markets almonds indicating either individual varieties or mixtures of several similar appearing varieties. There are five established industry mixtures, including ''California.'' The other four consist of ''Nonpareil,'' ''Mission,'' ''NePlus Ultra,'' and ''Inshell Bleaching.'' All are recognized as separate groupings and may contain several varieties showing dissimilar characteristics (based on shape and appearance). However, the varieties in each classification have broad similarities in their uses, propensity for blanching, and acceptance for particular end products. The ''California'' mixture is widely recognized within the industry. The ''California'' mixture is defined in the Almond Variety Update, 1985, referencing the establishment of the definition in 1972 by USDA, Federal-State Inspection Service. It may include the varieties Ballico, California, Davey, Harvey, Merced, Norman, Ruby, Thompson, Vesta and all other varieties that are similar to the varieties listed and in addition the variety Nonpareil

may be included in the classification but not to exceed 25 percent by weight of the lot. All varieties in the ''California'' mixture are blanchable.

All blanchable type almonds are not similar in shape and appearance. However, the ABCGS contends that handlers are not concerned with differences in the shape or appearance of the almonds, as long as they are blanchable. This mixing of varieties is a common practice in the industry today. However, using the current standards, inspected lots would not meet the requirement for similar varietal characteristics, and would be certified as either failing to meet a specific grade due to dissimilar varieties; or, as meeting a ''Mixed'' grade designation. The ABCGS states that these options (fails to meet a specified grade and Mixed) negatively impact the marketing of such lots even though the seller and buyer are fully aware of the product's characteristics. (The U.S. Fancy and U.S. Extra No. 1 grades cannot be re-designated as ''Mixed'' lots.)

By expanding the definition of similar varietal characteristics as ABCGS recommends, the standards will be in-line with current marketing practices. The change would allow lots that are comprised of blanchable types, including up to 25 percent Nonpareil types, to meet the requirements of ''similar varietal characteristics'' when so designated as ''California'' type.

Currently, the U.S. No. 1, U.S. Select Sheller Run, U.S. Standard Sheller Run, and U.S. No. 1 Whole and Broken grades may be designated as U.S. No. 1 Mixed, U.S. Select Sheller Run Mixed, U.S. Standard Sheller Run Mixed, and U.S. No. 1 Whole and Broken, Mixed if two or more dissimilar varieties are found in excess of the tolerance, and all other defects are within the tolerances. If the definition for ''similar varietal characteristics'' is changed as ABCGS recommends, only those lots designated as ''one type'' or undesignated lots would need be redesignated as ''Mixed'' if the tolerance for dissimilar varieties is exceeded.

This proposed change regarding similar varietal characteristics would not affect the U.S. Standards for Grades of Almonds In The Shell. Because of the nature of in shell almonds, no change to the current definition of similar varietal characteristics is warranted in this standard.

The ABCGS recommends that the tolerances for foreign material be tighter in most grades, including a ''zero tolerance'' for glass and metal in all grades in the U.S. Standards for Grades of Shelled Almonds. They contend that this tightening of the tolerances reflects the current requirements of most buyers, and meets current food safety concerns in regard to glass and metal. The ABCGS reports that major buyers of almonds are setting more stringent tolerances (than current tolerances in the U.S. grades) for foreign material in contract specifications. In discussions with representatives of the industry, most felt that although the tighter tolerances would be more difficult to meet, it would not be impossible. The effect this change would have on the industry would be to fail any lot found to have any amount of glass or metal, and in most grades further restrict other types of foreign material.

The ABCGS recommends that the tolerance for live insects inside the shell be restricted to zero in the U.S. Standards for Grades of Almonds In The Shell. They state that this tightening of the tolerance reflects the requirements of consumers, and with effective fumigation practices live insects can be eliminated. This change would cause any lot found to have any amount of live insects if found inside the shell to fail to meet any U.S. grade.

The ABCGS recommends to modify the U.S. Standard Sheller Run grade within the U.S. Standards for Grades of Shelled Almonds by combining the tolerances for chipped and scratched kernels (20 percent) and split and broken kernels (15 percent). The new total tolerance would be 35 percent, with a restriction of not more than 15 percent for split and broken. The ABCGS views chipped and scratched kernels as less objectionable than split and broken kernels. Chipped and scratched kernels essentially retain their full shape, but have superficial chips and scratches of the pellicle and meat. Split and broken kernels are those with 1/8 or more of the kernel split or broken off. The effect of this change would be to allow with up to 35 percent chipped and scratched (with 0 percent split and broken), or any combination of the two types of defects totaling 35 percent (or less), as long as the percentage of split and broken does not exceed 15 percent.

The ''Unclassified'' designation would be deleted from the two grade standards. The term ''unclassified'' is not a grade within the meaning of the standards and only serves to show that no grade has been applied to the lot. Since this designation is rarely used and may create some confusion in the marketplace, it would be deleted from the standards.

The ABCGS recommends that current language referring to ''appearance of the lot'' be removed from both grade standards. Currently, this language is found in the general definitions of ''injury,'' ''damage,'' and in the specific definition of ''damage by chipped and scratched kernels'' in the shelled grades; and, in the general definition of ''damage'' in the in-the-shell grades. This language allows interpretations for various defects, whereby a lot of almonds that are not considered injured, or damaged individually by particular defects may be considered injured or damaged based on affecting the appearance of the lot. Removing this language would limit the scoring of defects based on the individual kernel and not on the general appearance of the lot.

This change in both grade standards would cause defects to be scored, based on the individual kernel, rather than based on the lot as a whole.

ABCGS suggests that USDA revise the definition of ''damage by gum'' from its current definition of ''more than 1/8 of the surface affected'' to an ''area aggregating more than the equivalent of a circle 1/4 inch in diameter'' in both grade standards regardless of the size of the almond. The ABCGS feels that gum is a serious defect on any size nut, (generally viewed as an inedible) and should be scored more tightly than at present. Industry generally allows less of an area to be affected than the current standards permit. By using a specific area rather than a percentage of the surface, scoring will be easier and more objective for inspectors.

The ABCGS recommends that the definition of ''fairly uniform color'' be changed in § 51.2086 of the U.S. Standards for Grades of Almonds In The Shell to account for uniformity in color of the shell, whether lots of almonds are ''natural'' or ''bleached.'' The industry offers in-the-shell almonds with both ''natural'' and ''bleached'' shells. Bleaching of the shells is an approved practice within the industry, however, confusion exists between buyers and sellers regarding the acceptability of bleached shells. Adding the reference of bleaching in the definition of ''fairly uniform color'' should eliminate the confusion.

The ABCGS recommends that the definition of ''decay'' be changed in § 51.2121 of the U.S. Standards for Grades of Shelled Almonds to correspond with the definition in the U.S. Standards for Grades of Almonds In The Shell from ''the kernel is putrid or decomposed'' to ''part or all of the kernel has become decomposed.'' The language and wording of decay would be changed to promote uniformity and consistency between the two grade standards.

The definitions of ''damage,'' ''insects,'' ''mold,'' and ''shriveling''

would be changed in the U.S. Standards for Grades of Almonds In The Shell to correspond with the definitions in the U.S. Standards for Grades of Shelled Almonds. The language and wording of these definitions would be changed to promote uniformity and consistency between the two grade standards.

Skin discoloration of the kernel (staining) is currently referenced as a defect in the in-the-shell standard. Skin discoloration does not change when the almonds are shelled, and therefore would be considered a defect in the shelled standard. The ABCGS recommends specifically referencing this defect in the shelled standards to promote uniformity and consistency between the two grade standards. Although this skin discoloration has historically been considered a defect in the shelled almonds standards, specifically naming it will give a point of reference to the industry and the inspection service.

In keeping with Departmental Regulations of moving towards metrification, metric equivalents will be added, in parenthesis, following any Imperial measurements, throughout the text of the standards. The metric equivalents, in millimeters, are based on the conversion of 64/64 on an inch equals 25.4 millimeters.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In part 51, Subpart—United States Standards for Grades of Almonds in the Shell is revised to read as follows:

Subpart—United States Standards for Grades of Almonds in the Shell

Grades

Sec.
51.2075 U.S. No. 1.
51.2076 U.S. No. 1 Mixed.
51.2077 U.S. No. 2.
51.2078 U.S. No. 2 Mixed.

Application of Tolerances

51.2079 Application of tolerances.

Determination of Grade

51.2080 Determination of grade.

Definitions

51.2081 Similar varietal characteristics.
51.2082 Loose extraneous and foreign material.
51.2083 Clean.
51.2084 Fairly bright.
51.2085 Fairly uniform color.
51.2086 Well dried.
51.2087 Decay.
51.2088 Rancidity.
51.2089 Damage.
51.2090 Serious damage.
51.2091 Thickness.

Subpart—United States Standards for Grades of Almonds in the Shell

Grades

§ 51.2075 U.S. No. 1.

''U.S. No. 1'' consists of almonds in the shell which are of similar varietal characteristics and free from loose extraneous and foreign material. The shells are clean, fairly bright, fairly uniform color, and free from damage caused by discoloration, adhering hulls, broken shells or other means. The kernels are well dried, free from decay, rancidity, and free from damage caused by insects, mold, gum, skin discoloration, shriveling, brown spot or other means.

(a) Unless otherwise specified, the almonds are of a size not less than 28/64 of an inch (11.1 mm) in thickness.

(b) In order to allow for variations incident to proper grading and handling, the following tolerances are provided as specified:

(1) *For external (shell) defects.* 10 percent, by count, for almonds which fail to meet the requirements of this grade other than for variety and size;

(2) *For dissimilar varieties.* 5 percent, by count, including therein not more than 1 percent for bitter almonds mixed with sweet almonds;

(3) *For size.* 5 percent, by count, for almonds which are smaller than the specified minimum thickness;

(4) *For loose extraneous and foreign material.* 2 percent, by weight, including therein not more than 1 percent which can pass through a round opening 24/64 inch (9.5 mm) in diameter: Provided, that such material is practically free from insect infestation; and,

(5) *For internal (kernel) defects.* 10 percent, by count, for almonds with kernels failing to meet the requirements of this grade: Provided, that not more than one-half of this tolerance or 5 percent shall be allowed for kernels affected by decay or rancidity, damaged by insects or mold or seriously damaged by shriveling: And provided further, that no part of this tolerance shall be allowed for live insects inside the shell.

§ 51.2076 U.S. No. 1 Mixed.

''U.S. No. 1 Mixed'' consists of almonds in the shell which meet the requirements of U.S. No. 1 grade, except that two or more varieties of sweet almonds are mixed.

§ 51.2077 U.S. No. 2.

''U.S. No. 2'' consists of almonds in the shell which meet the requirements of U.S. No. 1 grade, except that an additional tolerance of 20 percent shall be allowed for almonds with shells damaged by discoloration.

§ 51.2078 U.S. No. 2 Mixed.

''U.S. No. 2 Mixed'' consists of almonds in the shell which meet the requirements of U.S. No. 2 grade, except that two or more varieties of sweet almonds are mixed.

Application of Tolerances

§ 51.2079 Application of tolerances.

The tolerances for the foregoing grades are applied to the entire lot of almonds, based upon a composite sample drawn from containers throughout the lot.

Determination of Grade

§ 51.2080 Determination of grade.

In grading the inspection sample, the percentage of loose hulls, pieces of shell, chaff and foreign material is determined on the basis of weight. Next, the percentages of nuts which are of dissimilar varieties, undersize or have adhering hulls or defective shells are determined by count, using an adequate portion of the total sample. Finally, the nuts in that portion of the sample are cracked, and the percentage having internal defects is determined on the basis of count.

Definitions

§ 51.2081 Similar varietal characteristics.

Similar varietal characteristics means that the almonds are similar in shape, and are reasonably uniform in degree of hardness of the shells, and that bitter almonds are not mixed with sweet almonds. For example, hard-shelled varieties, semi-soft shelled varieties, soft-shelled varieties and paper-shelled varieties are not mixed together, nor are any two of these types mixed under this definition.

§ 51.2082 Loose extraneous and foreign material.

Loose extraneous and foreign material means loose hulls, empty broken shells, pieces of shells, external insect infestation and any substance other than almonds in the shell or almond kernels.

§ 51.2083 Clean.

Clean means that the shell is practically free from dirt and other adhering foreign material.

§ 51.2084 Fairly bright.

Fairly bright means that the shells show good characteristic color.

§ 51.2085 Fairly uniform color.

Fairly uniform color means that the shells do not show excessive variation in color, whether bleached or natural.

§ 51.2086 Well dried.

Well dried means that the kernel is firm and brittle, not pliable or leathery.

§ 51.2087 Decay.

Decay means that part or all of the kernel has become decomposed.

§ 51.2088 Rancidity.

Rancidity means that the kernel is noticeably rancid to taste.

§ 51.2089 Damage.

Damage means any defect which materially detracts from the appearance of the individual kernel, or the edible or shipping quality of the almond. Any one of the following defects or combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Discoloration of the shell which is medium gray to black and affects more than one-eighth of the surface in the aggregate. Normal variations of a reddish or brownish color shall not be considered discoloration;

(b) Adhering hulls which cover more than 5 percent of the shell surface in the aggregate;

(c) Broken shells when a portion of the shell is missing, or the shell is broken or fractured to the extent that moderate pressure will permit the kernel to become dislodged;

(d) Insect injury when the insect, web or frass is present or there is definite evidence of insect feeding;

(e) Mold, when visible on the kernel, except when white or gray and easily rubbed off with the fingers;

(f) Gum, when a film of shiny, resinous appearing substance affects an area aggregating more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(g) Skin discoloration when more than one-half of the surface of the kernel is affected by very dark or black stains contrasting with the natural color of the skin;

(h) Shriveling when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat. An almond containing two kernels shall not be classed as damaged if either kernel has more than three-fourths of the pellicle filled with meat; and,

(i) Brown spot which affects an aggregate area on the kernel greater than the area of a circle one-eighth inch (3.2 mm) in diameter.

§ 51.2090 Serious damage.

Serious damage means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold. The following defect shall be considered as serious damage: Shriveling when the kernel is seriously withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered seriously damaged if more than one-fourth of the pellicle is filled with meat.

§ 51.2091 Thickness.

Thickness means the greatest dimension between the two semi-flat surfaces of the shell measured at right angles to a plane extending between the seams of the shell.

3. In Part 51, Subpart—United States Standards for Grades of Shelled Almonds is revised to read as follows:

Subpart—United States Standards of Grades of Shelled Almonds

Grades

Sec.
51.2105 U.S. Fancy.
51.2106 U.S.Extra No. 1.
51.2107 U.S. No. 1.
51.2108 U.S. Select Sheller Run.
51.2109 U.S. Standard Sheller Run.
51.2110 U.S. No. 1 Whole and Broken.
51.2111 U.S. No. 1 Pieces.

Mixed Varieties

51.2112 Mixed varieties.

Size

51.2113 Size requirements.
51.2114 Tolerances for size.

Application of Tolerances

51.2115 Application of tolerances.

Definitions

51.2116 Similar varietal characteristics.
51.2117 Whole.
51.2118 Clean.
51.2119 Well dried.
51.2120 Decay.
51.2121 Rancidity.
51.2122 Insect injury.
51.2123 Foreign material.
51.2124 Doubles.
51.2125 Split or broken kernels.
51.2126 Particles and dust.
51.2127 Injury.
51.2128 Damage.
51.2129 Serious damage.
51.2130 Diameter.
51.2131 Fairly uniform in size.

Subpart — United States Standards for Grades of Shelled Almonds

Grades

§ 51.2105 U.S. Fancy.

''U.S. Fancy'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from injury caused by chipped and scratched kernels, and free from damage caused by mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 3 percent;

(c) *For kernels injured by chipping and/or scratching.* 5 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 2 percent, including not more than one-half of this amount, or 1 percent, for split or broken kernels, and including not more than one-half of the former amount, or 1 percent, for seriously damaged kernels.

§ 51.2106 U.S. Extra No. 1.

''U.S. Extra No. 1'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 5 percent;

(c) *For kernels damaged by chipping and/or scratching.* 5 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) For particles and dust. One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 4 percent, including not more than one-fourth of this amount, or 1 percent, for split or broken kernels, and including not more than three-eighths of the former amount, or 1–1/2 percent, for seriously damaged kernels.

§ 51.2107 U.S. No. 1.

''U.S. No. 1'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 15 percent;

(c) *For kernels damaged by chipping and/or scratching.* 10 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 5 percent including not more than one-fifth of this amount, or 1 percent, for split or broken kernels, and including not more than three-tenths of the former amount, or 1½ percent, for seriously damaged kernels.

§ 51.2108 U.S. Select Sheller Run.

''U.S. Select Sheller Run'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 15 percent;

(c) *For kernels damaged by chipping and/or scratching. 20 percent;*

(d) *For foreign material.* One-tenth of 1 percent (0.10 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent);

(f) *For split and broken kernels.* 5 percent: Provided, that not more than two- fifths of this amount, or 2 percent, shall be allowed for pieces which will pass through a round opening 20/64 inch (7.9 mm) in diameter; and,

(g) *For other defects.* 3 percent, including not more than two-thirds of this amount, or 2 percent, for serious damage.

§ 51.2109 U.S. Standard Sheller Run.

''U.S. Standard Sheller Run'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 25 percent;

(c) *For kernels damaged by chipping and/or scratching or split and broken.* 35 percent; Provided, that not more than three-sevenths of this amount, or 15 percent, shall be allowed for split and broken: And Provided Further, that not more than one-third of this latter amount, or 5 percent, shall be allowed for pieces which will pass through a round opening 20/64 inch (7.9 mm) in diameter;

(d) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 3 percent, including not more than two-thirds of this amount, or 2 percent, for serious damage.

§ 51.2110 U.S. No. 1 Whole and Broken.

''U.S. No. 1 Whole and Broken'' consists of shelled almonds of similar varietal characteristics which are clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

(a) In this grade not less than 30 percent, by weight, of the kernels shall be whole. Doubles shall not be considered as whole kernels in determining the percentage of whole kernels.

(b) Unless otherwise specified, the minimum diameter shall be not less than 20/64 of an inch (7.9 mm). (See §§ 51.2113 and 51.2114.)

(c) In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(1) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(2) *For doubles.* 35 percent;

(3) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(4) *For particles and dust.* One-tenth of 1 percent (0.10 percent);

(5) *For undersize.* 5 percent; and,

(6) *For other defects.* 5 percent, including not more than three-fifths of this amount, or 3 percent, for serious damage.

§ 51.2111 U.S. No. 1 Pieces.

''U.S. No. 1 Pieces'' consists of shelled almonds which are not bitter, which are clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

(a) Unless otherwise specified, the minimum diameter shall be not less than 8/64 of an inch (3.2 mm). (See §§ 51.2113 and 51.2114.)

(b) In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(1) *For bitter almonds mixed with sweet almonds.* 1 percent;

(2) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(3) *For particles and dust.* 1 percent; and

(4) *For other defects.* 5 percent, including not more than three-fifths of this amount, or 3 percent, for serious damage.

§ 51.2112 Mixed varieties.

Any lot of shelled almonds designated as ''one type'' or undesignated as to

type, which consists of a mixture of two or more dissimilar varieties which meet the other requirements of any of the grades of U.S. No. 1, U.S. Select Sheller Run, U.S. Standard Sheller Run, U.S. No. 1 Whole and Broken may be designated as: ''U.S. No. 1 Mixed;'' ''U.S. Select Sheller Run Mixed;'' ''U.S. Standard Sheller Run Mixed;'' ''U.S. No. 1 Whole and Broken Mixed;'' respectively; but no lot of any of these grades may include more than 1 percent of bitter almonds mixed with sweet almonds.

Size

§ 51.2113 Size requirements.

The size may be specified in terms of range in count of whole almond kernels per ounce or in terms of minimum, or minimum and maximum diameter. When a range in count is specified, the whole kernels shall be fairly uniform in size, and the average count per ounce shall be within the range specified. Doubles and broken kernels shall not be used in determining counts. Count ranges per ounce commonly used are shown below, but other ranges may be specified: Provided, that the kernels are fairly uniform in size.

Count Range per Ounce

16 to 18, inclusive.
18 to 20, inclusive.
20 to 22, inclusive.
22 to 24, inclusive.
23 to 25, inclusive.
24 to 26, inclusive.
26 to 28, inclusive.
27 to 30, inclusive.
30 to 34, inclusive.
34 to 40, inclusive.
40 to 50, inclusive.
50 and smaller.

§ 51.2114 Tolerances for size.

(a) When a range is specified as, for example, ''18/20,'' no tolerance for counts above or below the range shall be allowed.

(b) When the minimum, or minimum and maximum diameter are specified, a total tolerance of not more than 10 percent, by weight, may fail to meet the specified size requirements: Provided, that not more than one-half of this amount, or 5 percent, may be below the minimum size specified.

Application of Tolerances

§ 51.2115 Application of tolerances.

The tolerances for the grades are to be applied to the entire lot, and a composite sample shall be taken for determining the grade. However, any container or group of containers in which the almonds are found to be materially inferior to those in the majority of the containers shall be considered a separate lot.

Definitions

§ 51.2116 Similar varietal characteristics.

Similar varietal characteristics means that the kernels are similar in shape and appearance. For example, long types shall not be mixed with short types, or broad types mixed with narrow types, and bitter almonds shall not be mixed with sweet almonds. Color of the kernels shall not be considered, since there is often a marked difference in skin color of kernels of the same variety.

(a) When a lot is specified as ''one type,'' all kernels shall be the same in shape and appearance; and,

(b) When a lot is specified and carton marked as ''California,'' kernels present may include any one or a combination of blanchable varieties within the ''California'' Marketing Classification. In addition, Nonpareil or similar types may be included provided that it does not exceed twenty-five percent (25%), by weight, of the lot.

§ 51.2117 Whole.

Whole means that there is less than one-eighth of the kernel chipped off or missing, and that the general contour of the kernel is not materially affected by the missing part.

§ 51.2118 Clean.

Clean means that the kernel is practically free from dirt and other foreign substance.

§ 51.2119 Well dried.

Well dried means that the kernel is firm and brittle, and not pliable or leathery.

§ 51.2120 Decay.

Decay means that part or all of the kernel has become decomposed.

§ 51.2121 Rancidity.

Rancidity means that the kernel is noticeably rancid to the taste.

§ 51.2122 Insect injury.

Insect injury means that the insect, web, or frass is present or there is definite evidence of insect feeding.

§ 51.2123 Foreign material.

Foreign material means pieces of shell, hulls or other foreign matter which will not pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2124 Doubles.

Doubles means kernels that developed in shells containing two kernels. One side of a double kernel is flat or concave.

§ 51.2125 Split or broken kernels.

Split or broken kernels means seven-eighths or less of complete whole kernels but which will not pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2126 Particles and dust.

Particles and dust means fragments of almonds kernels or other material which will pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2127 Injury.

Injury means any defect which more than slightly detracts from the appearance of the individual almond. The following shall be considered as injury:

Chipped and scratched kernels when the affected area on an individual kernel aggregates more than the equivalent of a circle one-eighth inch (3.2 mm) in diameter.

§ 51.2128 Damage.

Damage means any defect which materially detracts from the appearance of the individual kernel, or the edible or shipping quality of the almonds. Any one of the following defects or combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Chipped and scratched kernels, when the affected area on an individual kernel aggregates more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(b) Mold, when visible on the kernel, except when white or gray and easily rubbed off with the fingers.

(c) Gum, when a film of shiny, resinous appearing substance affects an area aggregating more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(d) Shriveling, when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat;

(e) Brown spot on the kernel, either single or multiple, when the affected area aggregates more than the equivalent of a circle one-eighth inch (3.2 mm) in diameter; and,

(f) Skin discoloration when more than one-half of the surface of the kernel is affected by very dark or black stains contrasting with the natural color of the skin.

§ 51.2129 Serious damage.

Serious damage means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold.

§ 51.2130 Diameter.

Diameter means the greatest dimension of the kernel, or piece of kernel at right angles to the longitudinal axis. Diameter shall be determined by passing the kernel or piece of kernel through a round opening.

§ 51.2131 Fairly uniform in size.

Fairly uniform in size means that, in a representative sample, the weight of 10 percent, by count, of the largest whole kernels shall not exceed 1.70 times the weight of 10 percent, by count, of the smallest whole kernels.

Dated: April 9, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–9829 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 929

[Docket No. FV–96–929–1PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on a change to the reporting requirements currently prescribed under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (committee). This rule would modify language in the order's rules and regulations to change the first date by which handlers must file their acquisition report from February 5 to January 5 during each crop year. This rule would provide more useful production information to the cranberry industry at an earlier time.

DATES: Comments must be received by May 22, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kathleen M. Finn, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456: telephone: (202) 720–1509, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601)as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This proposal invites comments on a change to the reporting requirements currently prescribed under the cranberry marketing order. This rule would modify language in the order's rules and regulations to change the first date by which handlers must file their acquisition reports from February 5 to January 5. The committee unanimously recommended that the date be changed from February 5 to January 1. The Department proposes modifying the recommendation by requiring the first report to be filed by January 5 in order to allow sufficient time for the handlers to file the reports.

Section 929.62(b) of the cranberry marketing order provides authority to require each handler to file promptly with the committee a certified report as to the quantity of cranberries acquired during such period as may be specified. The fiscal period under the order is from September 1 of one year through August 31 of the following year. Section 929.105(b) of the order's rules and regulations prescribe that certified reports shall be filed by each handler to the committee not later than the 5th day of February, May, and August of each fiscal period and the 5th day of September of the succeeding fiscal period. Such report shall show the total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the reporting period indicated through January 31, April 30, July 31, and August 31, respectively.

The committee recommended that the first acquisition report due to the committee on February 5 that shows the total quantity of cranberries the handler acquired through January 31 be changed

to an earlier date. This would provide producers and handlers vital production information earlier in the season and allow them to plan accordingly. The order's reporting and recordkeeping requirements have not been amended since 1988. Handlers' techniques in gathering and recording acquisition data have progressed considerably over the last seven years. Handlers have indicated that they could provide the committee with a acquisition report prior to January 1 of the crop year.

Therefore, the committee recommended that § 929.105(b) be revised by changing the first reporting due date from February 5 to January 1. As stated previously, the Department has modified this date from January 1 to January 5. The first acquisition report currently shows the total quantity of cranberries acquired and the total quantity of cranberries handled from the beginning of the reporting period through January 31. The committee also recommended that the January 31 date be changed to December 31 to make the report consistent with the new due date. In addition, the Department proposes modifying § 929.105(b) by listing each one of the due dates. This would make the section easier to understand as to when each report is due.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced section have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and have been assigned OMB number 0581–0103.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Marketing agreements, Cranberries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.105 is amended by revising paragraph (b) to read as follows:

§ 929.105 Reporting.

* * * * *

(b) Certified reports shall be filed with the committee, on a form provided by the committee, by each handler not later than January 5, May 5, and August 5 of each fiscal period and by September 5 of the succeeding fiscal period showing:

(1) The total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the reporting period indicated through December 31, April 30, July 31, and August 31, respectively, and

(2) The respective quantities of cranberries and cranberry products held by the handler on February 1, May 1, August 1, and August 31 of each fiscal period.

Dated: April 9, 1996.

James R. Rodeheaver,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–9830 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 946

[FV96–946–1PR]

Irish Potatoes Grown in Washington; Modification of the Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would reduce the minimum diameter requirement from 2⅛ inches to 2 inches for Russet type varieties of Washington potatoes shipped during the July 15 through August 31 period each season. Potato varieties currently being grown for shipment during this period are similar in shape to those grown for marketing during the balance of the season. Reducing the minimum diameter would recognize this similarity and enable handlers to market a larger portion of their crop in fresh outlets. This change would improve the marketing of Washington potatoes and increase returns to producers as well as provide consumers with increased supplies of potatoes.

DATES: Comments which are received by May 22, 1996 will be considered prior to the issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, PO Box 96456, Washington, DC 20090–6456; FAX: (202) 720–5698.

All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724 or FAX (503) 326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 690–0464 or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The State of Washington Potato Committee (Committee) is the agency responsible for local administration of the marketing order program in the designated production area.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that

the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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 action 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 would not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of Washington potatoes that are subject to regulation under the order and approximately 450 producers in the regulated production area. Small agricultural service firms, which include handlers of Washington potatoes, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato handlers and producers regulated under the marketing agreement and order may be classified as small entities.

Section 946.52 (7 CFR 946.52) authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period.

Size regulations are currently in effect under section 946.336 in terms of minimum diameter and minimum weight. All Russet types must be 2⅛ inches minimum diameter or 4 ounces minimum weight during the period July 15 through August 31 each season, and 2 inches or 4 ounces during the remainder of the season. This rule amends section 946.336 by reducing the minimum diameter requirement for Russet type varieties from 2⅛ inches to 2 inches during the July 15 through August 31 period each season. Thus, the 2 inch minimum diameter or 4 ounce minimum weight would apply to Russet type potatoes throughout the entire season.

At its meeting on February 15, 1996, the Committee unanimously recommended reducing the minimum diameter requirement for Russet type varieties to 2 inches during the period July 15 through August 31, when early crop shipments are made.

When the current minimum diameter requirement for Russet type varieties was established, the Norgold Russet was the primary variety being grown for the early market, i.e., the months of July and August. This variety is more round in shape than those varieties grown for shipment later in the season. The newer varieties grown for the early market, such as the Norkotah Russet, are shaped the same as the varieties traditionally marketed later in the season. Thus, there is no need for a larger diameter requirement for earlier varieties. Therefore, the Committee recommended that all Russet type varieties be subject to the same minimum diameter requirement throughout the entire marketing season.

Reducing the minimum diameter would enable handlers to market a larger portion of the crop in fresh market outlets. This change is expected to improve the marketing of Washington potatoes and increase returns to producers.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 946.336 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 946.336 Handling regulation.

* * * * *

(a) * * *

(2) * * *

(ii) All Russet types, 2 inches (54.0 mm) minimum diameter, or 4 ounces minimum weight.

* * * * *

Dated: April 16, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–9832 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1106

[DA–96–05]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend certain provisions of the Southwest Plains Federal milk marketing order (Order 106) for the period of September 1996 through August 1998. The proposal would suspend a portion of the supply plant shipping requirement and the touch-base requirement under Order 106 for a 2-year period. The action was requested by Kraft Foods, Inc. (Kraft), which contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

DATES: Comments are due no later than May 22, 1996.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090- 6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small

entities. Such rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the period of September 1, 1996, through August 31, 1998:

In § 1106.6, the words ''during the month''.

In § 1106.7(b)(1), beginning with the words ''of February through August'' and continuing to the end of the paragraph.

In § 1106.13, paragraph (d)(1) in its entirety.

All persons who wish to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090- 6456, by the 30th day after publication of this notice in the Federal Register.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend the requirement that producers ''touch-base'' at a pool plant with at least one day's production during the month before their milk is eligible for diversion to a nonpool plant. By suspending the touch-base provision, producer milk would not be required to be delivered to pool plants before going to unregulated manufacturing plants.

The proposed suspension would also allow a supply plant that has been associated with the Southwest Plains order during the months of September 1995 through January 1996 to qualify as a pool plant without shipping any milk to a pool distributing plant during the months of September 1996 through August 1998. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants during the months of September through January and 20 percent of its producer receipts to pool distributing plants during the months of February through August to qualify as a pool plant under the order.

According to Kraft's letter requesting the suspension, supplemental milk supplies will not be needed to meet the fluid needs of distributing plants. Kraft anticipates that there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants available to meet the Class I needs of the market. Consequently, it states, there is no need to require producers located some distance from pool distributing plants to touch-base when their milk can more economically be diverted directly to manufacturing plants in the production area.

Accordingly, it may be appropriate to suspend the aforesaid provisions from September 1, 1996, through August 31, 1998.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: April 9, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–9831 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–230A]

Energy Conservation Program for Consumer Products: Test Procedure for Clothes Washers and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE or Department) today is issuing a supplemental notice of proposed rulemaking to expand the scope of the Department's proposed rule to amend the clothes washer test procedure used to test for compliance with the existing energy conservation standard. The Association of Home Appliance Manufacturers (AHAM) recommended an additional new test procedure that would apply to the anticipated future clothes washer energy conservation standards. The Department is reopening the comment period on its proposed rule to seek comments on whether it should adopt the AHAM recommended test procedure, with certain changes.

DATES: Written comments in response to this notice must be received by June 6, 1996.

ADDRESSES: Written comments, 10 copies, are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, Room 1J–018, ''Test Procedure for Clothes Washers and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers,'' Docket No. EE–RM–94–230A, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202)–586–7574.

Copies of the transcript of the public hearing and the public comments received on the proposed rule, may be read and/or photocopied at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–8423

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion
A. AHAM Recommended Test Procedure
Annual Energy Consumption
Capacity Measurement
Electrical Energy Supply
Remaining Moisture Content (RMC)
Sodium Hypochlorite Bleach
Suds-saver Provision
Temperature Use Factors
Test Cloth and Test Load
Uniformly Distributed Temperature Selections
Water-heating Clothes Washers
Water Consumption Factor
B. Related Matters
1. Potential Impacts/Changes to the Appendix J Test Procedure
Test Load Sizes
Water-heating Clothes Washers
Field Testing
2. Section 430.23, ''Test procedures for measures of energy consumption,'' paragraph (j)

I. Introduction

On Thursday, March 23, 1995, the Department published a proposed rule to amend the clothes washer test procedure. 60 FR 15330 (hereafter referred to as the Notice of Proposed Rulemaking or NOPR). On July 12, 1995, a hearing on the proposed rule was held in Washington, DC.

The proposed amendment to the test procedure was based on the same factual foundation as the existing test procedure and energy conservation standards for clothes washers, so that the existing energy conservation standard would not have to be adjusted. The Department believes, however, that the existing test procedure currently overstates the average annual energy consumption for clothes washers because of changes in consumer habits since the current test procedure was adopted.[1] The Department had planned on initiating a subsequent clothes washer test procedure rulemaking, at a later date, which would take into account current consumer habits, and would be used as the basis for considering revision of the clothes washer energy conservation standards.[2]

In response to the NOPR, AHAM submitted comments asking DOE to adopt an additional new test procedure to take effect when new standards take effect. The Department greatly appreciates AHAM's effort in developing a new test procedure. The Department is considering adopting the test procedure with certain revisions. The Department is considering issuance of a final rule with two test procedures, to be codified in Appendices ''J'' and ''J1'' in the Code of Federal Regulations, title 10, part 430, § 430.23. Appendix ''J'' would be a revision of the current test procedure, would be consistent with the existing standards, and would become effective 30 days after issuance of the final rule. Appendix ''J1'', based on AHAM's test procedures, would be used in the analysis and review of revised efficiency standards, and would apply to any revised standards. At that time the Department would amend its regulations to replace Appendix ''J'' with Appendix ''J1.''

The Department solicits comments from the public at this time on issues raised by the AHAM recommended test procedure and by the options under consideration with respect to this proposal. In connection with the reopening of the comment period, the Department is proposing regulatory language for part 430, § 430.23, Appendix J1.

II. Discussion

A. AHAM Recommended Test Procedure

AHAM recommended a test procedure for use and adoption during the next round of clothes washer standards rulemaking. The AHAM test procedure addresses current consumer usage habits which result in approximately a 30 percent reduction in energy consumption from the current test procedure. Discussed below are comments by the following industry representatives: General Electric Company (GE), Maytag and Admiral Products (Maytag), Speed Queen Company (Speed Queen), Whirlpool Corporation (Whirlpool), and Miele Appliances Inc. (Miele), directed to the AHAM test procedures, as well as industry comments that were directed to the NOPR but that concern matters also covered by the AHAM test procedure. In addition, AHAM provided copies of its clothes washer test procedure to non-industry representatives who have been involved with the residential appliance standards program. (AHAM, No. 8).[3] The Department received comments concerning the AHAM test procedure from the Clorox Company (Clorox), the Proctor and Gamble Company (P&G), and American Council for and Energy Efficient Economy (ACEEE).

Annual Energy Consumption

GE recommended that the Department incorporate into the AHAM test procedure a table for the annual number of clothes washer cycles per year based on the capacity of the clothes washer being tested for determining annual energy consumption. GE's recommendation would in essence specify a constant amount of clothing (in pounds) that is washed per year per typical household. GE derived its table by averaging P&G data for average wash loads used in ''regular'' and ''large'' capacity clothes washers. The GE table shows a range of ''Adjusted Annual Cycles (AAC)'' from 264 to 810 based on capacity. (GE, No. 6 at 4). Maytag strongly opposes the GE recommendation primarily because it states, ''there is no evidence that average load size is a function of washer capacity. To the contrary, there is evidence that wash load sizes are based on factors other than washer capacity most of the time.'' (Maytag, No. 41 at 1).

The Department understands GE's purpose is to provide some type of scale to adjust for the use of larger capacity machines. The Department is proposing to reduce the number of annual cycles from 416 to 392, as stated in the NOPR. The Department is aware that the number of annual cycles has declined over time,[4] while the shipment weighted average capacity of clothes washers has increased over the same relative time period.[5] However, the Department believes that it is reasonable to assume that the number of cycles for all sizes of clothes washers is relatively constant and that families with large needs, based on lifestyle or number of family members, purchase larger clothes washers and families with smaller needs purchase smaller clothes washers. If the GE table were to be employed it would result in the following expected

[1] Proctor & Gamble data indicates a decrease in the use of hot water and the number of cycles per year over time.

[2] The second round of clothes washer standards rulemaking was initiated by the publication of an Advance Notice of Proposed Rulemaking (ANOPR), (59 FR 56423, November 14, 1994.)

[3] Comments on the NOPR have been assigned docket numbers and have been numbered consecutively. Statements that were presented at the July 12, 1995, public hearing are identified as Testimony.

[4] Proctor and Gamble letter of September 2, 1994 to DOE.

[5] AHAM Major Home Appliance Industry Book published 1995.

consumer use cycles per year: using a 1.5 cubic foot compact clothes washer, 517 cycles per year would be expected, whereas using a 3.2 cubic foot standard clothes washer, 298 cycles per year would be expected.[6] For the reasons indicated above, however, the Department does not believe that there is such great variation in the average usage of washers of different sizes. Moreover, the Department is not aware of any data concerning current usage which establish that as the capacity of a clothes washer increases, it is operated less frequently. Therefore, the Department does not propose to incorporate a table to allow for a variation in annual clothes washer cycles dependent upon clothes washer capacity. The Department will reconsider this issue, however, if it receives statistically valid data showing such a variation.

Capacity Measurement

The AHAM recommended test procedure, as well as the current and NOPR test procedures, require a test measurement of the clothes container capacity. This capacity is defined as the volume which a dry clothes load could occupy. This capacity is then used in the calculation of the Energy Factor which is used to rate the efficiency of clothes washers on a per load basis. The actual load, in pounds of clothing, that a clothes washer can wash is a function of many variables including the wetted clothes container volume which is actually available for clothes washing, the agitation system and the motor torque. The Department has used the measured clothes container capacity as a proxy for the actual load a clothes washer is capable of washing, and this has worked well for purposes of comparing vertical axis clothes washers. However, there has been discussion as to whether the measured capacity of a clothes container is a comparable proxy of the load capability for horizontal axis clothes washers.

The DOE and AHAM recommended test procedures both require measuring the capacity to the upper most part of the clothes washer container, which includes the volume occupied by the tub ring. The maximum water level in any vertical axis clothes washer may vary, but the water level cannot go to the top of the tub ring. Maytag calculated that this current method of measuring capacity results in the measured volume of vertical-axis clothes washers exceeding the wetted volume by a minimum of 15 percent to well over 20 percent. (Maytag, No. 13 at 1). However, all the manufacturers, including Maytag, believe that the current method for measuring vertical-axis clothes washer capacity is sufficient and should not be changed. (AHAM, No. 33 at 5).

Since the measured and wetted volumes of a horizontal axis clothes washer are the same, Maytag proposed multiplying the measured volume of a horizontal axis clothes washer by a factor of 1.2. (Maytag, No. 13 at 2). This factor would mathematically increase the capacity of horizontal-axis clothes washers and would result in a 20 percent increase in the energy factor for horizontal-axis clothes washers. A similar factor is included in the International Electrotechnical Commission (IEC) 456 test procedure for clothes washers. ACEEE supports a capacity credit for horizontal-axis clothes washers.[7] ACEEE states that the IEC test procedure has a 15 percent credit and believes the credit may be too low. ACEEE believes the credit should be 21 percent. (ACEEE, No. 32 at 3).

Speed Queen opposes a horizontal-axis clothes washer capacity adjustment factor stating that adequate time for discussion and comment is needed on this ''recently raised issue.'' (Speed Queen, No. 29 at 3). GE opposes any horizontal-axis clothes washer capacity credit stating, ''In view of the evidence, from P & G, that American consumer washing habits are driven in large part by their perception of capacity, proponents of a European adjustment factor must provide hard data of its applicability to the U.S. market.'' (GE, No. 36 at 2). Whirlpool also opposes any credit for horizontal-axis clothes washer capacity because no data has been presented that would demonstrate a difference of American loading habits for vertical-axis versus horizontal-axis clothes washers. (Whirlpool, No. 37 at 4).

The Department notes that the measured volume of a vertical axis clothes washer is larger than the wetted volume, whereas, these two volumes are the same for horizontal axis clothes washers. Therefore, for these two types of machines, capacity may not have the same relationship to the amount of clothes a clothes washer is capable of washing. However, the Department has no data to indicate that this possible difference translates into an actual difference in load size capability when the other variables that affect load size are considered, or as to how American consumers will use horizontal axis washers. If such data becomes available, the Department would consider making an adjustment to the calculation of the energy factor of either vertical or horizontal axis clothes washers to have relatively accurate comparisons. However, today's notice of proposed rulemaking would make no changes in this area.

Electrical Energy Supply

The NOPR would delete a provision in the existing test procedures that allowed turning off of console lights which did not consume more than 10 watts during the clothes washer test cycle. AHAM maintains this provision in its recommended test procedure. Speed Queen, however, indicated that it supported the Department's proposal to remove the provision. (Speed Queen, No. 29 at 4). Today's notice is consistent with the NOPR, and excludes this provision.

Remaining Moisture Content

The AHAM recommended test procedure includes a provision to test the Remaining Moisture Content (RMC) of a test load. RMC represents a percentage derived by dividing the moisture weight that is remaining in the clothing at the completion of the clothes washer cycle by the weight of the dry clothes prior to the clothes washing cycle. There are several issues raised relating to the methodology for testing RMC.

GE expressed a concern about the possibility of manufacturers providing manual selectable options to consumers which would affect the resulting RMC of consumer wash loads. GE believes that the Department should not use the lowest RMC level achieved in a clothes washer for the future minimum energy conservation standard analysis or for energy reporting, and that there should be some type of ''discounting of the RMC credit.'' According to GE, consumers may not always choose the setting which would result in the lowest RMC value. (Testimony at 157). GE provided a chart showing four factors which affect RMC—spin speed, spin time, load size, and rinse temperature (GE, No. 6 at appendix E)—and stated that clothes washers could be manufactured that offered user options for spin speed and duration. Whirlpool indicated that the AHAM test procedure addresses the concern regarding consumer selection of spin speed. Specifically, Whirlpool stated that the AHAM test procedure requires the use of the energy test cycle, which specifies that the spin speed recommended by the

[6] These figures were derived by DOE from the GE proposed table using the specified clothes washer capacities.

[7] Commenters have used both terms ''factor'' and ''credit'' which are intended to mean the same thing.

manufacturer for cotton and linen clothes shall be used in the test (section 2.1.1 AHAM submitted test procedure). (Testimony at 170). The Department realizes there are several issues that affect RMC measurement which have not been addressed and are discussed below, which could affect the final test procedure methodology for testing RMC.

Spin Speed and Spin Time

The Department is aware that the AHAM recommended test procedure requires the use of the energy test cycle to conduct the RMC test. The AHAM test procedure defines the ''energy test cycle'' as follows: ''the cycle recommended by the manufacturer for washing cotton and/or linen clothes. It includes the agitation/tumble operation, spin speed (s), wash times, and rinse times applicable to that cycle, including water heating time for water heating clothes washers, and applies to all wash/rinse temperature selections and water levels available on the model, regardless of whether the wash/rinse temperature selections or water levels are available in the cycle recommended for cotton and/or linens.'' This definition appears to address clothes washers with multiple spin speeds, because spin speed is depicted as ''spin speed(s).'' In addition, rinse time is depicted as ''rinse times.'' The definition clearly states that testing for energy reporting shall be conducted in the cycle the manufacturer specifies for cotton and/or linen clothes.

The AHAM test procedure appears to be adequate in the situation where the energy test cycle has only one spin speed and time. However, the AHAM test procedure does not specify the spin speed to be used in testing a clothes washer for which that cycle has several or a range of values for spin speed and time for cotton and linen clothes. Therefore, because exact consumer preferences are not known relative to the choice of multiple spin speed or spin time selections, the Department is considering the option of requiring the use of the average of the extreme values of the spin speeds and times that are available in the energy test cycle.[8] The Department believes that this would address the testing of clothes washers with multiple recommended spin speeds and times, and might discount the RMC value as proposed by GE. The Department welcomes comments on this issue.

Load Size

GE provided a graph with RMC on the ''Y'' axis and Load Size on the ''X'' axis. (GE, No. 6 at appendix E). The graph was not quantified, but depicted a relatively large negative slope of approximately 0.5. Thus, according to the graph, as load size gets larger the RMC level decreases substantially.[9] The Department requested data from all parties present at the hearing to help quantify the exact slope. (Testimony at 160). So far, the Department has not received any such data. The issue is important because the AHAM test procedure specifies that the maximum test load be used to conduct the RMC test, which is approximately 35 percent larger than an average test load. However, the AHAM test procedure indicates, based on P&G data, that consumers use a maximum load only 12 percent of the time whereas they use an average load 74 percent of the time.

If GE's graph accurately depicts the slope, this would have a major impact on the expected energy savings to consumers and manufacturer efficiency/energy consumption representations, because data shows that consumers use their clothes washers with an average size load 74 percent of the time. It would mean that, under the AHAM recommended test procedure, the anticipated energy consumption to remove the moisture from the clothing would be artificially low because the test procedure calculates RMC on the basis of a maximum size load. Under the AHAM test procedure RMC is first determined for a maximum size load. The RMC thus determined is then adjusted in order to determine the moisture content that would remain in an average size load. The adjustment formula is based on the assumption that RMC as a percentage amount is the same for different load sizes, the point that GE disputes. An alternative to the AHAM recommended test method for RMC could be to require testing using the average test load, rather than the maximum test load with an adjustment. However, the Department believes that this may increase test burden. Currently, the majority of clothes washer models do not have adaptive control features such as automatic water fill control. Under the AHAM recommended test procedure, machines with adaptive controls need to be tested using an average test load. Requiring testing of all machines using the average test load may not be warranted if the slope is actually small. At this time, the Department does not plan to change the AHAM recommended test method. The Department requests data, comment and suggested changes to the test procedure, if needed, to address this issue.

Energy Required To Remove Moisture From the Test Load

The RMC value is used to calculate the energy required to remove moisture from the test load, ''D_E''. The ''DE'' is calculated using the maximum size test load, load adjustment factor (LAF) (P&G ratio of maximum load size to average load size), nominal energy required to remove moisture from clothes (constant for all clothes washers, 0.5 KWh/lb) and the clothes dryer utilization factor (DUF) (percentage of clothes washer loads that are dried by clothes dryers). AHAM recommended a DUF of 83 percent, although P&G calculates the DUF to be 84.4 percent.[10] AHAM stated at the hearing it did not think using the 84 percent figure would be controversial, but that it might need to further consider the matter. (Testimony at 104–105). The Department is using 84 percent for the DUF in today's proposal.

Sodium Hypochlorite Bleach

Clorox recommended that the Department adopt a definition for sodium hypochlorite bleach (bleach) dispenser, and a corresponding credit because of the potential for energy savings. (Clorox, No. 30 at 1). In regard to the clothes washer standard rulemaking, Clorox has provided the Department with data indicating that a significant amount of energy can be saved with the use of bleach.[11] The savings would be realized through the use of colder water for washing. The Clorox data shows that cleaning performance is maintained or minimally degraded at colder temperatures if bleach is used. Clorox recommended revising the Temperature Use Factors (TUFs) and energy consumption calculations to provide a credit to clothes washers equipped with a bleach dispenser. Clorox stated, however, ''Consumer data identifies a large area for *potential* energy savings due to the higher incidence of hot water usage in bleach loads.'' (Emphasis added.) Clorox further stated, ''Consumers that use bleach typically are more concerned with getting their laundry clean, and recognize that hotter wash temperatures provide the best results.'' (Clorox, No. 30 at 2).

[8] Similarly, for example, the DOE dishwasher test procedure has a 50 percent proration value for use of heated verses unheated dry option. (42 FR 15423, March 17, 1977)

[9] RMC is a percentage which decreases, although the actual remaining moisture weight increases because the larger load retains more moisture.

[10] Comment 32 on Docket number EE–RM–94–403.

[11] Comment 41 on docket number EE–RM–94–403.

The data provided from Clorox relative to the cleaning performance with bleach shows a significant potential for energy savings because cleaning performance is maintained or minimally degraded when bleach is added to cold water and detergent, versus when hot water is used with just detergent. However, the energy savings do not appear to be demonstrated by the data provided, because consumers who use bleach tend to use hot water rather than shifting to cold water. Therefore, the Department does not plan to include a provision for bleach in its clothes washer test procedures. The Department welcomes comment on this issue.

Suds-Saver Provision

The AHAM recommended test procedure does not provide a credit to clothes washers with a suds-saver feature. Based on previous information from AHAM (AHAM meeting, February 16, 1995), the Department believes that AHAM eliminated this provision due to the relatively low number of sales of clothes washers with a suds-saver feature. Additionally, AHAM believes that a suds-saver credit is no longer needed in the test procedure. The Department requests comments relative to the elimination of the suds-saver credit.

Temperature Use Factors

The Department received several comments regarding the method for determining Temperature Use Factors (TUFs), which are used to prorate energy consumption among cold, warm and hot wash, as well as to factor in a warm rinse if offered. Because any test procedure based on the AHAM test procedure would not become effective until approximately the year 2000, a significant emphasis in determining such test procedure's TUF values has been on the need and method to project future consumer usage habits based on currently available survey data.

AHAM provided the recommended test procedure with TUFs for wash temperatures and a range of TUF values for rinse temperature. (AHAM, No. 8). AHAM indicated that the original submission had been revised and provided the final version of TUFs. The final version also included a range of rinse TUF values. (AHAM, No. 48 at 1). GE indicated that it supported the AHAM wash TUFs and provided justification for a warm rinse TUF of 21 percent. GE provided a detailed analysis which included linear regression projections and utilized ''differencing to eliminate autocorrelation.'' (GE, No. 6 at 5 and No. 36 at 1). P&G provided data, linear regression analysis with and without projections, and recommendations for TUFs. P&G indicated that it believed the future projections of the linear regression were valid for the wash TUFs, although it thought the projection for the warm rinse TUF was too aggressive. (P&G, No. 12 at 1). ACEEE believed the TUFs should be determined by the average between a current linear regression and a linear regression projected to the year 1999. (ACEEE, No. 32 at 3). Although Whirlpool disagreed with AHAM's use of linear regression projection to obtain wash TUF values, and instead recommended use of an average of the last five years, it supported the AHAM wash TUFs because the resultant difference was small. Whirlpool indicated that it believed the warm rinse TUF value should be 33 percent. (Whirlpool, No. 37 at 2).

At the Department's request, the National Institute of Standards and Technology (NIST) has conducted a linear regression with and without future year projections. The NIST results varied slightly from the P&G analysis results, probably due to rounding off to integers or to use of the calendar year for the data (P & G survey data is conducted over two calendar years, *i.e.*, 93/94), but were basically consistent with the P&G results. The following table provides the TUF values as recommended from the various entities.

PRESENTATION OF VARIOUS POSITIONS FOR TEMPERATURE USE FACTORS

	Hot wash (DATA/TUF)	Warm wash (DATA/TUF)	Cold wash (DATA/TUF)	Warm rinse (DATA)	Warm rinse (TUF [3])
P&G 1994 RAW DATA	0.16	0.48	0.36	0.18	N/A
AHAM	0.14	0.47	0.39	[1] 0.13–0.21	0.21–0.33
GE	0.14	0.47	0.39	0.13	0.21
WHIRLPOOL	[1] 0.16	[1] 0.50	[1] 0.34	[1] 0.21	[1] 0.33
ACEEE	[1] 0.14	[1] 0.49	[1] 0.37	[1] 0.16	[1] 0.27
P&G 1994 REGRESSION	0.15	0.51	0.34	0.18	[1] 0.30
NIST 1994 REGRESSION	[1] 0.15	[1] 0.50	[1] 0.35	[1] 0.19	[1] 0.32
P&G 2000 REGRESSION	0.14	0.48	0.38	[2] 0.16	[1] 0.27
NIST 2000 REGRESSION	[1] 0.13	[1] 0.48	[1] 0.39	[1] 0.13	[1] 0.22

[1] Calculated by NIST independently or based on comment.
[2] Recommended by P&G, independent of regression results.
[3] Presently accepted by all commenters as being calculated by (P&G data)/0.60, representing that 60 percent of the clothes washers in the P&G survey had a warm rinse available.

The Department believes that linear regression is one acceptable method of conducting data plotting because it is generally accepted, for example, by educators, economists and businesses. However, to project consumer usage data into the future, linear regression may be unacceptable because it does not address factors which affect the change in consumer's habits (e.g., per P&G: improvements in detergent, change in fabric type or concern to save energy). (P&G, No. 12 at 1,2). From a statistical standpoint, if data were available on the factors which correlate to the decrease in hot water usage, then an accurate prediction could be made. However, the Department does not have this data and understands that the data is not readily available. Considering P&G's comments, the Department believes the trend to choose cooler wash temperatures is likely to continue, but possibly not at the rate indicated by the linear regression projection. Considering the above, the Department believes that the ACEEE position to average the current TUF values and the projected TUF values is a reasonable approach, since the test procedure is being developed for future use. Therefore, in its modifications of the AHAM test procedure, DOE is considering incorporation of the following TUFs: hot wash, 14 percent; warm wash, 49 percent; cold wash, 37 percent; and warm rinse, 27 percent. The Department welcomes comments relating to the acceptability of these TUF values.

Test Cloth and Test Load

AHAM recommended a requirement for pre-conditioning the ''energy test cloths'' (see AHAM test procedure section 2.6.1.2). In this section, AHAM referenced its standard ''test detergent IIA.'' The Department believes that specifying a particular detergent is too specific and may not be warranted because a variation in detergent for preconditioning test cloth is unlikely to measurably affect the energy consumption of a clothes washer being tested. Absent any justification to require use of AHAM's detergent in performing the test procedure, non-AHAM manufacturers should not be required to obtain the AHAM detergent to test their clothes washers. Therefore, the Department is considering changing the detergent to ''commercially available clothes washer detergent that is suitable for 135 °F (57.2 °C) wash water.'' The Department requests comment on this detergent description.

The Department is also concerned about the use of ''energy stuffer cloths'' (test procedure section 2.6.2). Energy test cloths and energy stuffer cloths are used to make up the various size test loads. An energy stuffer cloth is approximately one sixth the size of an energy test cloth. The concern is that if a large number of energy stuffer cloths are used instead of energy test cloths, then the mechanical energy needed to agitate the test load may be understated. The Department believes that there should be a maximum number of energy stuffer cloths that can be used to establish the test load. Therefore, the Department is considering the option of setting the maximum number of energy stuffer cloths that can be used to 5. This number represents the maximum number of energy stuffer cloths that should be needed because 6 energy stuffer cloths would be the equivalent of one energy test cloth. The Department requests comments on this issue.

In its test load table (table 5.1), AHAM recommended a tolerance of ± 0.10 pounds. The Department believes this tolerance is too large. A tolerance of ± 0.05 pounds appears to be more suitable because the required test load sizes can easily be obtained through the use of energy stuffer cloths that weigh approximately 0.04 pounds each. The Department requests comments on the tolerance value.

Uniformly Distributed Temperature Selections

At the hearing, the Department expressed concern regarding terminology used in AHAM's recommended test procedure—''uniformly distributed, by temperature [between hot wash and cold wash]''—relative to the calculation or testing of a warm wash temperature selection. (Testimony at 113). The AHAM test procedure requires that the warm wash (or multiple warm wash) selection(s) be calculated, in lieu of testing, when all of a model's temperature selections are uniformly distributed. If not uniformly distributed, then each temperature selection must be tested. The Department asked AHAM to define ''uniformly distributed, by temperature (between hot wash and cold wash)'' at the hearing. (Testimony at 115). AHAM responded with an expanded definition that sets two conditions for a ''warm wash having uniform distribution by temperature between hot wash and cold wash.'' (AHAM, No. 33 at 4). The first condition is: the ''theoretical mean warm wash temperature'' equals the ''theoretical mean of all wash temperatures.'' The second condition is: ''uniform separation'' of warm wash temperatures exists. AHAM included detailed mathematical equations (see AHAM No. 33 at 4) to further explain the above terms.

The Department appreciates AHAM's submission regarding the definition and mathematical expressions. However, the Department believes that a narrative definition would be more appropriate for the rule language to maintain consistency with other definitions. The Department is considering an approach that retains the content of the AHAM definition, but converts it into narrative form through a definition for ''uniformly distributed warm wash.''

AHAM also indicated without qualification that an ''infinite selection'' warm wash temperature selection would be considered uniformly distributed. If a clothes washer has an infinite number of warm wash temperature selections which follows a proportional (or linear) relationship with the warm wash selection device (dial, slide, etc.), then clearly the warm wash temperature selection is uniformly distributed and the recommended AHAM method for uniformly distributed temperatures applies. However, the AHAM test procedure does not address an infinite warm wash selection which follows a path that is not proportional (linear). It is possible that some clothes washer manufacturers, in the future, may employ non-linear infinite warm wash selections. Therefore, the Department is considering the option of revising sections 3.5.1 and 3.5.2 of the AHAM test procedure to address this issue, and welcomes comments relative to the definitions and revised sections it is considering.

In addition, Whirlpool has indicated a concern about the language regarding intermediate warm wash temperatures. (Whirlpool No. 50 at 1). Whirlpool recommended changing the terminology in the test procedure from ''Warm Wash'' to ''Intermediate Wash'' to eliminate confusion. The Department agrees with Whirlpool that the intent of the AHAM recommended test procedure is that the warm wash temperatures refer to all temperatures which are below the hottest hot (135 °F (57.2 °C)) and above the coldest cold. The Department agrees with Whirlpool and believes that was the intent of the AHAM recommended test procedure. Therefore, to prevent any possible ambiguity regarding warm wash temperatures, the Department is considering defining ''warm wash'' as all temperature selections between the hottest and coldest. The Department welcomes comments regarding the AHAM test procedure and the acceptability of the new definition.

Water-Heating Clothes Washers

NIST on behalf of the Department expressed a concern regarding the possible need to establish ambient test conditions for testing water-heating clothes washers. (Testimony at 132). The Department believes that the energy consumed in a water-heating clothes washer may be affected by the ambient temperature of the clothes washer. Thus, if the ambient temperature prior to and during testing is relatively hot, then less energy will be consumed than under typical operating conditions, i.e., the test will understate the clothes washer's energy consumption. Conversely, if the ambient temperature prior to and during the test is relatively cold, then the energy consumption will be overstated. The Department asked AHAM to comment on this issue at the hearing. (Testimony at 132). AHAM recommended adding ambient temperature conditions for tests of water heating clothes washers, specified as 75 °F ± 5 °F. (AHAM, No. 33 at 6) . Speed Queen supported the AHAM recommendation. (Speed Queen, No. 29 at 2). The Department believes that AHAM's specified temperature is above room temperature but reflects acceptable test conditions for manufacturer facilities while preventing large variations. Therefore, DOE is considering adoption of this requirement.

The Department is concerned about the testing of water-heating clothes washers that may have been stored in an area that has a temperature outside of

the above range, prior to testing. The concern is that the thermal mass of the clothes washer may affect the resultant energy consumption. Therefore, the Department is considering the addition of pre-conditioning requirements for water-heating clothes washers. The unique requirement would be to conduct the established pre-conditioning procedure, if the water-heating clothes washer has not been stored in the test room, at the specified ambient conditions, for at least 8 hours (see section 2.9.2). The Department welcomes comment on the 8 hour time frame and on the issue of ambient conditions for water-heating clothes washers.

AHAM's recommended test procedure provides for testing water-heating clothes washers that are capable of using externally heated water. However, the AHAM test procedure only included a provision for hot water heated externally by electricity and did not include a provision for water-heating clothes washers that use hot water heated externally by gas or oil. A test provision for hot water heated externally by gas or oil is required for Federal Trade Commission labeling. Therefore, the Department is considering adoption of such a provision. Additionally, in doing so, the Department is also considering simplification of the test procedure by combining sections for water-heating and nonwater-heating clothes washers where appropriate. The Department requests comments on these options.

Water Consumption Factor

In the NOPR, the Department proposed a Water Consumption Factor (WCF) (clothes washer capacity per gallon per cycle). The Department believes that providing a means of determining WCF may allow consumers, utilities or other organizations to compare clothes washer water consumption independent of clothes washer capacity. AHAM recommended language to calculate total water consumption in gallons per cycle. The AHAM expression is not adjusted to take into account variations of model capacities and will penalize larger capacity clothes washers on a comparison basis.

In response to the NOPR for Appendix ''J'', the Department received several comments regarding the WCF. Miele and Speed Queen indicated that WCF should be the inverse of what was proposed because many utilities already use that factor (gallons per cycle per cubic foot capacity). (Miele, No. 10 at 2 and Speed Queen, No. 29 at 3). AHAM indicated that WCF on a per cycle basis can be expressed as cubic feet per gallon (AHAM, No. 33 at 5). The Department agrees with Miele and Speed Queen that the WCF should be consistent with existing utility programs and represented on a per cycle basis as gallons (weighted water consumption) per cubic foot capacity. Therefore, the Department is considering addition of a provision to AHAM's recommended test procedure to calculate WCF expressed as gallons per cycle per cubic feet. The Department requests comments regarding this topic.

B. Related Matters

1. Potential Impacts/Changes to the Appendix J Test Procedure

Test Load Sizes

AHAM recommended that the Department adopt its test load table (table 5.1 of the Appendix ''J1'' test procedure) for the Appendix ''J'' test procedure. The Department supports the incorporation of the AHAM test load table because it reflects the latest consumer usage data. However, the impact of the incorporation of the recommended AHAM test load table will most likely result in the majority of front-loader clothes washers being tested with larger test loads. The Department realizes that front-loader clothes washers are not required to meet a performance minimum energy conservation standard, but existing models will require retesting and relabeling. The Department requests comments relative to the acceptability of the AHAM recommended test load table for the Appendix ''J'' test procedure.

Water-Heating Clothes Washers

AHAM recommended a provision for testing water-heating clothes washers that have the capability of using externally heated water (see discussion above). However, the provision for externally heated water was not in the NOPR. Therefore, the Department plans on similarly incorporating test procedures for water-heating clothes washers with externally heated water capability in the final rule for the Appendix ''J'' test procedure. The Department requests comments on this issue.

Field Testing

Methods for testing nonconventional clothes washers are not provided in the DOE current test procedure, the NOPR Appendix J, or AHAM recommended test procedure. In addition, none of these test procedures is valid for machines equipped with adaptive controls if consumers use the adaptive cycle more than 50% of the time. AHAM's recommended test procedure specifies guidelines for conducting field tests of nonconventional clothes washers, and of machines with adaptive controls where a manufacturer believes the controls will be used more than 50% of the time. The field testing provisions provide guidelines for manufacturers to conduct data gathering in support of a Petition for Waiver pursuant to Code of Federal Regulation, Title 10, Part 430, section 430.27. AHAM proposed that these same field testing provisions be added to Appendix ''J''. The Department requests comments on this proposal.

2. Section 430.23, ''Test Procedures for Measures of Energy Consumption'', Paragraph (j)

The Department proposed revisions to § 430.23 (j) in the NOPR. These changes dealt with the number of annual clothes washer cycles, corresponding Appendix ''J'' section number references and the incorporation of the Modified Energy Factor descriptor. If Appendix ''J1'' is promulgated, § 430.23(j) will need to be revised. The Department plans to make the required section reference changes to § 430.23(j), for both the Appendix ''J'' and Appendix ''J1'' test procedures.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, April 15, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of Chapter II of Title 10, of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Appendix J1 is added to subpart B of part 430 as follows:

Appendix J1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers.

Note: This test procedure applies to amendments to revise 1994 minimum energy conservation standards for clothes washers set forth at Title 10 CFR 430.32(g).

1. Definitions

1.1 *Adaptive control system* refers to a clothes washer control system which is capable of automatically adjusting washer operation or washing conditions based on characteristics of the clothes load placed in the clothes container, without allowing or requiring consumer intervention and/or actions. Examples would be clothes washer

control system independent selection, modifications, or absolute control of wash water temperature, agitation and/or tumble cycle time, number of rinse cycles, spin speed, etc.

Note: The energy consumption of any adaptive system which depends on the use of, detection of, or the presence of either soil, soap, suds, or any additive laundering substitute or complimentary product to determine the operation of the clothes washer must be determined following the field test procedures defined in section 6.

1.2 *Adaptive water fill control system* refers to a clothes washer water fill control system which is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring consumer intervention and/or actions.

1.3 *Bone-dry* means a condition or a load of test cloth which has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

1.4 *Clothes container* means the compartment within the clothes washer that holds the clothes during the operation of the machine.

1.5 *Compact* refers to a clothes washer which has a clothes container capacity of less than 1.6 cubic feet.

1.6 *Deep rinse cycle* refers to a rinse cycle in which the clothes container is filled with water to a selected level and the clothes load is rinsed by agitating it or tumbling it through the water.

1.7 *Energy test cycle* means the cycle recommended by the manufacturer for washing cotton and/or linen clothes. It includes the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to that cycle, including water heating time for water heating clothes washers, and applies to all wash/rinse temperature selections and water levels available on the model, regardless of whether the wash/rinse temperature selections or water levels are available in the cycle recommended for cottons and/or linens.

1.8 *Load use factor* means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

1.9 *Manual control systems* refers to the type of washer control system which requires that the consumer make the choices that determine washer operation or washing conditions, for example: wash/rinse temperature selections, and wash time before starting the cycle.

1.10 *Manual water fill control system* refers to a clothes washer water fill control system which requires the consumer to determine or select the water fill level.

1.11 *Modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of remaining moisture of the test load.

1.12 *Nonwater-heating clothes washer* refers to a clothes washer which does not have an internal hot water heating device to generate hot water.

1.13 *Spray rinse cycle* refers to a rinse cycle in which water is sprayed onto the clothes for a period of time without maintaining any specific water level in the clothes container.

1.14 *Standard* refers to a clothes washer which has a clothes container capacity of 1.6 cubic feet or greater.

1.15 *Temperature use factor* means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

1.16 *Thermostatically controlled water valves* refer to a set of clothes washer valves which sense water temperature and adjust the hot water and cold water supplies appropriately to maintain a desired mixed water temperature.

1.17 *Uniformly distributed warm wash* refers to warm wash selections for which the warm wash water temperatures have a linear relationship with all discrete warm wash selections when the water temperatures are plotted against equally spaced consecutive warm wash selections between the hottest warm wash and the coldest warm wash. If the warm wash has infinite selections, the warm wash water temperature shall have a linear relationship with the distance on the selection device (e.g. dial angle or slide movement) between the hottest warm wash and the coldest warm wash. The criteria for a linear relationship as specified above is that the difference between the actual water temperature at any warm wash selection and the corresponding temperature on the temperature/selection line formed by connecting the warmest and the coldest warm selections is less than ±5 percent. In all cases, the mean water temperature of the warmest and the coldest warm selections must coincide with the mean of the hot and cold water temperature.

1.18 *Warm wash* refers to all temperature selections that are below the hottest hot (≤135 °F (57.2 °C)) and above the coldest cold temperature selection.

1.19 *Water consumption factor* means the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

1.20 *Water-heating clothes washer* refers to a clothes washer where some or all of the hot water for clothes washing is generated by a water heating device internal to the clothes washer.

1.21 *Symbol usage.*

The following identity relationships are provided to help clarify the symbology used throughout this procedure. The other symbols and corresponding terms from the table below a sample variable can be substituted with their appropriate meanings:

1.21.1 For example, ''Electrical Energy Consumption'' for an ''Extra Hot Wash'' and ''Maximum Test Load'' would be depicted as follows:

Em_x

E—Electrical Energy Consumption
H—Hot Water Consumption
C—Cold Water Consumption
m—Extra Hot Wash (max. temp. >135°F (57.2°C.))
h—Hot Wash (max. temp. <=135°F (57.2°C.))
w—Warm Wash (intermediate temp.)
c—Cold Wash (minimum temp.)
x—Maximum Test Load
a^+—Above Average Test Load
a—Average Test Load
a^-—Below Average Test Load
n—Minimum Test Load

1.21.2 For example, ''Hot Water Consumed by Warm Rinse'' for the ''Maximum Test Load'' would be depicted as follows:

R_x

R—Hot Water Consumed by Warm Rinse
Er—Electrical Energy Consumed by Warm Wash/Warm Rinse
ER—Electrical Energy Consumed by Warm Rinse$^+$—Maximum Test Load
a^+—Above Average Test Load
a—Average Test Load
a^-—Below Average Test Load
n—Minimum Test Load

1.21.3 For example, ''Temperature Use Factor'' for ''Extra Hot Wash'' would be depicted as follows:

TUF_m

m—Extra Hot Wash
h—Hot Wash
w—Warm Wash
c—Cold Wash
R—Warm Rinse

1.21.4 For example, ''Temperature Weighted Hot Water Consumption'' for the ''Maximum Test Load'' would be depicted as follows:

Vh_x

x—Maximum Test Load
a^+—Above Average Test Load
a—Average Test Load
a^-—Below Average Test Load
n—Minimum Test Load

1.21.5 For example, ''Hot Water Energy Consumption'' for the ''Maximum Test Load'' would be depicted as follows:

E_{max}

E—Hot Water Energy Consumption
F—Load Usage Factor
Q—Total Water Consumption
ME—Machine Electrical Energy Consumption
max—Maximum Test Load
avg—Average Test Load
min—Minimum Test Load

1.21.6 The following additional symbols are used in the test procedure:

RMC—Remaining Moisture Content
WI—Initial Weight of Dry Test Load
WC—Weight of Test Load After Extraction
ME_T—Total Machine Electrical Energy Consumption
E_{TE}—Total Per-Cycle Energy Consumption

2. Testing Conditions

2.1 *Installation.* Install the clothes washer in accordance with manufacturer's instructions.

2.2 *Electrical energy supply.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120, 120/240, or 120/208Y volts as applicable to the particular terminal block wiring system and

within 2 percent of the nameplate frequency as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct test at the highest voltage specified by the manufacturer.

2.3 *Supply Water Temperature.*

2.3.1 *Clothes washers in which electrical energy consumption and/or water energy consumption are affected by the inlet water temperature (for example, water heating clothes washers or clothes washers with thermostatically controlled water valves).* The temperature of the hot water supply at the water inlets shall be maintained at 135°F +0°F −10°F (57.2°C +0°C −5.5°C) and the cold water supply at the water inlets shall be maintained at 60°F +0°F −10°F (15.6°C +0°C −5.6°C). A water meter shall be installed in both the hot and cold water lines to measure water consumption.

2.3.2 *Clothes washers in which electrical energy consumption and water energy consumption are NOT affected by the inlet water temperature.* The temperature of the hot water supply shall be maintained at 135°F ± 5°F (57.2°C ± 2.8°C) and the cold water supply shall be maintained at 60°F ± 5°F (15.6°C ± 2.8°C). A water meter shall be installed in both the hot and cold water lines to measure water consumption.

2.4 *Water pressure.* The static water pressure at the hot and cold water inlet connection of the clothes washer shall be maintained at 35 pounds per square inch gauge (psig) ±2.5 psig (241.3 kPa ± 17.2 kPa) during the test. The static water pressure for a single water inlet connection shall be maintained at 35 psig ±2.5 psig (241.3 kPa ±17.2 kPa) during the test. A water pressure gauge shall be installed in both the hot and cold water lines to measure water pressure.

2.5 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.5.1 *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale shall have a resolution of at least 0.2 ounces (5.7 g) and a maximum error no greater than 0.3 percent of the measured value.

2.5.1.2 *Weighing scale for clothes container capacity measurements.* The scale should have a resolution of 0.50 pounds (0.2 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter shall have a resolution no larger than 1 watt-hour (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 watts-hours (180.0 kJ).

2.5.3 *Temperature measuring device.* The device shall have an error no greater than ±1°F (± 0.6°C) over the range being measured.

2.5.4 *Water meter.* The water meter shall have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured.

2.5.5 *Water pressure gauge.* The water pressure gauge shall have a resolution of 1 pound per square inch gauge (psig) (6.9 kPa) and shall have an error no greater than 5 percent of any measured value.

2.6 *Test cloths.*

2.6.1 *Energy test cloth.*

2.6.1.1 The energy test cloth shall not be used for more than 25 test runs and shall be clean and consist of the following:

(a) Pure finished bleached cloth, made with a momie or granite weave, which is 50 percent cotton and 50 percent polyester and weighs 5.75 ounces per square yard (195.0 g/m²) and has 65 ends on the warp and 57 picks on the fill. (b) Cloth material that is 24 inches by 36 inches (61.0 cm by 91.4 cm) and has been hemmed to 22 inches by 34 inches (55.9 cm by 86.4 cm) before washing. The maximum shrinkage after five washes shall not be more than four percent on the length and width.

2.6.1.2 The new test cloths, including energy test cloths and energy stuffer cloths shall be pre-conditioned in a clothes washer in the following manner:

2.6.1.2.1 For each gallon (3.79 liters) of water used, use 6 grams of a commercially available clothes washing detergent that is suitable for 135 °F (57.2 °C) wash water, with the washer set on maximum water level. Place detergent in washer and then place the new load to be conditioned in the washer. Wash the load for ten minutes in soft water (17ppm or less). Wash water is to be hot, and controlled at 135 °F ± 5 °F (57.2 °C ± 2.8 °C). Rinse water temperature is to be cold, and controlled at 60 °F ± 5 °F (15.6 ± °C 2.8 °C). Rinse the load through a second rinse using the same water temperature (utilize an optional second rinse if available).

2.6.1.2.2 Dry the load.

2.6.1.2.3 A final cycle is to be hot water wash with no detergent followed by two cold water rinses.

2.6.1.2.4 Dry the load.

2.6.2 *Energy stuffer cloth.* The energy stuffer cloth shall be made from energy test cloth material and shall consist of pieces of material that are 12 inches by 12 inches (30.5 cm by 30.5 cm) and have been hemmed to 10 inches by 10 inches (25.4 cm by 25.4 cm) before washing. The maximum shrinkage after five washes shall not be more than four percent on the length and width. The number of test runs on the same energy stuffer cloth shall not exceed 25 runs.

2.7 *Test Load Sizes.* Maximum, minimum, and when required, average test load sizes shall be determined using Table 5.1 and the clothes container capacity as measured in 3.1 through 3.1.4. Test loads shall consist of energy test cloths, except that adjustments to the test loads to achieve proper weight can be made by the use of energy stuffer cloths with no more than 5 stuffer clothes per load.

2.8 *Use of Test Loads.* Table 2.8 defines the test load sizes and corresponding water fill settings which are to be used when measuring water and energy consumption. ''Control System'' refers to the type of clothes washer control system as defined in section 1 of this appendix:

TABLE 2.8.—TEST LOAD SIZES AND WATER FILL SETTINGS REQUIRED

Water fill control system	Manual		Manual		Adaptive	
Other control systems	Manual		Adaptive		Manual or adaptive	
	Test load size	Water fill setting	Test load size	Water fill setting	Test load size	Water fill setting
	Max	Max	Max	Max	Max	As determined by the Clothes Washer.
	Min	Min	Avg Min	Max Min .	Avg+[1]. Avg. Avg[1]. Min.	

[1] See 3.3.3.1, 3.4.3.1, or 3.6.3.1 to determine if these load sizes are required.

2.8.1 The test load sizes to be used to measure RMC are specified in section 3.8.

2.8.2 Test loads for energy and water consumption measurements shall be bone dry prior to the first cycle of the test, and dried to a maximum of 104 percent of bone dry weight for subsequent testing.

2.8.3 *Method of loading.* Load the energy test cloths by grasping them in the center, shaking them to hang loosely and then put them into the clothes container prior to activating the clothes washer.

2.9 *Pre-conditioning.*

2.9.1 *Nonwater-heating clothes washer.* If the clothes washer has neither been tested nor filled with water in the preceding 96 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.9.2 *Water-heating clothes washer.* If the clothes washer has neither been tested nor filled with water in the preceding 96 hours

and/or if it has not been in the test room at the specified ambient conditions for 8 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.10 *Wash time setting.* If one wash time is prescribed in the energy test cycle, that shall be the wash time setting; otherwise, the wash time setting shall be the higher of either the minimum, or 70 percent of the maximum, wash time available in the energy test cycle.

2.11 *Test room temperature for water-heating clothes washers.* Maintain the test room ambient air temperature at 75°F±5 °F (23.9 °C ±2.8 °C).

3. Test Measurements

3.1 *Clothes container capacity.* Measure the entire volume which a dry clothes load could occupy within the clothes container during washer operation according to the following procedures:

3.1.1 Line the inside of the clothes container with 2 mil (0.051 mm) plastic sheet. All clothes washer components which occupy space within the clothes container and which are recommended for use with the energy test cycle shall be in place and shall be lined with 2 mil (0.051 mm) plastic sheet to prevent water from entering any void space.

3.1.2 Record the total weight of the machine before adding water.

3.1.3 Fill the clothes container manually with either 60 °F±5 °F (15.6 °C±2.8 °C) or 100°F#±10 °F (37.8°C ±2.8°C) water to its uppermost edge. Measure and record the weight of water, W, in pounds.

3.1.4 The clothes container capacity is calculated as follows:

C=W/d.

Where:

C=Capacity in cubic feet.

W=Mass of water in pounds.

d=Density of water (62.0 lbs/ft^3 for 100° F (993 kg/m^3 for 37.8° C) or 62.3 lbs/ft^3 for 60° F (998 kg/m^3 for 15.6° C)).

3.2 *Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers.* All energy consumption tests shall be performed under the energy test cycle, unless otherwise specified. Table 3.2 defines the sections below which govern tests of particular clothes washers, based on the number of wash/rinse temperature selections available on the model, and/or method of water heating. The procedures prescribed are applicable regardless of a clothes washer's washing capacity, loading port location, primary axis of rotation of the clothes container, and type of control system.

TABLE 3.2.—TEST SECTION REFERENCE

Max. wash temp. available	<=135 °F (57.2 °C)			≤135 °F (57.2 °C) [2]	
Number of wash temp. selections	1	2	≤=3	3	≤3
Test Sections Required to be Followed	3.6	3.4	3.4	3.3	3.3
	[1] 3.7	3.6	3.5	3.5	3.4
	3.8	[1] 3.7	3.6	3.6	3.5
	.....	3.8	[1] 3.7	[1] 3.7	3.6
	.....	.....	3.8	3.8	[1] 3.7
	.....	.....	3.8	3.8	[1] 3.7
	.....	.....	.....	.....	3.8

[1] Only applicable to machines with warm rinse.
[2] This only applies to water heating clothes washers on which the maximum wash temperature available exceeds 135° F (57.2° C).

3.2.1 *Inlet water temperature and the wash/rinse temperature settings.*

3.2.1.1 For automatic clothes washers set the wash/rinse temperature selection control to obtain the wash water temperature desired (extra hot, hot, warm, or cold) and cold rinse and open both the hot and cold water faucets.

3.2.1.2 For semi-automatic washers: (1) For hot water temperature: open the hot water faucet completely and close the cold water faucet; (2) for warm inlet water temperature: Open both hot and cold water faucets completely; (3) for cold water temperature: close the hot water faucet and open the cold water faucet completely.

3.2.2 Total water consumption during the energy test cycle shall be measured, including hot and cold water consumption during wash, deep rinse, and spray rinse.

3.2.3 *Clothes washers with adaptive/ manual/consumer optional control systems*

3.2.3.1 *Clothes washers with adaptive controls and alternate manual controls.* If clothes washers with adaptive controls allow consumer selection of manual controls as an alternative, then both manual and adaptive modes shall be tested and the energy consumption, E_{TE} , calculated in section 4 shall be the average of the measured values. If the product manufacturer feels more energy savings would result from the actual in home use of the adaptive control system, then the procedures in section 6.2 can be used as an alternate means to provide data in support of a waiver.

3.2.3.2 *Clothes washers with adaptive water fill controls.* When testing these clothes washers in adaptive water fill control, the maximum, minimum, and average water levels as defined in the following sections shall be interpreted to mean that amount of water fill which is selected by the control system when the respective test loads are used, as defined in Table 2.8. The load usage factors which shall be used when calculating energy consumption values are defined in Table 4.1.3.

3.2.3.3 *Clothes washers with adaptive control systems which do not adaptively modify the water fill levels.* The water fill selector shall be set to the maximum water level available on the clothes washer for the maximum and average test load sizes and set to the minimum water level for the minimum test load size as defined in Table 2.8. The load usage factors which shall be used when calculating energy consumption values are defined in Table 4.1.3.

3.2.3.4 *Clothes washers with manual control systems.* The water fill selector shall be set to the maximum water level available on the clothes washer for the maximum test load size and set to the minimum water level for the minimum test load size as defined in Table 2.8. The load usage factors which shall be used when calculating energy consumption values are defined in Table 4.1.3.

3.2.3.5 *Clothes washers with consumer options for the energy test cycle.* Clothes washers which have more than one option or a range of options for various characteristics (other than wash time) of the energy test cycle, such as various spin speeds or adaptive water fill selections, etc., shall be tested at the maximum and minimum extremities of the available options. The energy consumption and other equations calculated in section 4 shall be determined by the average of the measured values.

3.3 *''Extra Hot Wash'' Cycle (Max Wash Temp* >135° F (57.2° C)). This section applies to water heating clothes washers only. Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.3.1 through 3.3.3.5.2 for the hottest setting available.

3.3.1 *Maximum test load and water fill.* Hot water consumption (Hm_x), cold water consumption (Cm_x), and electrical energy consumption (Em_n) shall be measured for an extra hot wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per table 5.1.

3.3.2 *Minimum test load and water fill.* Hot water consumption (Hm_n), cold water consumption (Cm_n), and electrical energy consumption (Emn) shall be measured for an extra hot wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per table 5.1.

3.3.3 *Average test load and water fill.* For clothes washers with adaptive controls, measure the values for hot water consumption (Hm_a), cold water consumption (Cm_a), and electrical energy consumption (Em_a) for an extra hot wash/cold rinse energy test cycle, with an average test load size as determined per table 5.1.

3.3.3.1 Steps 3.3.3.2 through 3.3.3.5.2 are to determine if additional testing of clothes washers with adaptive water fill controls is necessary, by checking for linearity in the

three water consumption values (minimum, average, and maximum) measured.

3.3.3.2 Calculate the total water consumption for the maximum test load size ($V_x=Hm_x+Cm_x$)

3.3.3.3 Calculate the total water consumption for the average test load size ($V_a=Hm_a+Cm_a$)

3.3.3.4 Calculate the total water consumption for the minimum test load size ($V_n=Hm_n+Cm_n$)

3.3.3.5 If V_a is different than the average of V_x and V_n by 5 percent or more then two additional test load sizes, average$^{(+)}$ and average$^{(-)}$ shall be tested as follows:

3.3.3.5.1 To determine the average$^{(+)}$ test load size, add the weights for the maximum and average test load sizes and divide by two. Place the average$^{(+)}$ test load size into the clothes washer and measure the hot water consumption (Hm_{a+}), cold water consumption (Cm_{a+}), and electrical energy consumption (Em_{a+}) for an extra hot wash/cold rinse energy test cycle.

3.3.3.5.2 To determine the average$^{(-)}$ test load size, add the weights for the average and minimum test load sizes and divide by two. Place the average$^{(-)}$ test load size into the clothes washer and measure the hot water consumption (Hm_{a-}), cold water consumption (Cm_{a-}), and electrical energy consumption (Em_{a-}) for an extra hot wash/cold rinse energy test cycle.

3.4 *''Hot Wash'' Cycle (Max Wash Temp ≤135 °F (57.2 °C)).* Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.4.1 through 3.4.3.5.2 for 135 °F (57.2 °C) wash if available or the hottest selection less than 135 °F (57.2 °C).

3.4.1 *Maximum test load and water fill.* Hot water consumption (Hh_x), cold water consumption (Ch_x), and electrical energy consumption (Eh_x) shall be measured for a hot wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per table 5.1.

3.4.2 *Minimum test load and water fill.* Hot water consumption (Hh_n), cold water consumption (Ch_n), and electrical energy consumption (Eh_n) shall be measured for a hot wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per table 5.1.

3.4.3 *Average test load and water fill.* For clothes washers with adaptive controls, measure the values for hot water consumption (Hh_a), cold water consumption (Ch_a), and electrical energy consumption (Eh_a) for a hot wash/cold rinse energy test cycle, with an average test load size as determined per table 5.1.

3.4.3.1 Steps 3.4.3.2 through 3.4.3.5.2 are to determine if additional testing of clothes washers with adaptive water fill controls is necessary, by checking for linearity in the three water consumption values (minimum, average, and maximum) measured.

3.4.3.2 Calculate the total water consumption for the maximum test load size ($V_x=Hh_x+Ch_x$)

3.4.3.3 Calculate the total water consumption for the average test load size ($V_a=Hh_a+Ch_a$)

3.4.3.4 Calculate the total water consumption for the minimum test load size ($V_n=Hh_n+Ch_n$)

3.4.3.5 If V_a is different than the average of V_x and V_n by 5 percent or more then two additional test load sizes, average$^{(+)}$ and average$^{(-)}$ shall be tested as follows:

3.4.3.5.1 To determine the average$^{(+)}$ test load size, add the weights for the maximum and average test load sizes and divide by two. Place the average$^{(+)}$ test load size into the clothes washer and measure the hot water consumption (Hh_{a+}), cold water consumption (Ch_{a+}), and electrical energy consumption (Eh_{a+}) for a hot wash/cold rinse energy test cycle.

3.4.3.5.2 To determine the average$^{(-)}$ test load size, add the weights for the average and minimum test load sizes and divide by two. Place the average$^{(-)}$ test load size into the clothes washer and measure the hot water consumption (Hh_{a-}), cold water consumption (Ch_{a-}), and electrical energy consumption (Eh_{a-}) for a hot wash/cold rinse energy test cycle.

3.5 *''Warm Wash'' Cycle (Intermediate Wash Temperature Selection Between Hot and Cold).* Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.5.1 through 3.5.5.3 for the warm water wash temperature.

3.5.1 For clothes washers with uniformly distributed warm wash temperature selections, the reportable values to be used for the warm water wash setting shall be the arithmetic average of hot and cold selections measurements. This is a calculation only, no testing is required.

3.5.2 For clothes washers that do not have uniformly distributed warm wash temperature selections, test all intermediate wash temperature selections for washers having discrete warm wash selections. For washers having infinite warm wash selections which are non-uniformly distributed by temperature between ''hot wash'' and ''cold wash'', test at 20 percent, 40 percent, 60 percent, and 80 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. The reportable values to be used for the warm water wash setting shall be the arithmetic averages of all tests required in this section.

3.5.3 *Maximum test load and water fill.* Hot water consumption (Hw_x), cold water consumption (Cw_x), and electrical energy consumption (Ew_x) shall be measured for a warm wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per table 5.1.

3.5.4 *Minimum test load and water fill.* Hot water consumption (Hw_n), cold water consumption (Cw_n), and electrical energy consumption (Ew_n) shall be measured for a warm wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per table 5.1.

3.5.5 *Average test load and water fill.* For clothes washers with adaptive controls, measure the values for hot water consumption (Hw_a), cold water consumption (Cw_a), and electrical energy consumption (Ew_a) for a warm wash/cold rinse energy test cycle, with an average test load size as determined per table 5.1.

3.5.5.1 If additional testing of clothes washers with adaptive water fill controls was determined to be necessary by section 3.3.3.1 or 3.4.3.1. average$^{(+)}$ and average$^{(-)}$ test load sizes shall be determined for warm wash as follows:

3.5.5.2 To determine the average$^{(+)}$ test load size, add the weights for the maximum and average test load sizes and divide by two. Place the average$^{(+)}$ test load size into the clothes washer and measure the hot water consumption (Hw_{a+}), cold water consumption (Cw_{a+}), and electrical energy consumption (Ew_{a+}) for a warm wash/cold rinse energy test cycle.

3.5.5.3 To determine the average$^{(-)}$ test load size, add the weights for the average and minimum test load sizes and divide by two. Place the average$^{(-)}$ test load size into the clothes washer and measure the hot water consumption (Hw_{a-}), cold water consumption (Cw_{a-}), and electrical energy consumption (Ew_{a-}) for a warm wash/cold rinse energy test cycle.

3.6 *''Cold Wash'' Cycle (Minimum Wash Temperature Selection).* Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.6.1 through 3.6.3.5.2 for the coldest wash temperature selection available.

3.6.1 *Maximum test load and water fill.* Hot water consumption (Hc_x), cold water consumption (Cc_x), and electrical energy consumption (Ec_x) shall be measured for a cold wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per table 5.1.

3.6.2 *Minimum test load and water fill.* Hot water consumption (Hc_n), cold water consumption (Cc_n), and electrical energy consumption (Ec_n) shall be measured for a cold wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per table 5.1.

3.6.3 *Average test load and water fill.* For clothes washers with adaptive controls, measure the values for hot water consumption (Hc_a), cold water consumption (Cc_a), and electrical energy consumption (Ec_a) for a cold wash/cold rinse energy test cycle, with an average test load size as determined per table 5.1.

3.6.3.1 Steps 3.6.3.2 through 3.6.3.5.2 are to determine if additional testing of clothes washers with adaptive water fill controls is necessary, by checking for linearity in the three water consumption values (minimum, average, and maximum) measured.

3.6.3.2 Calculate the total water consumption for the maximum test load size ($V_x=Hc_x+Cc_x$)

3.6.3.3 Calculate the total water consumption for the average test load size ($V_a=Hc_a+Cc_a$)

3.6.3.4 Calculate the total water consumption for the minimum test load size ($V_n=Hc_n+Cc_n$)

3.6.3.5 If V_a is different than the average of V_x and V_n by 5 percent or more then two additional test load sizes, average$^{(+)}$ and average$^{(-)}$ shall be tested as follows:

3.6.3.5.1 To determine the average$^{(+)}$ test load size, add the weights for the maximum and average test load sizes and divide by two. Place the average$^{(+)}$ test load size into the clothes washer and measure the hot water consumption (Hc_{a+}), cold water consumption (Cc_{a+}), and electrical energy consumption (Ec_{a+}) for a cold wash/cold rinse energy test cycle.

3.6.3.5.2 To determine the average$^{(-)}$ test load size, add the weights for the average and minimum test load sizes and divide by two. Place the average$^{(-)}$ test load size into the clothes washer and measure the hot water consumption (Hc_{a-}), cold water consumption (Cc_{a-}), and electrical energy consumption (Ec_{a-}) for a cold wash/cold rinse energy test cycle.

3.7 *Warm Rinse.*

3.7.1 Measure the amount of hot water consumed during the hottest rinse cycle with the rinse temperature set to warm, including all deep and spray rinses, for the maximum (R_x), minimum (R_n), and average (R_a) test load sizes and/or water fill levels.

3.7.2 Measure the total amount of electrical energy consumed by the clothes washer with a warm wash and hottest rinse cycle, including all wash, deep rinses, and spray rinses, for the maximum (Er_x), minimum (Er_n), and average (Er_a) test load sizes and/or water fill levels.

3.7.3 Subtract the electrical energy values for warm wash/cold rinse as measured in section 3.5 (Ew) from the Er values determined above in section 3.7.2 to calculate the additional electrical energy required to heat the water and operate the clothes washer for the warm wash/warm rinse cycle (ER).

(a) $ER_x = Erx - Ew_x$
(b) $ER_a = Er_a - Ew_a$
(c) $ER_n = Er_n - Ew_n$

3.7.4 If additional testing of clothes washers with adaptive water fill controls was determined to be necessary by section 3.3.3.1, 3.4.3.1, 3.5.5.1 or 3.6.3.1., the average$^{(+)}$ and average$^{(-)}$ values shall be determined for warm rinse in sections 3.7.1 (R_{a+} and R_{a-}), 3.7.2 (Er_{a+} and Er_{a-}), and 3.7.3 (ER_{a+} and ER_{a-}) as appropriate.

3.8 *Remaining Moisture Content.*

3.8.1 The wash temperature will be the same as the rinse temperature for all testing.

3.8.2 *For clothes washers with cold rinse only.*

3.8.2.1 Determine the maximum test load as defined in table 5.1 and section 3.1.

3.8.2.2 Record the actual 'bone dry' weight of the test load (WI_{max}).

3.8.2.3 Set water level selector to maximum fill.

3.8.2.4 Run the energy test cycle.

3.8.2.5 Record the weight of the test load immediately after completion of the energy test cycle (WC_{max}).

3.8.2.6 Calculate the remaining moisture content of the maximum test load, RMC_{max}, expressed as a percentage and defined as:

$$RMC_{max} = ((WC_{max} - WI_{max}) / WI_{max}) \times 100\%$$

3.8.3 *For clothes washers with cold and warm rinse options.*

3.8.3.1 Complete steps 3.8.2.1 through 3.8.2.5 for cold rinse. Calculate the remaining moisture content of the maximum test load for cold rinse, RMCCOLD, expressed as a percentage and defined as:

$$RMC_{COLD} = ((WC_{max} - WI_{max}) / WI_{max}) \times 100\%$$

3.8.3.2 Complete steps 3.8.2.1 through 3.8.2.6 for warm rinse. Calculate the remaining moisture content of the maximum test load for warm rinse, RMC_{WARM}, expressed as a percentage and defined as:

$$RMC_{WARM} = ((WC_{max} - WI_{max}) / WI_{max}) \times 100\%$$

3.8.3.3 Calculate the remaining moisture content of the maximum test load, RMC_{max}, expressed as a percentage and defined as:

$$RMC_{max} = RMC_{COLD} \times (1 - TUF_R) + RMC_{WARM} \times (TUF_R).$$

4. Calculation of Derived Results from Test Measurements

All calculations for average, above average, and below average test load sizes in this section are applicable only to those clothes washers which were required to be tested in these conditions, as stated in Table 2.8.

4.1 *Hot water and machine electrical energy consumption of clothes washers.*

4.1.1 *Per-cycle temperature-weighted hot water consumption for maximum, intermediate, and minimum water fill levels using each appropriate load size as defined in section 2.8 and Table 5.1.* Calculate for the cycle under test the per-cycle temperature weighted hot water consumption for the maximum water fill level, Vh_x, the above average water fill level, Vh_{a+}, the average water fill level, Vh_a, the below average water fill level, Vh_{a-}, and the minimum water fill level, Vh_n, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Vh_x = [Hm_x \times TUF_m] + [Hh_x \times TUF_h] + [Hw_x \times TUF_w] + [Hc_x \times TUF_c] + [R_x \times TUF_R]$
(b) $Vh_{a+} = [Hm_{a+} \times TUF_m] + [Hh_{a+} + \times TUF_h] + [Hw_{a+} \times TUF_w] + [Hc_{a+} \times TUF_c] + [R_{a+} \times TUF_R]$
(c) $Vh_a = [Hm_a \times TUF_m] + [Hh_a \times TUF_h] + [Hw_a \times TUF_w] + [Hc_a \times TUF_c] + [R_a \times TUF_R]$
(d) $Vh_{a-} = [Hm_{a-} \times TUF_m] + [Hh_{a-} \times TUF_h] + [Hw_{a-} \times TUF_w] + [Hc_{a-} \times TUF_c] + [R_{a-} \times TUF_R]$
(e) $Vh_n = [Hm_n \times TUF_m] + [Hh_n \times TUF_h] + [Hw_n \times TUF_w] + [Hc_n \times TUF_c] + [R_n \times TUF_R]$

Where:

x, a, & n are the maximum, average, and minimum test load for the clothes washer under test.

a+ is the above average test load size.

a− is the below average test load size.

Hm_x, Hm_{a+}, Hm_a, Hm_{a-}, and Hm_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, above average, average, below average, and minimum fill, respectively, for the extra-hot wash cycle with the appropriate test loads, as defined in section 2.8.

Hh_x, Hh_{a+}, Hh_a, Hh_{a-}, and Hh_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, above average, average, below average, and minimum fill, respectively, for the hot wash cycle with the appropriate test loads, as defined in section 2.8.

Hw_x, Hw_{a+}, Hw_a, Hw_{a-}, and Hw_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, above average, average, below average, and minimum fill, respectively, for the warm wash cycle with the appropriate test loads, as defined in section 2.8.

Hc_x, Hc_{a+}, Hc_a, Hc_{a-}, and Hc_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, above average, average, below average, and minimum fill, respectively, for the cold wash cycle with the appropriate test loads, as defined in section 2.8.

R_x, R_{a+}, R_a, R_{a-}, and R_n are the reported hot water consumption values, in gallons per- cycle (or liters per cycle), at maximum, above average, average, below average, and minimum fill, respectively, for the warm rinse cycle and the appropriate test loads, as defined in section 2.8

TUF_m, TUF_h, TUF_w, TUF_c, and TUF_R are temperature use factors for extra hot wash, hot wash, warm wash, cold wash, and warm rinse temperature selections, respectively, and are as defined in Table 4.1.1.

TABLE 4.1.1.—TEMPERATURE USE FACTORS

Max Wash Temp Available	≤135 °F (57.2 °C)	≤135 °F (57.2 °C)	≤135 °F (57.2 °C)	>135 °F (57.2 °C)	>135 °F (57.2 °C)
No. Wash Temp Selections	Single	2 Temps	≥3 Temps	3 Temps	>3 Temps
TUF_m (extra hot)	NA	NA	NA	0.14	0.05
TUF_h (hot)	NA	0.63	0.14	NA	0.09
TUF_w (warm)	NA	NA	0.49	0.49	0.49
TUF_c (cold)	1.00	0.37	0.37	0.37	0.37
TUF_R (warm rinse)	0.27	0.27	0.27	0.27	0.27

4.1.2 *Total per-cycle hot water energy consumption for all maximum, intermediate, and minimum water fill levels tested.* Calculate the total per-cycle hot water energy consumption for the maximum water fill level, E_{max}, the minimum water fill level, E_{min}, and the average water fill level, E_{avg}, expressed in kilowatt-hours per cycle and defined as:

(a) $E_{max} = [Vh_x \times T \times K]$ = Total energy when a maximum load is tested.

(b) $E_{avg} = [Vha \times T \times K]$ or if above average and below average test loads were required to be tested $E_{avg} = [(1/3) \times (Vh_{a+} + Vh_a + Vh_{a-}) + T \times K]$ = Total energy for an average load.

(c) $E_{min}=[Vh_n \times T \times K]$=Total energy when a minimum load is tested.

Where:

T=Temperature rise=75 °F (23.9 °C).

K=Water specific heat in kilowatt-hours per gallon degree F=0.00240 [0.00114 kWh/(L•°C)].

Vh_x, Vh_{a+}, Vh_a, Vh_{a-}, and Vh_n, are as defined in 4.1.1.

4.1.3 *Total weighted per-cycle hot water energy consumption.* Calculate the total weighted per cycle hot water energy consumption, E_T, expressed in kilowatt-hours per cycle and defined as:

$E_T=[E_{max} \times F_{max}]+[E_{avg} \times F_{avg}]+[E_{min} \times F_{min}]$

Where:

E_{max}, E_{avg}, and E_{min} are as defined in 4.1.2.

F_{max}, F_{avg}, and F_{min} are the load usage factors for the maximum, average, and minimum test loads based on the size and type of control system on the washer being tested. The values are as shown in table 4.1.3.

TABLE 4.1.3.—LOAD USAGE FACTORS

Water Fill Control System	Manual	Manual	Adaptive
Other Control Systems	Manual	Adaptive	Manual or Adaptive
F_{max}=	[1].72	[2].10	[3].12
F_{avg}=		[2].62	[3].74
F_{min}=	[1].28	[2].28	[3].14

[1] Reference 3.2.3.4
[2] Reference 3.2.3.3.
[3] Reference 3.2.3.2

4.1.4 *Total Per-cycle hot water energy consumption using gas-heated or oil-heated water.* Calculate for the energy test cycle the per-cycle hot water consumption, E_{TG}, using gas heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$E_{TG}=E_T \times 1/e \times 3412$ Btu/kWh or $E_{TG}=E_T \times 1/e \times 3.3$ MJ/kWh

Where:

e = Nominal gas or oil water heater efficiency = 0.75.

E_T = As defined in 4.1.3.

4.1.5 *Per-cycle machine electrical energy consumption for all maximum, average, and minimum test load sizes.* Calculate the total per-cycle machine electrical energy consumption for the maximum water fill level, ME_{max}, the minimum water fill level, ME_{min}, and the average water fill level, ME_{avg}, expressed in kilowatt-hours per cycle and defined as:

(a) $ME_{max}=[Em_x \times TUF_m] +[Eh_x \times TUF_h]+[Ew_x \times TUF_w]+[Ec_x \times TUF_c]+[ER_x \times TUF_R]$

(b) $ME_{avg}=[Em_a \times TUF_m][Eh_a \times TUF_h]+[Ew_a \times TUF_w]+[Ec_a \times TUF_c]+[ER_a \times TUF_R]$

Note: Em_a is the average of Em_{a+}, Em_a, and Em_{a-} if above average and below average test loads were required to be tested. The same applies to Eh_a, Ew_a, Ec_a, and ER_a.

(c) $ME_{min}=[Em_n \times TUF_m]+[Eh_n \times TUF_h]+[Ew_n \times TUF_w]+[Ec_n \times TUF_c]+[ER_n \times TUF_R]$

Where:

x, a, & n are the maximum, average, and minimum test load for the clothes washer under test.

a_+ & a_- are the above average and below average test load sizes for the clothes washer under test.

Em_x, Em_{a+}, Em_a, Em_{a-}, and Em_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, above average, average, below average, and minimum test loads, respectively, for the extra-hot wash cycle.

Eh_x, Eh_{a+}, Eh_a, Eh_{a-}, and Eh_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, above average, average, below average, and minimum test loads, respectively, for the hot wash cycle.

Ew_x, Ew_{a+}, Ew_a, Ew_{a-}, and Ew_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, above average, average, below average, and minimum test loads, respectively, for the warm wash cycle.

Ec_x, Ec_{a+}, Ec_a, Ec_{a-}, and Ec_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, above average, average, below average, and minimum test loads, respectively, for the cold wash cycle.

ER_x, ER_{a+}, ER_a, ER_{a-}, and ER_n are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, above average, average, below average, and minimum test loads, respectively, for the warm rinse cycle.

TUF_m, TUF_h, TUF_w, TUF_c, and TUF_R are as defined in 4.1.1.

4.1.6 *Total weighted per-cycle machine electrical energy consumption.* Calculate the total per cycle load size weighted energy consumption, ME_T, expressed in kilowatt-hours per cycle and defined as:

$ME_T=[ME_{max} \times F_{max}]+[ME_{avg} \times F_{avg}]+[ME_{min} \times F_{min}]$

Where:

ME_{max}, ME_{avg}, and ME_{min} are as defined in 4.1.5.

F_{max}, F_{avg}, and F_{min} are as defined in 4.1.3.

4.1.7 *Total per-cycle energy consumption when electrically heated water is used.* Calculate for the energy test cycle the total per-cycle energy consumption, E_{TE}, using electrical heated water, expressed in kilowatt-hours per cycle and defined as:

$E_{TE}=E_T+ME_T$

Where:

ME_T=As defined in 4.1.6.

E_T=As defined in 4.1.3.

4.2 *Water consumption of clothes washers.*

4.2.1 *Per-cycle water consumption.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the cold wash/cold rinse cycle and defined as:

$Q_{max}=[Hc_x+Cc_x]$

$Q_{avg}=[Hc_a+Cc_a]$

Note: Hc_a is the average of Hc_{a+}, Hc_a, and Hc_{a-} if above average and below average test loads were required to be tested. The same applies to Cc_a.

$Q_{min}=[Hc_n+Cc_n]$

Where:

Hc_x, Cc_x, Hc_a, Cc_a, Hc_n, and Cc_n are as defined in 3.6.

4.2.2 *Total weighted per-cycle water consumption.* Calculate the total weighted per cycle consumption, Q_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Q_T=[Q_{max} \times F_{max}]+[Q_{avg} \times F_{avg}]+[Q_{min} \times F_{min}]$

Where:

Q_{max}, Q_{avg}, and Q_{min} are as defined in 4.2.1.

F_{max}, F_{avg}, and F_{min} are as defined in 4.1.3.

4.2.3 *Water consumption factor.* Calculate the water consumption factor, WCF, expressed in gallon per cycle per cubic feet (or liter per cycle per liter), as:

$WCF=Q_T/C$

Where:

Q_T=as defined in section 4.2.2.

C=as defined in section 3.1.

4.3 *Per-cycle energy consumption for removal of moisture from test load.* Calculate the per-cycle energy required to remove the moisture of the test load, D_E, expressed in kilowatt-hours per cycle and defined as

$D_E=(LAF) \times (\text{Maximum test load weight}) \times (RMC_{max} - 4\%) \times (DEF) \times (DUF)$

Where:

LAF=Load adjustment factor=0.52.

Maximum test load weight=As shown in Table 5.1 expressed in lbs/cycle.

RMC_{max}=As defined in 3.8.2.6 or 3.8.3.3.

DEF=nominal energy required for a clothes dryer to remove moisture from clothes=0.5 kWh/lb (1.1 kWh/kg).

DUF=dryer usage factor, percentage of washer loads dried in a clothes dryer=0.84.

4.4 *Modified energy factor.* Calculate the modified energy factor, MEF, expressed in cubic feet per kilowatt-hour per cycle (or

liters per kilowatt-hour per cycle) and defined as:

$MEF=C / (E_{TE}+D_E)$

Where:

C=As defined in 3.1.4.

E_{TE}=As defined in 4.1.7.

D_E=As defined in 4.3.

5. Test Loads

TABLE 5.1.—TEST LOAD SIZES

Container volume	cu. ft. ≥ <	Minimum load		Maximum load		Average load	
	(liter)	lb	(kg)	lb	(kg)	lb	(kg)
0 –0.80	0 –22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17

Notes:
(1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are +/− 0.05 pounds (0.023 kg).

6. Field Testing

6.1 *Nonconventional Wash System Energy Consumption Test.*

If a clothes washer has washer controls or systems that do not allow for adequate measurement of energy consumption under the test procedure, or for calculation of energy consumption using a procedure accepted by DOE and a representative number of other manufacturers, such nonconventional clothes washers must be field tested as a basis for a waiver request.

The field test shall consist of a minimum of 10 of the nonconventional clothes washers (''test clothes washers'') and 10 clothes washers already being distributed in commerce (''base clothes washers''). The tests shall include a minimum of 50 cycles per clothes washer. The test clothes washers and base clothes washers should be identical in construction except for the controls or systems being tested. Equal numbers of both the test clothes washer and the base clothes washer shall be tested simultaneously in comparable settings to minimize seasonal and/or consumer laundering conditions and/or variations. The clothes washers shall be monitored in such a way as to accurately record the total energy consumption per cycle. At a minimum, the following must be measured and recorded throughout the test period for each clothes washer: Hot water usage in gallons (or liters), electrical energy in kilowatt-hours, and the cycles of usage.

The field test results will be used to determine the best method to correlate the rating of the test clothes washer to the rating of the base clothes washer. If the base clothes washer is rated at A kWh per year, but field tests at B kWh per year, and the test clothes washer field tests at D kWh per year, the test unit would be rated as follows:

$A\times(D/B)=G$ kWh per year

6.2 *Adaptive control system field test.*

Section 3.2.3.1 defines the test method for measuring energy consumption for clothes washers which incorporate control systems having both adaptive wash cycle and alternate manual wash cycle selections. Energy consumption calculated by the method defined in section 3.2.3.1 assumes the adaptive cycle will be used 50 percent of the time. The purpose of this section is to define the requirements for developing in-house and field test data in support of a request for a waiver when it is felt that the adaptive cycle will be used more than 50 percent of the time.

The field test sample size shall be a minimum of 10 test clothes washers. The test clothes washers shall be totally representative of the design, construction, and control system that will be placed in commerce. The duration of field testing in the user's house shall be a minimum of 50 energy test cycles, for each unit. No special instructions as to cycle selection or product usage shall be given to the field test participants, other than inclusion of the product literature pack which will be shipped with all units, and instructions regarding filling out data collection forms, use of data collection equipment, and/or basic procedural methods.

Prior to the test clothes washers being installed in the field test locations, baseline data shall be developed for all field test units by conducting laboratory tests as defined by section 1 through section 5 of these test procedures to determine the energy

consumption, water consumption, and remaining moisture content values.

The following data shall be measured and recorded *for each wash load* during the test period: wash cycle selected (adaptive or manual), clothes load dry weight (measured prior to placement into the clothes washer) in pounds, and type of articles in the clothes load (i.e., cottons, linens, permanent press, etc.).

The wash loads used in calculating the in-home percentage split between adaptive and manual cycle usage shall be only those wash loads which conform to the definition of the energy test cycle.

Calculate:

T=The total number of energy test cycles run during the field test

T_a=The total number of adaptive control energy test cycles

T_m=The total number of manual control energy test cycles

The percentage weighing factors:

$P_a=(T_a/T)\times100$ (the percentage weighing for adaptive control selection)

$P_m=(T_m/T)\times100$ (the percentage weighing for manual control selection)

Energy consumption (E_{TE}), calculated in section 4.1, and water consumption (Q_T), calculated in section 4.2, shall be the weighted average of the measured values using P_a and P_m as the weighing factors.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 96–27]

Federal Home Loan Bank Directors' Compensation and Expenses

AGENCY: Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to repeal its Directors' Fees and Allowances Policy (Policy) and amend its regulation on the compensation of Federal Home Loan Bank (Bank) directors to provide greater flexibility to the Banks in compensating their directors and to set forth a clear standard of reasonableness for such compensation under the Federal Home Loan Bank Act (Bank Act). The current Finance Board regulation on the compensation of Bank directors subjects the payment of fees and expenses to limits set by the Finance Board. Those limits and other criteria are contained in the Policy, which essentially imposes a uniform directors' compensation structure on all Banks. The proposed rule would replace the current regulatory/policy scheme with an amended regulation permitting each Bank, within certain general guidelines, to devise its own compensation structure for Bank directors, and allowing each Bank to pay its directors for such expenses as are payable by the Bank to its senior officers.

The Finance Board is also proposing a rule requiring that meetings of a Bank's board of directors be held within the United States. This will codify an important provision of the Finance Board's Policy, which would be rescinded simultaneously with the adoption of a final rule on Bank directors' compensation and expenses.

DATES: Comments must be received on or before June 21, 1996.

ADDRESSES: Comments may be mailed to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, District Banks Secretariat, (202) 408–2872; or Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408–2932; Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Subsection 7(i) of the Bank Act permits each Bank, with the approval of the Finance Board, to pay its directors reasonable compensation and necessary expenses for the time required of them in the performance of their Bank-related duties, in accordance with resolutions adopted by such directors. 12 U.S.C. 1427(i) (1994). A general provision on Bank directors' compensation, which appears at section 932.27 of the Finance Board's regulations, provides merely that directors' fees shall be established by each Bank within limits set by the Finance Board. See 12 CFR 932.27 (1995).

The Finance Board has exercised its statutory responsibility to approve Bank director compensation and expenses largely through its Directors' Fees and Allowances Policy, adopted by resolution of its Board of Directors on February 23, 1993. See Finance Board Resolution No. 93–12 (Feb. 23, 1993). The existing policy establishes a maximum fee of $1,200 per day payable to the Chair of a Bank's board of directors when presiding over meetings of the board or its executive committee, and a maximum fee of $650 per day payable to all other directors for attendance at board, committee, or other meetings for which a fee is authorized. Under the Policy, daily meeting fees are the only authorized source of compensation for Bank directors; the Policy does not provide for payment of either a retainer, or non-cash benefits to directors. The Policy also sets forth generally the categories of expenses that are payable to Bank directors and identifies several specific expense items the payment of which is either authorized or prohibited.

The Banks first became subject to a formal policy on directors fees and expenses in 1974, when the former Federal Home Loan Bank Board (FHLBB) (the Finance Board's predecessor agency) adopted a policy that revised, clarified and incorporated the various resolutions, minute entries and interpretations on director compensation and expenses that had been issued by the FHLBB since its creation in 1932. The FHLBB policy was amended several times, lastly in 1986, when the current dual $1200/$650 per day meeting fee caps were incorporated. When the Finance Board succeeded the FHLBB as regulator of the Bank system in 1989, the FHLBB's policy on Bank directors' fees and expenses remained in effect, as provided by the Financial Institutions Reform, Recovery and Enforcement Act's (FIRREA) provision on the continuation of orders, resolutions, determinations and regulations of the FHLBB. See Public Law 101–73, section 401(h), 103 Stat. 183 (1989) (codified at 12 U.S.C. 1437 note). The Policy is essentially identical to the FHLBB's 1986 policy.

The Bank Act currently vests in the Finance Board the responsibility to supervise the Bank System, to regulate it for financial safety and soundness, and to pass upon most matters of corporate governance of the Banks. A series of studies and reports mandated by the Housing and Community Development Act of 1992, Public Law 102–550, section 1393, 106 Stat. 3672 (1992), including a report prepared by the Finance Board in April 1993, concluded that the Finance Board's authority over Bank corporate governance is in conflict with the agency's primary role as Bank System regulator. Since the completion of these studies, the Finance Board has been working closely with the Banks to implement regulatory and policy changes designed to devolve to the Banks the authority to set policy on matters of corporate governance, to the extent permissible under the Bank Act. In conjunction with these efforts, two separate task forces composed of senior officials of the Banks have recommended that the Finance Board rescind the Policy and establish broad

guidelines within which the Banks' boards of directors can set the structure and limits for the compensation of their directors.

As part of its policy to devolve matters of corporate governance to the Banks, the Finance Board is now proposing to rescind both its current regulation on Bank directors' compensation and the Policy adopted thereunder and to replace both with a comprehensive regulation on Compensation and Expenses of Bank Directors. This proposed regulation, though more detailed than the existing regulation, will allow the Banks greater freedom to develop and implement their own directors' compensation plans than is possible under the current regulatory/policy scheme, while establishing clear and enforceable regulatory limitations.

II. Analysis of the Proposed Rule

The proposed rule provides for the addition of a new § 932.26 to the Finance Board's regulations and for the revision of § 932.27 thereof to contain entirely new text. Proposed § 932.26 codifies existing Finance Board policies requiring that most meetings of a Bank's boards of directors and its committees be held within the district served by that Bank and prohibiting Banks from holding any such meetings outside the borders of the United States. This provision is taken from the Finance Board's existing Policy and the codification of these requirements as a regulation is intended merely to preserve these important requirements when the Policy is rescinded.

The proposed rule also would replace § 932.27 of the Finance Board's regulations, entitled ''Compensation,'' with a new regulation entitled ''Compensation and Expenses of Bank Directors.'' As a whole, proposed § 932.27 is intended to limit the total dollar pool available to each Bank to compensate its directors to an appropriate level, while providing the Banks with maximum flexibility to devise their own directors' compensation schemes within the dollar limit. The proposed regulation is not designed to answer specific compensation issues; rather, it is intended to empower each Bank to exercise its reasonable discretion to decide how to compensate its directors, and thereby to allow many practices that are not authorized under the Policy, including, without limitation: the payment of retainer fees, the provision of non-cash benefits and the payment of meeting fees for participation in telephonic meetings.

Paragraph (a) of the proposed regulation defines two terms—''compensation'' and ''average compensation per director.''

Paragraph (b) of the proposed regulation is the operative provision with respect to the compensation of directors. It requires each Bank to adopt annually, by resolution of its board of directors, a written policy to provide for the payment of ''reasonable compensation'' to its directors for their work on Bank-related matters during the following calendar year. In conjunction with the definition of ''compensation'' contained in paragraph (a), paragraph (b) is intended to permit the Banks to remunerate their directors in a wide variety of fashions, including through the use of daily meeting fees, retainer fees, cash or non-cash fringe benefits, deferred payments, or combinations thereof.

Under proposed paragraph (b), the text of each Bank's policy must detail the types of Bank-related meetings or other activities in which its directors are required or expected to participate and for which they may be compensated. In addition, the policy must explain fully the methodology for determining the amounts and the circumstances under which its directors may be paid, including, if applicable: setting forth rates of compensation for participation in Bank-related activities; setting forth any retainer fees payable to directors and the circumstances under which they may be paid; explaining the rationale behind any graduated meeting or retainer fee scales; and detailing any non-cash fringe benefits to be provided to directors, including the approximate cash value thereof. By requiring a detailed written policy on director compensation, paragraph (b) is intended, in part, to facilitate review of the Banks' director compensation practices during the Finance Board's annual regulatory examination process. The Finance Board specifically requests comment on whether to include as part of the regulation a requirement that the Banks' policies on director compensation be made available to the public through either the Finance Board or the Banks individually and, if so, whether the policies should be disseminated as a matter of course, or merely made available upon request.

Paragraph (c) of the proposed regulation sets forth the substantive limits on Bank directors' compensation that must be reflected in each Bank's policy on director compensation. The requirements of this subsection are designed to operate in tandem and are intended to require each Bank to develop a compensation plan that, using a reasonable pool of money, provides incentive for active director participation in Bank-related affairs and rewards those directors who assume greater responsibilities.

The introductory text to paragraph (c)(1) provides for a $28,000 cap on each Bank's annual ''average compensation per director'' (ACPD), which is defined in paragraph (a) as the total amount the Bank pays in compensation to all directors, divided by the total number of directors designated by the Federal Housing Finance Board to serve on the Bank's board for that year. By capping the ACPD, the proposed regulation effectively would limit the total pool of money available to each Bank to compensate its directors (to $28,000 times the total number of directors), but, because each Bank has a different number of directors, this has been expressed in terms of ''compensation per director'' instead of as a lump sum. Because the regulation caps only the average amount paid to a Bank's directors, it would not prohibit a Bank from paying one or more directors more than $28,000, as long as the average compensation of all the Bank's directors does not exceed that amount.

In reaching the $28,000 figure, the board of directors of the Finance Board has considered a number of factors, including: Bank directors' earnings under the Policy; compensation of directors at other Government Sponsored Enterprises (GSEs), including an analysis of similarities and differences between the Banks and other GSEs that might require different compensation levels; and the compensation of board directors of Bank system member financial institutions. After reviewing these factors, and considering the agency's statutory responsibility to ''approve'' Bank directors' compensation, see 12 U.S.C. 1427(i), the Bank Act's requirement that such compensation be ''reasonable,'' see *id*., and the preference for providing a clear regulatory standard, the board of directors of the Finance Board concluded that an ACPD cap of $28,000 would be sufficient to allow the Banks to attract high quality individuals to serve on their boards of directors, yet is moderate enough, considering market rates, the Banks' GSE status and the general duties of Bank directors, to qualify as ''reasonable compensation'' under the Bank Act.

As provided in paragraph (c)(2), the cap on ACPD will increase automatically, beginning in 1997, to reflect the previous year's change in the Consumer Price Index (CPI). Although paragraph (c)(2) requires the Finance Board to communicate to the Banks each year's new ACPD cap figure, the annual change in the regulatory ACPD

cap is not contingent upon such communication. It is understood that the precise change in CPI will not be available until after the beginning of the year to which it is to apply. However, the agency views this provision as a mechanism for allowing the ACPD cap to keep pace with the level of inflation over a number of years and does not anticipate the need for Banks to make minute adjustments to their compensation policies on an annual basis, although the proposed regulation would not prohibit such adjustments.

Paragraph (c)(1)(i) requires that, keeping within stated cap on ACPD, each Bank's policy on director compensation should be designed such that, at year end, the total compensation paid to each director reflects both the amount of time that the director has spent on Bank-related business and the level of responsibility the director has assumed with respect to his or her role on the Bank's board of directors.

Specifically, the requirement that a directors' annual compensation must reflect the amount of time spent on official Bank business is intended to ensure that Bank directors are being paid for meetings they actually attend and duties they actually perform for each Bank. For example, a Bank's policy should ensure that, at year end, a director who has attended every scheduled Bank-related meeting receives more in compensation (all other factors being equal) than a director who has missed more than a negligible amount of meetings. Although there are many permissible ways for a Bank to implement this requirement, the one method would be to incorporate into its policy a schedule of meeting fees, the payment of which would be contingent upon directors' attendance at appropriate Bank functions. While the proposed regulation would not prohibit a Bank from paying a portion of its directors' compensation in the form of a retainer fee, paragraph (c)(1)(i) effectively would prohibit a Bank from paying its directors entirely through retainer fees, unless their payment somehow was made contingent on the fulfillment of Bank-related duties.

Paragraph (c)(1)(i) also requires that each director's total annual compensation reflect the level of responsibility assumed by that director. This requirement is aimed primarily at ensuring that directors are rewarded appropriately for serving as committee Chair, or for assuming other positions of responsibility. The provision leaves to the discretion of the Bank the identification of the particular formal or informal duties that warrant additional compensation. While the provision also leaves to the discretion of the Bank the method of incorporating such incentives into its director compensation policy, the one method of doing so would be to provide for graduated scales of meeting or retainer fees under which those assuming more responsibility in general, or with respect to a particular meeting or function, receive a higher sum than those who do not.

Paragraph (c)(1)(ii) requires each Bank to pay its Chair: (1) more than any other director and (2) at least 125 percent of the Bank's ACPD. Any plan under which a Bank's board Chair would not receive significant additional compensation for assuming such duties would not provide ''reasonable compensation,'' as required by subsection 7(i) of the Bank Act. 12 U.S.C. 1427(i). Accordingly, although paragraph (c)(1)(i) requires generally that a Bank stratify its compensation based on the level of responsibility assumed by each director, the Finance Board has determined that a requirement dealing specifically with Bank Chairs is appropriate to ensure that statutory requirements are being fulfilled. To avoid ambiguity in determining compliance with the provision and to ensure that Bank Chairs are provided more than a negligible premium for their additional service, the proposed rule includes the specific ''125 percent'' minimum figure, arrived at after reviewing the compensation practices of other GSEs and financial institutions.

The Finance Board specifically requests comment on whether to include as part of the regulation a provision under which a portion of each Bank's directors' annual compensation would be contingent upon that Bank's achievement of performance-related goals such as meeting particular earnings targets, achieving a satisfactory regulatory examination, or fulfilling the Bank's housing finance mission, and, if so, whether these incentive goals should be set forth in the regulation, or left to the discretion of the Banks.

Finally, paragraph (d) of the proposed regulation allows each Bank to pay its directors such Bank-related travel, subsistence and other related expenses as are payable to senior officers of the Bank under the Bank's travel policy, except for gift or entertainment expenses. This provision ties payment of directors' expenses to existing Bank policies which are subject to regulatory examination and which may be amended at the discretion of the Bank.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act. See 5 U.S.C. 601(6). Therefore, in accordance with 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 932

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

Accordingly, part 932, chapter IX, title 12, Code of Federal Regulations, is hereby amended as follows:

PART 932—ORGANIZATION OF THE BANKS

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

Authority: 12 U.S.C. 1442a, 1422b, 1426, 1427, 1464; 18 U.S.C. 207; 42 U.S.C. 8101 *et seq.*

2. Section 932.26 is added to read as follows:

§ 932.26 Site of board of directors and committee meetings.

Meetings of a Bank's board of directors and committees thereof usually should be held within the district served by the Bank. No meetings of a Bank's board of directors and committees thereof may be held in any location that is not within the United States, including its possessions and territories.

3. Section 932.27 is revised to read as follows:

§ 932.27 Compensation and expenses of Bank directors.

(a) *Definitions.* As used in this section:

(1) *Compensation* means any payment of money or provision of any other thing of value (or the accrual of a right to receive money or a thing of value in a subsequent year) in consideration of a director's performance of official duties for the Bank, including, without limitation, retainer fees, daily meeting fees and fringe benefits.

(2) *Average compensation per director* means the sum of the total annual compensation paid to all directors serving on a Bank's board of directors, divided by the total number of directors designated by the Federal Housing Finance Board to serve on the Bank's board for that year.

(b) *Annual compensation.* Each Bank's board of directors shall adopt annually by resolution a written policy to provide for the payment to Bank directors of reasonable compensation for the performance of their duties as

members of the Bank's board for the following calendar year, subject to the requirements set forth in paragraph (c) of this section. At a minimum, such policy shall address the activities or functions for which attendance is necessary and appropriate and may be compensated, and shall explain and justify the methodology for determining the amount of compensation to be paid to directors.

(c) *Policy requirements.* Each Bank's policy on director compensation shall conform to the following requirements:

(1) The Average Compensation Per Director for each Bank shall not exceed $28,000 for the year 1996. Within this limit:

(i) The total annual compensation for each director shall reflect both the amount of time spent on official Bank business and the level of responsibility assumed by that director; and

(ii) The total annual compensation for the chair of each Bank's board of directors shall not be equaled or exceeded by the total annual compensation of any other director and shall not be less than 125 percent of the Average Compensation Per Director for that Bank.

(2) For 1997 and subsequent years, the limit on Average Compensation Per Director set forth in paragraph (c)(1) of this section shall be adjusted annually to reflect the preceding year's change in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics. Each year, as soon as practicable after the publication of the previous year's CPI, the Board shall publish notice, by Federal Register, distribution of a memorandum, or otherwise, of the CPI-adjusted limit on Average Compensation Per Director.

(d) *Expenses.* Each Bank may pay its directors for such necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of their official duties as are payable to senior officers of the Bank under the Bank's travel policy, except that directors may not be paid for gift or entertainment expenses.

By the Board of Directors of the Federal Housing Finance Board.

Dated: April 10, 1996.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–9775 Filed 4–19–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–004]

Proposed Establishment of Class E Airspace, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would revise the Jackson, Wyoming, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Jackson Hole Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before June 7, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–004, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532. 4, Federal Aviation Administration, Docket No. 96–ANM–004, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

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. 96–ANM–004.'' 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 at the address listed above 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 NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. 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 procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at Jackson, Wyoming, to accommodate a new GPS SIAP to the Jackson Hole Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

significant 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 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9c, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ANM WY E5 Jackson, WY [revised]

Jackson Hole Airport, WY
(Lat. 43°36′23″N. long. 110°44′17″W)
Jackson VOR/DME
(Lat. 43°36′30″N, long 110°44′05″W)
Dunoir VOR/DME
(Lat. 43°49′42″N, long. 110°20′08″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Jackson Hole Airport, and within 4.4 miles west and 8.3 miles east of the Jackson VOR/DME 200° radial extending from the VOR/DME to 21.4 miles south of the miles south of the VOR/DME, and within 2.2 miles each side of the Jackson VOR/DME 020° radial extending from the VOR/DME to 10.5 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7 miles west and 10.5 miles east of the Jackson VOR/DME 020° radial extending from the VOR/DME to 33.5 miles north of the VOR/DME, and within 4.3 miles each side of the Jackson VOR/DME 107° radial extending from the VOR/DME to 13.1 miles east of the VOR/DME, and within 5.3 miles north and 7.9 miles south of the Dunior VOR/DME 102° and 282° radials extending from 7 miles east to 18.2 miles west of the Dunoir VOR/DME, and that airspace south of the Jackson VOR/DME bounded on the east by the southwest edge of V–328, on the south by lat. 42°30′00″N, and on the west by the southeast edge of V–465; excluding the Big Piney, WY, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on April 4, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–9743 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–001]

Proposed Amendment to Class E Airspace, Baker, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Baker, Montana, Class E airspace to accommodate a revised Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Baker Municipal Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before May 17, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–001, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–001, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, 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. 96–ANM–001.'' 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 the light of comments received. All comments submitted will be available for examination at the address listed above 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 NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. 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 amend Class E airspace at Baker, Montana, to accommodate a revised GPS SIAP to Baker Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February

26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant 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 proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ANM MT E5 Baker, MT [Revised]

Baker Municipal Airport, MT
(Lat. 46°20′52″N, long. 104°15′34″W)

That airspace extending upward from 700 feet above the surface within a- 8.9-mile radius of the Baker Municipal Airport extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°29′00″N, long. 104°45′00″W; to lat. 46°30′30″N, long. 104°31′00″W; to lat. 46°37′00″N, long. 103°59′40″W; to lat. 46°37′55″N, long. 103°53′45″W; to lat. 46°25′45″N, long. 103°37′30″W; to lat. 46°17′30″N, long. 103°48′15″W; to lat. 45°40′00″N, long. 103°00′50″W; to lat. 45°35′30″N, long. 103°01′45″W; to lat. 45°55′20″N, long. 103°53′15″W; to lat. 46°00′00″N, long. 104°13′00″W; to lat. 46°04′20″N, long. 104°10′45″W; to the point of beginning; excluding that portion within the Bowman Municipal Airport, ND, 1,200-foot Class E airspace area.

* * * * *

Issued in Seattle, Washington, on March 29, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–9742 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 96–ANM–3]

Proposed Establishment of Temporary Restricted Area R–3203D; Orchard, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a temporary Restricted Area R–3203D at Orchard Training Area near Boise, ID, for the period June 1–17, 1996. The Idaho Army National Guard has requested that this temporary area be established to support its increased annual training requirements. This temporary area would be established adjacent to an existing Restricted Area R–3203A.

DATES: Comments must be received on or before May 20, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 96–ANM–3, Federal Aviation Administration, 1601 Lind Avenue, S.W., Renton, WA 98055–4056.

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: Ken McElroy, Airspace and Rules Division (ATA–400), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3075.

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. 96–ANM–3.'' The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: The State of Idaho, Military Division, Headquarters Idaho Army National Guard, Boise Air Terminal, 4040 W. Guard Street, Boise, ID 83705–8048. 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 Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3075. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish a temporary Restricted Area R–3203D at Orchard Training Area, ID, adjacent to the existing Restricted Area R–3203A, to assist the Idaho Army National Guard in satisfying its annual training requirements. The proposed restricted area would be in effect for the period June 1–17, 1996. Expansion in the number of gun batteries assigned to Field Artillery units, along with

requirements that each assigned battery accomplish several moves per day to different surface firing points, has created the need to temporarily expand the available restricted airspace to provide for more effective training. All artillery firing would be directed into existing impact areas located approximately in the center of Restricted Area R–3203A. The temporary restricted area is needed to provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing Restricted Area R–3203A. The proposed temporary area would be used for Idaho National Guard Field Artillery firing and would be released to the FAA for public use during periods it is not required for military training.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

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.

Environmental Review

This proposal will be subjected to an environmental analysis by the proponent and the FAA prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

R–3203D Orchard Training Area, ID [New]

Boundaries. Beginning at lat. 43°14'00''N., long. 116°316'30''W.;
To lat. 43°17′51″N., long. 116°16′25″W.;
To lat. 43°19′02″N., long. 116°14′45″W.;
To lat. 43°19′02″N., long. 116°06′36″W.;
To lat. 43°15′58″N., long. 116°01′12″W.;
To lat. 43°15′00″N., long. 116°01′00″W.;
To lat. 43°17′00″N., long. 116°05′00″W.;
To lat. 43°17′00″N., long. 116°12′00″W.;
To the point of beginning.

Designated altitudes. Surface to and including 22,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance for the period June 1–17, 1996, only.

Controlling agency. FAA, Boise ATCT.

Using agency. Idaho Army National Guard.

Issued in Washington, DC, on April 11, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–9741 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–13–U

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AE05

Definition of United States (U.S.) Resident; Religious Record of Birth or Baptism as Evidence of Citizenship; Plan to Help Blind and Disabled Individuals Achieve Self-Support

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: These proposed regulations clarify SSA's policies on the definition of a U.S. resident and the acceptable types of evidence for proving status as a U.S. citizen or national. They clarify that, for purposes of the Supplemental Security Income (SSI) program, ''resident of the U.S.'' means the individual has established an actual dwelling place in the U.S. and plans to continue living in the U.S. These proposed regulations also clarify that, for purposes of the SSI program, a religious record of a birth or baptism in the U.S. must have been recorded in the U.S. within 3 months of the birth, in addition to showing that the individual was born in the U.S., in order to be acceptable evidence that the individual is a U.S. citizen or a national of the U.S. In addition, these proposed regulations make a minor technical correction to clarify wording regarding income that is used or set aside to be used under a plan to become self-supporting.

DATES: To be sure that your comments are considered, we must receive them no later than June 21, 1996.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-Mail to ''regulations@ssa.gov,'' or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713.

SUPPLEMENTARY INFORMATION:

Background

To be eligible for SSI benefits, an individual must be a resident of the U.S. (one of the 50 States, the District of Columbia, or the Northern Mariana Islands). Generally, a person becomes a resident when he or she arrives in the U.S., establishes an actual dwelling place in the U.S., and plans to continue living in the U.S.

Our regulation at § 416.1603(b) currently defines ''resident of the U.S.'' as ''a person who is living within the geographical limits of the United States.'' This definition is vague because it implies that mere presence, such as that of a visitor, is sufficient to establish residency. In addition, it does not fully support the evidence of residency documents required to establish U.S. residency listed in § 416.1603(a).

Our proposed regulation specifies that an individual must establish an actual dwelling place in the U.S. and intend to continue living in the U.S. to be considered a U.S. resident. Clarification of this regulation is necessary to address problems that have arisen where individuals have established U.S. residency under current regulations, but do not intend to live in the U.S.

In evaluating evidence of residency for SSI purposes, the term ''actual dwelling place'' will encompass different types of living situations

including the situation of a homeless individual.

Another requirement for eligibility for SSI benefits is that an individual must be either a citizen or national of the U.S. or an alien lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law. Section 416.1610 of the regulations lists the various types of evidence that an individual can submit as proof that he or she is a citizen or national. Among the acceptable types of evidence for a U.S. citizen or national is a religious record of birth or baptism which shows the individual was born in the U.S. However, § 416.1610(a)(2) currently does not specify that the place of recordation must be in the U.S., nor does it set any time limits on when the record must have been established.

Prior SSA studies have shown that religious records of birth or baptism recorded in the U.S. within 3 months of birth are generally reliable. Records made after 3 months of birth are more prone to fraud. While not a foolproof fraud deterrent, this proposed regulation will help to limit fraud by lessening the chance of an individual later coming into the U.S. and using a fraudulent record to obtain SSI benefits.

Explanation of Revisions

We propose to revise § 416.1603(b) to define precisely what we mean by ''living within the geographical limits of the United States'' and to reflect the evidence required by § 416.1603(a). We also propose to revise § 416.1610(a)(2) to specify that, in addition to showing that the individual was born in the U.S., a religious record of birth or baptism must have been recorded in the U.S. within 3 months of birth.

In addition, we propose making a minor technical correction to the wording of the second sentence in § 416.1180 concerning income that is used or set aside to be used under a plan to become self-supporting to correct a typographical error.

Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they only affect individuals who claim benefits under title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed regulations do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: April 4, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are proposing to amend subparts K and P of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat 154 (42 U.S.C. 1382 note).

2. Section 416.1180 is amended by revising the second sentence to read as follows:

§ 416.1180 General.

* * * If you are blind or disabled, we will pay you SSI benefits and will not count the part of your income that you use or set aside to use under a plan to become self-supporting.* * *

Subpart P—[Amended]

3. The authority citation for subpart P of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614(a)(1)(B) and (e), and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c(a)(1)(B) and (e), and 1383); 8 U.S.C. 1254a; sec. 502, Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note).

4. Section 416.1603 is amended by revising paragraph (b) to read as follows:

§ 416.1603 How to prove you are a resident of the United States.

* * * * *

(b) *What ''resident of the United States'' means.* We use the term ''resident of the United States'' to mean a person who has established an actual dwelling place within the geographical limits of the United States with the intent to continue to live in the United States.

* * * * *

3. Section 416.1610 is amended by revising paragraph (a)(2) to read as follows:

§ 416.1610 How to prove you are a citizen or a national of the United States.

(a) * * *

(2) A certified copy of a religious record of your birth or baptism, recorded in the United States within 3 months of your birth, which shows you were born in the United States;

* * * * *

[FR Doc. 96–9676 Filed 4–19–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205–A152

Labor Certification Process for the Permanent Employment of Aliens; Researchers Employed by Colleges and Universities

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to amend its regulations relating to labor certification for permanent employment of immigrant aliens in the United States. The proposed amendments would change the way prevailing wage determinations are made for researchers employed by colleges and universities. The proposed rule also would change

the way prevailing wages are determined for colleges and universities. The proposed rule also would change the way prevailing wages are determined for colleges and universities filing H–1B labor condition applications on behalf of researchers, since the regulations governing prevailing wage determinations for the permanent program are followed by State Employment Security Agencies in determining prevailing wages for the H–1B program.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before May 22, 1996.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4456, Washington, DC 20210, Attention: John M. Robinson, Deputy Assistant Secretary.

FOR FURTHER INFORMATION CONTACT: Contact Denis M. Gruskin, Senior Specialist, Division of Foreign labor Certifications, Employment and Training Administration, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Permanent Alien Employment Certification Process

Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor (Secretary) first must certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of such aliens will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(5)(A).

If the Secretary, through the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) determines that there are no able, willing, qualified, and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to INS and to the DOS, by issuing a permanent alien labor certification.

If DOL cannot make either of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make either of the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in 20 CFR part 656. These recruitment requirements and procedural steps are designed to test the labor market for available U.S. workers. They include providing notice of the job opportunity to the bargaining representative (if any) or posting of the job opportunity on the employer's premises, placing an advertisement in an appropriate publication, and placing a job order for 30 days with the appropriate local Employment Service office.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA) [8 U.S.C. 1361], that is, the employer has not submitted sufficient evidence of attempts to obtain qualified, willing, able, and available U.S. workers and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, section 291 of the INA states, in pertinent part, that:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible for such visa or such document, or is not subject to exclusion under any provision of (the INA) * * *.

B. Department of Labor Regulations

The Department has promulgated regulations, at 20 CFR part 656, governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

These regulations set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment service offices to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the primary basis of developing information for the certification determinations. See also 20 CFR parts 651–658; and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 655 sets forth the responsibility of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure an adequate test of the availability of qualified, willing and able U.S. workers to perform the work, and to insure that aliens are not employed under conditions adversely affecting the wages and working conditions of similarly employed U.S. workers.

C. Prevailing Wages and Researchers

Covered employers wishing to employ immigrant workers must recruit for U.S. workers at prevailing wages. State employment security agencies (SESA's or State agencies) survey prevailing wage rates on behalf of DOL. The permanent labor certification regulations at § 656.40 specify how State agencies are to calculate prevailing wages. The prevailing wage methodology set forth is used not only in determining prevailing wages for job opportunities involved in applications for permanent employment certification, but is also followed in determining prevailing wages for the H–2B temporary nonagricultural certification program, the H–1B labor condition application (LCA) program, and the F–1 student off-campus employment program. See 20 CFR part 655, subparts A, H, and J, respectively. In each of these programs, the applicable legislative and/or regulatory history require that prevailing wages be determined in accordance with the requirements of the permanent labor certification regulations at 20 CFR 656.40.

The INA requires that the wages paid to an H–1B professional worker be the higher of the actual wage paid to workers in the occupation or the prevailing wage for the occupational classification in the area of employment. The H–1B regulations incorporate the language of 20 CFR 656.40 (as required by H.R. Conference Report, No. 101–955, October 26, 1990, page 122) and provide employers filing H–1B applications the option of obtaining a prevailing wage determination from the SESA, using an independent authoritative source, or other legitimate

source, as defined at § 655.731(a)(2)(iii)(B) and (C) of the H–1B regulations.

Section 656.40 of the permanent labor certification regulations requires that in the absence of a wage determination issued under the Davis-Bacon Act, the Service Contract Act, or a collective bargaining agreement, the prevailing wage shall be the weighted average rate of wages paid to workers similarly employed in the area of intended employment, *i.e.*, ''the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers.'' Section 656.40(b) further provides that ''similarly employed'' is defined as having substantially comparable jobs in the occupational category in the area of intended employment.

D. Effects of Hathaway Children's Services on Prevailing Wages

Under the *en banc* decision of the Board of Alien Labor Certification Appeals (hereinafter referred to as BALCA or Board) in *Hathaway Children's Service* (91–INA–388, February 4, 1994), prevailing wages are calculated by using wage data obtained by surveying employers across industries in the occupation in the area of intended employment. In *Hathaway,* BALCA overruled its decision in *Tuskegee University,* 87–INA–561, Feb. 23, 1988, *en banc,* which interpreted § 656.40 to permit an examination of the nature of the employer's business in ascertaining the appropriate prevailing wage. 87–INA–561 at 4. In *Tuskegee* the Board said, in relevant part:

> Thus to be ''similarly employed'' for purpose of a prevailing wage determination, it is not enough that the jobs being compared are in the same occupational category they must also be ''substantially comparable.'' Accordingly, it is wrong to focus only on the job title or duties; the totality of the job opportunity must be examined * * *.
>
> It is clear that it is not only the job titles, but the nature of the business or institution where the jobs are located—for example, public or private, secular or religious, profit or non-profit, multinational corporation or individual proprietorship—which must be evaluated in determining whether the jobs are ''substantially comparable.''

In *Hathaway,* the Board declined to make an exception for maintenance repairers employed by non-profit institutions, analogous to the exception it had made in *Tuskegee*. The employer in *Hathaway,* a non-profit United Way affiliate, urged that the Board's decision in *Tuskegee* should be dispositive. The employer argued that the rationale in *Tuskegee* necessarily extends to non-profit employers, thereby differentiating them from for-profit employers.

The Board stated in *Hathaway,* that its holding in *Tuskegee* was ill-advised and should be explicitly overruled. The Board went on to say that:

> The underlying purpose of establishing a prevailing wage rate is to establish a minimum level of wages for workers employed in jobs requiring similar skills and knowledge levels in a particular locality. It follows that the term ''similarly employed'' does not refer to the nature of the employer's business as such; on the contrary, it must be determined on the basis of the similarity of the skills and knowledge required of the job offered. Of course the nature of the employer's business may be reflected in that determination, to the extent it bears on the knowledge and skills required to perform the duties of the job * * *. But neither the record in *Tuskegee* nor the record before us today [in *Hathaway,*], suggests that the skills and knowledge required to perform the duties of the job opportunity being offered are any different depending upon the employer's financial ability to pay the going rate. Specifically, there is no evidence to suggest that the duties of the job offered, either as an associate professor of physics in *Tuskegee* or as a maintenance repairman in the present case [*Hathaway,*], differed as between charitable non-profit institutions and businesses operated for a profit. We find no basis, under the Act or its implementing regulations, for allowing this Employer to hire an alien so that it can pay sub-standard wages to its maintenance repairer or other workers, on the ground that it cannot pay the prevailing wage, while we tell the Mom-and-Pop shop next door or around the corner that ''There is no provision in the law or regulations which allows for waiver of the prevailing wage requirements on the basis of an Employer's financial hardship'' [citing *Norberto La Rosa* (89–INA–287), March 27, 1991] * * *.

In accordance with the holding in *Hathaway,* SESA's were instructed to survey all employers, without regard to the nature of the employer, in the area of intended employment in determining prevailing wages for an occupation.

It has since been asserted that implementation of this policy resulted in considerably higher prevailing wage determinations for research positions in colleges and universities. The higher education community maintains that this policy will jeopardize its ability to recruit foreign researchers with talents and skills not readily available in the U.S. Further, the Department has received comments and inquiries from Congress and other Federal agencies and organizations, such as the Council of Economic Advisers (CEA), National Science Foundation (NSF), the Department of Defense, Defense Research Engineering (DRE), Office of Science and Technology Policy (OSTP), National Institutes of Health (NIH), National Aeronautics and Space Administration (NASA), United States Department of Agriculture (USDA), United States Geological Survey (USGS), Department of Energy (DOE), and Department of Transportation (DOT), expressing concern about the Department's change of policy in determining prevailing wages for researchers employed by universities.

E. Basis for Proposed Rule

The Department believes there are substantial policy reasons to propose an exception whereby prevailing wage determinations for researchers employed by colleges and universities should be based solely on the wages paid by such institutions. These policy reasons are discussed below.

1. Existing Precedent

Congress established precedent in the INA for treating colleges and universities differently in their employment of talented, highly qualified scholars who are members of the teaching profession. Special procedures in DOL regulations were established for college and university teachers because of the provisions at 8 U.S.C. 1182(a)(5)(A)(i) (I) and (II) which require, in relevant part, that DOL must determine in cases involving aliens that are members of the teaching profession that the U.S. applicant is at least as qualified (equally qualified) as the alien before a labor certification can be denied because a U.S. worker is available for the job opportunity. For all other occupations, the DOL Certifying Officer need only find that the U.S. applicant is qualified or meets the employer's minimum job requirements. The ''special handling'' procedures for college and university teachers provide for a more limited test of the labor market than the basic process at 20 CFR 656.21 to successfully apply for a labor certification.

The ''equally qualified'' language was added to section 212(a)(14) of the INA [now at section 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A)] on October 20, 1976, by the Immigration and Nationality Act Amendments of 1976, Pub. L. 94–571, Section 5, 90 Stat. 2705. The Judiciary Committee of the House of Representatives stated, on passage of the bill, that:

> The Committee believes that the Department of Labor has impeded the efforts of colleges and universities to acquire outstanding educators or faculty members who posses specialized knowledge or a unique combination of administrative and teaching skills. As a result, this legislation includes an amendment to section 212(a)(14) which requires the Secretary of Labor to

determine that ''equally qualified'' American workers are available in order to deny a labor certification for members of the teaching profession * * *.
(H. Rep. No. 1553, 945h Cong., 2d Sess. 11 (Sept 15, 1976))

Prevailing wage determinations for college and university teachers are necessarily based solely on the wages paid by colleges and universities, since such teachers are employed only by institutions of higher education. Research positions are closely related to teaching (faculty) positions and often involve teaching duties, albeit not in a classroom setting. As stated in a letter dated July 25, 1995, which the Department received from the Association of American Universities (AAU):

Teaching is a primary mission of universities and occurs in all university settings. Teaching and research are inextricably intermingled in universities with research extending into undergraduate education, and teaching extending into postdoctoral education. Academic research scientists are expected to operate as teachers as well as researchers. University teaching includes a wide range of activities beyond the traditional classroom lecture, such as seminars, advising and other forms of mentoring. Some of the most effective teaching about research is carried out by doing research, and university research personnel often operate as student and teacher at the same time in the same setting: a postdoctoral fellow is instructed by the faculty researchers with whom he or she is working at the same time he or she serves as a teacher for graduate and undergraduate students working in the same lab.

2. Impact of Hathaway and Reinstatement of Previous Practice

The proposed rule would merely reinstate the practice that existed before the decision in *Hathaway* of basing prevailing wage determinations for researchers employed by colleges and universities solely on the basis of the wages paid by such institutions. *Hathaway* has had the greatest impact on colleges and universities wishing to file H–1B LCA's or permanent labor certification applications on behalf of researchers. Prior to *Hathaway*, SESA's in conducting prevailing wage surveys for researchers employed by colleges and universities consistently limited prevailing wage surveys to colleges and universities. ETA is not aware of any other situation in which a similar practice was consistently followed in determining prevailing wages for an occupation found in a variety of industries.

The application of the policy resulting from the *Hathaway* decision to the determination of prevailing wages for researchers has resulted in markedly higher prevailing wage determinations than those made previously. It has been alleged, for example, that prevailing wage determinations post-*Hathaway* have been 34 to 93 percent in excess of the actual wages paid to certain positions. Additionally, Representative Lamar Smith stated in a letter to the Secretary of Labor that:

Major research universities would clearly suffer if required to pay industry-scale wages to researchers. They pay research associates about $25,000 a year, as opposed to salaries of approximately $65,000 in industry. Since the amount universities pay under federal research grants is strictly limited by the federal government, they would be effectively barred from using immigrants in these positions. Even in instances where the schools found it feasible to pay the higher salaries out of their own funds, this would create discord with American employees and divert badly needed resources. The end result could be dramatically impeded scientific and technological progress in the United States.

Colleges and universities have also maintained that it would be untenable for them to pay international staff more than their counterparts who are United States citizens and lawful permanent residents, and they would be forced to either increase the wages of similarly employed U.S. citizens or stop hiring international faculty and researchers on H–1B visas.

3. Nonproprietary Nature of Academic Research

It has also been advanced that a significant reason for basing prevailing wage determinations for researchers employed by colleges and universities solely on the wages paid by such institutions relates to the nonproprietary nature of the research performed in an academic setting as opposed to that performed in a private, for-profit setting. The research product delivered by researchers in private, for-profit organizations is proprietary in nature and can be appropriated by the employing institution for commercial purposes. As pointed out by the AAU in its July 25, 1995, letter:

Academic research scientists are expected to disseminate the results of their research promptly and widely through publication in peer-reviewed scientific journals; indeed, in the highly competitive marketplace of fundamental research, professional recognition is accorded to the first to publish a new discovery.

Industrial scientists are expected to apply the results of their research to product development *within their company* (emphasis in original); often, meeting this objective in a competitive marketplace will require the industrial scientist to withhold publishing research results of proprietary information either indefinitely or at least until that information has been incorporated into the company's development process.

This difference in application of the results of research is so fundamental that it constitutes one of the greatest barriers to cooperation between academic and industrial research programs. Most universities have rules prohibiting the withholding of research results, and many companies are reluctant to permit industry-sponsored research results to be freed from proprietary restraints on dissemination * * *.

The AAU went on to summarize the difference between academic research scientists and industrial scientists, in relevant part, as follows:

Academic research scientists must be able to expand the frontiers of knowledge through an independently initiated and sustained fundamental research program and be able to translate the underlying body of knowledge, theories, principles and research procedures to succeeding generations of researchers. In contrast, industrial scientists must be able to translate basic discoveries into a program of applied research and development that has a reasonably high probability of producing marketable products and processes as end results.

The Department specifically requests comments on whether there are attributes of academic research that distinguish it from research conducted by private, for-profit employers.

4. Concern of Other Federal Agencies

As indicated above, other Federal agencies and organizations, with an interest in the research talent, knowledge, abilities and skills available to the U.S. academic community, have expressed concerns that the *Hathaway* decision could interfere with the ability of institutions of higher education to obtain the services of talented foreign scholars and researchers. These agencies which included, as stated above, the CEA, NSF, DRE, OSTP, NIH, NASA, USDA, USGS, DOE, and DOT, expressed the view that prevailing wage determinations for researchers employed by institutions of higher education should not include wage data from private sector employers.

Similarly, the Department is aware that Congress is examining legislative options to address the concerns of the research community on this matter. These options would extend the concept discussed in this proposed rule to prevailing wage rates in other employment, such as researchers employed by (a) institutions of higher education (as proposed above), and (b) federal research agencies and their affiliated nonprofit research institutions which are engaged in basic research and which employ postdoctoral fellows and visiting scientists in a manner similar to colleges and universities. While this

proposed rule would cover the college and university researchers, at this time the Department has insufficient information on whether extending the rule change to researchers in other employment is supportable. Commenters, therefore, are invited to submit comments about such a regulatory change and the Department will consider those and any other comments in the development of the final rule.

5. Non-Pecuniary Factors

The academic community and others believe that intangible, non-pecuniary incentives to working in an academic environment should be considered in determining prevailing wages for researchers employed by institutions of higher education. Such intangible benefits, according to the CEA, ''may include autonomy in choice of research, contact with students, immersion in an educational environment, and other types of participation in a university environment.'' The Department is interested in comments that specify the nature of these intangible benefits and how they are unique to higher education.

Executive Order 12866

The Department has determined that this proposed rule is not an ''economically significant regulatory action'' within the meaning of Executive Order 12866, in that it will not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

While it is not economically significant, the Office of Management and Budget reviewed the proposed rule because of the novel legal and policy issues raised by the rulemaking.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a substantial impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed rule would create no collection of information requirements.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.203. ''Certification for Immigrant Workers.''

List of Subjects in 20 CFR Part 656

Adminstrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion models, Forest and forest products, Gaum, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Wages, Working conditions.

Proposed Rule

Accordingly, it is proposed to amend part 656 of Chapter V of title 20, Code of Federal Regulations, as follows:

PART 656—[AMENDED]

1. The Authority citation for Part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. 49 *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978.

§ 656.40 [Amended]

2. Section 656.40 is amended as follows:

a. In the introductory language in paragraph (b), the phrase ''except for researchers employed by colleges and universities'' is added immediately after the phrase ''For purposes of this section,''.

b. Paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 656.40 Determination of prevailing wage for labor certification purposes.

* * * * *

(c) For purposes of this section, ''similarly employed'' in the case of researchers employed by colleges and universities in the area of intended employment.'' If no researchers are employed by colleges and universities other than the employer applicant, researchers employed by colleges and universities outside the area of intended employment shall be considered ''similarly employed.''

* * * * *

Signed at Washington, DC, this 16th day of April 1996.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–9911 Filed 4–19–95; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, and 521

[INTL-O62–90; INTL–0032–93; INTL–52–86; INTL–52–94]

RINS 1545–AO27; 1545–AR90; 1545–AL99; 1545–AT00

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and withdrawal of notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the withholding of income tax under sections 1441 and 1442 on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the related collection, refunds, and credits of withheld tax under sections 1461 through 1463 and section 6402. Additionally, this document contains proposed regulations relating to the statutory exemption under sections 871(h) and 881(c) for portfolio interest. This document proposes to remove certain temporary employment tax regulations under the Interest and Dividend Compliance Act of 1983 and to amend existing regulations under sections 6041A and 6050N. This document also proposes changes to proposed regulations contained in project number INTL–52–86, published on February 29, 1988 (53 FR 5991) under sections 6041, 6042, 6045, and 6049. This document proposes related changes to the regulations under sections 163(f), 165(j), 3401, 3406, 6114, and 6413 and proposes further changes to the proposed regulations under section 6109 contained in project number IL–0024–94 published on June 8, 1995 (60 FR 30211). This document proposes to remove certain regulations under income tax treaties. The IRS and Treasury have reviewed current withholding and reporting procedures applicable to cross-border flows of income and have concluded that changes are necessary in view of the substantial growth in such flows over

the past 15 years. This document also removes proposed regulations published on July 12, 1976 (41 FR 28517) and September 10, 1984 (49 FR 355110), respectively.

DATES: Written comments and requests for a public hearing must be received by July 22, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R ([INTL–0032–93]), room 5228, Internal Revenue Service, POB 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:R ([INTL–0032–93]), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip Garlett, telephone (202) 622–3880 (not a toll-free number), for questions on proposed regulations under sections 1441, 1442, 1461, 1462, 1463, 3401, 6402, and 6413; Gwendolyn A. Stanley, telephone (202) 622–3860 (not a toll-free number) for questions on payments to partnerships; Carl Cooper, telephone (202) 622–3840 (not a toll-free number) for questions on proposed regulations under sections 163(f), 165(j), 871(h) and 881(c) and on withholding agreements; Teresa Burridge Hughes, telephone (202) 622–3880 (not a toll-free number), for questions on proposed regulations under sections 6041 through 6049, 6050N; Teresa Burridge Hughes, telephone (202) 622–3880 and Renay France, telephone (202) 622–4910, for questions on proposed regulations under section 3406; Elissa Shendalman (202) 622–3870 on proposed regulations under section 6045 and 6049 relating to the reporting of payments made in a currency other than the U.S. dollar or transactions subject to section 988; Lilo Hester, telephone (202) 874–1490 (not a toll-free number), for questions on proposed regulations under section 6109; David F. Bergkuist, telephone (202) 622–3860 (not a toll-free number), for questions on proposed regulations under section 6114.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by June 21, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information relating to foreign persons that receive payments subject to withholding under sections 1441 or 1442 of the Internal Revenue Code are in §§ 1.1441–1(e), 1.1441–4(a)(2), 1.1441–4(b) (1) and (2), 1.1441–4(c), (d) and (e), 1.1441–5(a)(2)(ii), 1.1441–5(b), 1.1441–6(b) and (c), 1.1441–8(b), 1.1441–9(b), 1.1461–1(b) and (c), 301.6114–1, and 301.6402–3(e), 31.3401(a)(6)–1(e). This information is required by the IRS to identify and verify the status of persons to whom payments of U.S. source income is made. This information will be used to claim foreign person status and, in appropriate cases, to claim residence in a country with which the United States has an income tax treaty in effect, so that withholding at a reduced rate of tax may be obtained at source. The likely respondents and recordkeepers are individuals, state or local governments, farms, business or other for-profit institutions, federal agencies, nonprofit institutions, and small business or organizations. Responses to this collection of information are mandatory.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

The burden for the reporting requirement contained in §§ 1.1441–1(e)(2), 1.1441–4(a)(2), 1.1441–4(b)(2), 1.1441–4(c)(2), 1.1441–4(d), 1.1441–4(e)(1), (2) and (3), 1.1441–6(b), 1.1441–8(b), 1.1441–9(a)(2), 301.6114–1(b)(4), and 301.6402–3(e) will be reflected in the burden of Form W–8, Form 8833, Form 8233, and the income tax return of a foreign person filed for purposes of claiming a refund of tax.

The collection of information requirement for corporations contained in § 1.6049–4(c) will be reflected in the burden of Form W–8.

The requirement for the recordkeeping requirement in § 1.6049–5(c)(1) (ii) and (iii) is in an existing regulation, appearing in TD 7966 that was approved under OMB number 1545–0112.

Background

This document contains proposed amendments to the Income Tax Regulations (CFR parts 1, 31, 35a and 301) under sections 163(f), 165(j), 871, 881, 1441, 1442, 1461, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050N, 6109, 6114, 6402, and 6413 of the Internal Revenue Code (Code). This document also proposes to remove certain regulations under income tax treaties.

Explanation of Provisions

A. Current Rules

These proposed regulations deal with the withholding of tax under section 1441, 1442, or 1443 on amounts paid to foreign persons, procedures for claiming foreign status to avoid backup withholding under section 3406 on certain payments, and the reporting to the IRS of payments to foreign persons. Reporting to the IRS may be required under sections 6011 and 1461 or under the reporting provisions of chapter 61 of the Code, such as sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050H, and 6050N, (the 1099 reporting provisions).

1. U.S. Income Tax on U.S. Source Income of Foreign Persons

Under sections 871(a) and 881(a) of the Code, non-resident alien individuals and foreign corporations are subject to a 30 percent tax on most items of income they receive from sources within the United States that are not effectively connected with the conduct of a trade or business in the United States. Income taxable under these provisions includes interest, dividends, royalties, compensation, and other fixed or determinable annual or periodical income. The tax liability imposed under section 871(a) and 881(a) is generally collected by way of withholding at source under section 1441(a) (for payments to non-resident alien individuals and foreign partnerships) or under section 1442(a) (for payments to foreign corporations). Special withholding provisions apply under section 1443 to payments of certain income to foreign tax-exempt entities.

The 30 percent rate is often reduced under the Code or an income tax treaty. Under current regulations, a withholding agent may generally rely on a statement furnished by, or on behalf of, the beneficial owner certifying entitlement to a reduced rate. For example, the portfolio interest exception under section 871(h) and 881(c) is conditioned upon the beneficial owner

of the interest providing a statement of foreign status to the U.S. withholding agent, which can be provided on a Form W–8. See § 35a.9999–5(b), A–9. If a reduction is claimed under an income tax treaty, the withholding agent may generally rely on a Form 1001 provided by, or on behalf of, the beneficial owner claiming residence in a treaty country. For dividends, however, no certification is required and the withholding agent may generally rely on the address of the payee in the treaty country. The procedural requirements for claiming a reduced rate of withholding may vary depending upon the type of income, the taxpayer, or whether a treaty is involved.

A withholding agent is generally required to file an annual income tax return on Form 1042 to report amounts upon which a tax was actually withheld under chapter 3 of the Code or would have been required to be withheld but for an exemption under the Code, the regulations, or an income tax treaty. An information return on a Form 1042–S must be attached to the Form 1042 and report each recipient's name and address, amounts paid, and taxes withheld, if any. Section 1.1461–2(b) and (c).

2. Backup Withholding

Under chapter 61 of the Code and section 3406, a reportable payment, as defined in section 3406(b), is subject to backup withholding at the rate of 31 percent unless the payor receives a taxpayer identifying number (TIN), generally on a Form W–9, and, for reportable interest and dividends, a certification that the payee is not subject to notified payee underreporting. The payor of a reportable payment is also generally required to file Form 1099 with the IRS showing the name, address, and TIN of the payee; the amount of the payment; and the amount that was withheld, if any. The payor must also provide a copy of Form 1099 to the payee, who must report the payment on an income tax return to the extent the payment constitutes gross income. A payor that fails to obtain a TIN or other required information or to backup withhold when required under section 3406 may also be liable under section 3403 for the amount that should have been withheld. Information reporting by payors is critical to a matching system that allows the IRS to match information provided by payors with income reported on a payee's return.

The information reporting provisions of chapter 61 provide guidance to help payors determine when payments are made to a foreign person and, therefore, exempt from 1099 reporting and backup withholding. Generally, depending upon the type of payment involved, a payor may rely on a certification of foreign status made on Form W–8, Form 1001, Form 4224, or on documentary evidence. Therefore, even though an amount is exempt from withholding under chapter 3 of the Code if earned by a foreign person (e.g., gain from the sale of securities), a payor must nevertheless comply with specified certification procedures in order to avoid being subject to backup withholding. Only amounts subject to reporting under the 1099 reporting provisions can be subject to backup withholding under section 3406. Therefore, payments to foreign persons that are exempt from reporting are also exempt from backup withholding.

B. Need for Reform

The IRS and Treasury have reviewed the current withholding and reporting procedures applicable to cross-border flows of income and have concluded that changes are necessary in view of the substantial growth in such flows over the past 15 years. The IRS and Treasury have concluded that allowing the benefit of the reduced rate at source continues to be desirable. A system that reduces withholding at source permits an investor to receive its full income without the administrative costs and delays that can occur when applying for a refund of withheld taxes. This advantage, however, is necessarily accompanied by the need to rely, in part, on withholding agents. Withholding agents perform an important compliance function as recipients of the necessary documentation substantiating claims of foreign status and of reduced rates of withholding and as providers of information to the IRS.

One of the important objectives of the proposed revisions is to eliminate unnecessary burdens that the lack of standardization and coordination of current procedures imposes on withholding agents. For example, under current rules, different forms must be used for different purposes; different standards of proof apply for establishing foreign status for purposes of the 1099 reporting provisions (and the related backup withholding provisions) and of the Chapter 3 withholding provisions. Also, the revisions seek to facilitate compliance by clarifying many of the uncertainties under current procedures (e.g., the scope of due diligence standards imposed on withholding agents). This proposal also addresses the important issue of payments to intermediaries (nominees, agents, etc.) and whether, in the case of interest, dividends, and gross proceeds from publicly traded or widely held obligations or stocks, intermediaries should certify status on behalf of beneficial owners and, if so, how.

Under current rules, nominee procedures work differently for different types of income. For example, a U.S. broker redeeming a short-term obligation held by a foreign financial institution as an agent may exempt the payment from 1099 reporting and backup withholding and grant the exemption from the 30 percent tax under section 871(a) without having to obtain certificates or documentation. If the foreign financial institution makes a payment to another person offshore then no certification or documentation is required. On the other hand if, for example, the foreign financial institution, remitted the amount to a person in the United States through a U.S. office, it might have to obtain a Form W–8 or a Form W–9. In contrast, interest on registered obligations may not qualify as portfolio interest under sections 871(h) and 881(c) unless the U.S. withholding agent receives a statement that the beneficial owner of the obligation is not a U.S. person (see section 871(h)(2)(B)(ii)). Current regulations implement this condition by requiring that a beneficial owner certification be passed up through a chain of intermediaries to the U.S. withholding agent. These procedures have proved difficult to implement in a number of cases and these proposed regulations offer alternative procedures. The proposed revisions, therefore, respond to the concerns expressed by various representatives of the financial community regarding the cost of complying with current procedures and potential harm to the competitiveness of U.S. financial institutions in handling investment transactions in the United States and abroad.

These proposed regulations are also responsive to the Congressional mandate in section 342 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) that Treasury consider a range of options for replacing the address/self-certification method of administering income tax treaty benefits. Since 1982, the IRS and Treasury have studied several options for improving the withholding tax procedures, including a system of certification of residence in a treaty country and refund systems. At hearings held in February of 1985 on proposed regulations issued in 1984 under section 1441, comments from the public and several U.S. treaty partners made it apparent that certification requirements,

as proposed, would create too many administrative problems for payments made through nominees. The proposed revisions take these comments into account and propose to rely on procedures essentially identical to the procedures proposed for portfolio interest on registered obligations.

The streamlining of current procedures and the implementation of workable nominee certification procedures represent a substantial simplification and reduction of burden. The IRS and Treasury expect that this, in turn, should result in greater compliance and improve the ability by withholding agents and the IRS to detect abusive claims under U.S. income tax treaties or under the Code.

C. Summary of Proposal

1. Changes Affecting Portfolio-Type Investments

The proposed regulations under section 1441 and related Code provisions would substantially revise some aspects of the current system for withholding on, and reporting of, amounts paid to foreign persons. Current certification procedures (i.e., Forms W–8, 1001, 4224, etc.,) would be unified and reliance standards would be clarified in an effort to streamline the processing of cross-border payments, particularly by banks and other financial institutions. Most forms (W–8, 1001, 4224, 8709) are proposed to be combined into a single form (Form W–8). In addition, taxpayer identifying numbers are not required to be stated on withholding certificates, with certain limited exceptions that do not affect market-based transactions. These changes are important steps toward reducing the burden on withholding agents and assisting taxpayer compliance.

The address rule for claiming tax treaty benefits for dividends is proposed to be eliminated. Instead, dividends would be made subject to the same beneficial owner and intermediary certification procedures as are proposed for portfolio interest on registered obligations. It is also proposed to apply the same procedures to bank deposit interest (as described in section 871(i)(2)(A)). On the other hand, the documentary evidence procedures currently in effect for bank deposit interest on accounts held with foreign branches would be continued and would be applied as well to offshore payments of dividends on publicly traded stocks and portfolio interest on registered obligations. Therefore, documentary evidence would become the general rule for dividends and interest earned on accounts held with foreign branches. These proposed changes illustrate the effort by the IRS and Treasury to eliminate unnecessary procedural differences in order to reduce the burden on withholding agents.

The proposal does not generally affect other important classes of investment transactions. Thus, current portfolio interest rules for bearer obligations (including commercial paper), convertible obligations, pass-through certificates, as well as rules for broker proceeds and short term obligations would be retained. In order to further simplify compliance, the regulations under section 165(j) (§ 1.165–12) are proposed to be revised to eliminate the requirements that, in connection with delivery of bearer obligations, holders receive statements and send confirmations. Provisions regarding foreign-targeted registered obligations are to be retained. However, because these special procedures have been rarely used, comments are solicited on their usefulness and whether they should be retained.

Foreign intermediary procedures as currently applicable to portfolio interest (which are proposed to become applicable to dividends and bank deposit interest as well) are substantially revised by providing several options, allowing different taxpayers to comply in different ways. These options recognize that it is appropriate to adapt withholding requirements to accommodate different types of transactions and should provide substantial relief from current requirements.

In order to allow sufficient time for transition, the regulations are proposed to be generally effective for payments made after 1997. In addition, withholding agents would be allowed to continue to rely on existing certificates after that date until their validity expires as determined under current rules. Comments are solicited on whether these proposed effective dates leave adequate time to implement necessary system changes.

The regulations proposed in 1988 regarding the reporting by U.S. banks of bank deposit interest paid to Canadian residents are finalized, effective for payments made on or after January 1, 1997 with respect to Forms W–8 furnished on or after that date. See the Rules and Regulations section of this issue of the Federal Register.

2. Intermediary Procedures Options for Portfolio Interest, Dividends on Publicly Traded Stock, and Bank Deposit Interest

The proposed regulations offer intermediary certification options designed to simplify compliance by withholding agents. These procedures would be mostly relevant to portfolio interest on registered obligations, dividends on publicly traded stocks (eliminating the address rule), and interest paid on bank deposits (as described in section 871(i)(2)(A)). First, for portfolio interest on registered obligations, the current certification procedures would be retained, as an option and are not reproposed. See § 35a.9999–5(b), A–9. These rules will be included in final regulations in proposed § 1.871–14(c)(2)(iii) and, accordingly, that section of the proposed regulations is reserved. Preserving the existing regulations is designed to accommodate those taxpayers and withholding agents for whom the current rules work appropriately.

The regulations propose to add two new procedures. First, a withholding agent would be allowed to rely on an intermediary Form W–8 furnished on behalf of one or more beneficial owners (or other intermediaries) without having to obtain beneficial owner documentation if the intermediary has entered into a withholding agreement with the IRS and, thus, is a ''qualified intermediary.'' In a chain of intermediaries, an intermediary would be allowed to rely on the intermediary Form W–8 of another qualified intermediary. If the other intermediary is not qualified, the qualified intermediary would generally be required to obtain beneficial owner documentation from the other non-qualified intermediary. The qualified intermediary would then pass such documentation up the chain or rely on such documentation when issuing its intermediary Form W–8.

Under the withholding agreement procedure, a qualified intermediary would agree with the IRS to obtain such documentation or certifications as the agreement would specify. It is contemplated that institutions that are subject to bona fide ''know-your-customer'' procedures under their domestic laws will generally be permitted to rely on such procedures. The withholding agreement will generally include provisions for beneficial owner information to be reported or made available to the IRS and for the IRS to audit such information. In appropriate cases, the reporting and audit may be limited to

the beneficial ownership information pertaining to U.S. source income (other than gross proceeds) of U.S. customers or to an audit of the reports prepared by, and the methodology employed by, the approved external auditors of the qualified intermediary.

The regulations propose a second intermediary procedure permitting a foreign agent of a U.S. withholding agent to act on behalf of the withholding agent. While the U.S. withholding agent would remain liable for the acts (or failures to act) of its agent, the proposed procedure streamlines the withholding process as the foreign agent would collect the appropriate documentation on behalf of the U.S. withholding agent and report beneficial owner information to the IRS without having to furnish the documentation to the U.S. withholding agent. The documentation requirements under this procedure would be the same as those normally applicable to withholding agents.

Lastly, the proposed regulations provide that the U.S. competent authority may agree to special withholding procedures with a foreign competent authority under an income tax treaty. The United States intends to consult with its tax treaty partners before implementing changes that would affect its relationship with its treaty partners.

3. Use of Taxpayer Identifying Number

A taxpayer identifying number (TIN) is not required to be shown on withholding documents provided for income on portfolio-type investments.

A TIN continues to be required for claims of effectively connected income. A TIN would also be required to support claims of benefits under an income tax treaty (other than dividends on publicly traded stocks). Therefore, for example, payments of dividends on non-publicly traded stocks, royalties, or related party interest would require a TIN to be shown on the withholding certificate in order for a withholding agent to rely on a claim of a reduced rate under a tax treaty.

In the case of an individual, a TIN would generally be an IRS individual taxpayer identifying number (ITIN) issued by the IRS to a nonresident alien individual who is not otherwise eligible for a Social Security Number. In the case of a non-individual, a TIN would be an Employer Identification Number (EIN). Over time, the IRS will issue EIN's to foreign persons that begin with the two digits ''98'' to permit instant recognition of foreign status. See regulations proposed under section 6109 contained in project number INTL–0024–94, published on June 8, 1995 (60 FR 302111), describing the types of taxpayer identifying numbers issued to nonresident alien individuals and the manner in which a number can be obtained. Further revisions to the regulations under section 6109 are proposed in order to require the statement of a TIN in appropriate cases.

4. Other Proposed Changes

The regulations propose to clarify the extent of due diligence expected from certain withholding agents, such as banks and other financial institutions. Thus, for payments of portfolio-type income, the withholding agent's due diligence would be limited to an examination of the address stated on the withholding certificate. If the address on the certificate were a U.S. address or did not match the address information in its records, the withholding agent would have to seek further proof of a claim of foreign status. This change would not affect the current requirement that a withholding agent cannot ignore what it actually knows when determining the extent to which it may rely on a withholding certificate. However, in the case of financial institutions, knowledge would be limited to information that can be associated with the account under the same procedures as apply for purposes of the backup withholding provisions.

As a further burden reduction, the regulations propose to eliminate the requirement to attach withholding certificates to Forms 1042 and 1042–S. The current reporting requirements are otherwise unchanged except for clarification of how these requirements apply in the case of payments to intermediaries. Therefore, even though certification procedures are proposed to be modified for bank deposit interest, such interest continues to be exempt from reporting (except for certain interest on bank deposits paid to Canadian residents).

The period of validity of a certificate of foreign status (Form W–8) is limited to three years as under current law. However, a Form W–8 stating a beneficial owner's TIN is proposed to be valid indefinitely if it relates to income required to be reported to the IRS (or if the TIN is actually reported even though not otherwise required). The validity period for certificates used to claim a reduced rate for effectively connected income is proposed to be extended from one year to three years.

The regulations propose new procedures dealing with payments to foreign partnerships. These procedures generally would allow looking through to the partners and reliance on a certification provided for each partner. Alternatively, in order to facilitate certification for partnerships with many partners or for tiered partnerships, the regulations would also allow a foreign partnership to be a qualified intermediary under an agreement with the IRS. In that case, the partnership would be allowed to furnish an intermediary certificate for the partnership. The partnership would be required to withhold under section 1441 in the same manner as a domestic partnership. In addition, the regulations would clarify the manner in which a foreign entity and its interest holders can determine entitlement to benefits under an income tax treaty with a particular country based upon the principles in effect under the laws of that country.

The proposed regulations also address the practical difficulties that exist under current rules due to the lack of clear guidelines on determining the status of a payee as a U.S. or a foreign person in the absence of documentation. While some guidelines exist in limited cases (e.g., § 35a.9999–5(b) A–10), guidance is incomplete. The proposed regulations offer a comprehensive and uniform set of presumptions to assist withholding agents with these determinations.

5. Changes to Reporting Rules Under Chapter 61 of the Internal Revenue Code

On February 29, 1988, the IRS and Treasury published in project number INTL–52–86 (53 FR 5991) proposed amendments to the 1099 information reporting regulations (the 1988 proposed regulations) modifying the reporting requirements and the procedures for presenting a claim of foreign status. The provisions in the 1988 proposed regulations concerning information reporting of bank deposit interest paid to persons resident in Canada are finalized. See § 1.6049–5(e)(2) of the 1988 proposed regulations and the Rules and Regulations section of this issue of the Federal Register. The 1988 proposed regulations are not otherwise amended. In order to standardize procedures, changes are proposed to the procedures for certifying foreign status that were proposed in 1988 so as to conform them to those proposed under section 1441. The IRS and Treasury are considering finalizing the 1988 proposed regulations at the same time that the proposed regulations under section 1441 are finalized.

Proposed Effective Dates

Unless otherwise provided in the regulations, the regulations are proposed to be effective for payments made after December 31, 1997. The

regulations contain a number of transition rules designed to phase out currently outstanding withholding certificates (e.g., Forms W–8 and 1001)

Section-by-Section Analysis

Section 1.163–5 Denial of Interest Deduction on Certain Obligations Issued After December 31, 1982, Unless Issued in Registered Form

Section 1.163–5(c) contains foreign targeting procedures applicable to certain obligations issued in bearer form. Section 1.163–5(c)(2)(i)(B)(*5*) would be revised to modify the cross-reference to the documentary evidence rules since the Q&A regulations under part 35a are proposed to be eliminated

Section 1.165–12 Denial of Deduction for Losses on Registration-Required Obligations Not in Registered Form

Section 165(j)(1) and 1.165–12(a) deny a loss deduction to a holder of a registration-required obligation that is not in registered form unless the holder meets certain exceptions. Under § 1.165–12(c)(1) (iii) and (iv), the loss disallowance rule does not apply to a holder that delivers a registration-required obligation that is in bearer form and that is offered or sold in the United States if the holder delivers the obligation to a financial institution, and the financial institution provides a statement that it is a financial institution within the meaning of § 1.165–12(c)(1)(v), it is purchasing the obligation for its own account, the account of another financial institution, or an exempt organization, that will comply with section 165(j)(3) (A), (B), or (C). The loss disallowance rule also does not apply if a holder delivers a registration-required obligation in bearer form that is offered or sold outside the United States if it is delivered to a financial institution and the holder gives the financial institution a confirmation stating that any U.S. taxpayer that holds the obligation in bearer form and that is not exempt under section 165(j)(3) (A), (B), or (C) will be denied a deduction for any loss or capital gain treatment with respect to the obligation. A holder may deliver a registration-required obligation in bearer form that is offered and sold outside the United States to a person other than a financial institution only if the holder has documentary evidence, as described in

Section 35a.9999–4T, A–5 That the Person Is Not a U.S. Person

These proposed regulations would revise § 1.165–12(c)(1)(iv) to eliminate the requirement that the holder receive a statement from a financial institution for bearer obligations offered or sold in the United States. The proposed regulations would also eliminate the requirement that the holder deliver a confirmation to a financial institution for obligations offered or sold outside the United States. These changes are proposed to reduce the documentation burden associated with secondary market transactions. The documentary evidence requirement for delivery outside the United States to a foreign person other than a financial institution is retained. The proposed regulations would clarify that the holder may receive such evidence electronically

Section 1.871–14 Rules for Portfolio Interest

Under sections 871(h) and 881(c), interest that qualifies as portfolio interest is generally exempt from tax and is exempt from withholding at source under section 1441(b)(9). Section 1.871–14 proposes procedures governing whether interest (including original issue discount) qualifies as portfolio interest described in section 871(h)(2). Section 1.1441–2(d) provides the exemption from withholding.

For interest on bearer obligations, the existing provisions in § 35a.9999–5(a), A–1 (dealing with portfolio interest on bearer obligations) and in § 35a.9999–5(c) (dealing with convertible obligations) will be incorporated in § 1.871–14(b) without substantive changes and are not reproposed. These rules will be restated in proposed § 1.871–14 (b)(1) and (b)(2) that are currently shown as reserved

For interest on registered obligations, section 871(h)(2)(B)(ii) provides that such interest qualifies as portfolio interest only if the U.S. withholding agent receives a statement that the beneficial owner is not a United States person. Paragraph (c)(2)(i) provides that the statement requirement would be satisfied if the beneficial owner furnishes the type of documents described in proposed § 1.1441–1(e)(1)(i) for a withholding agent to rely on a claim of foreign status. Thus, in the case of a payment to a beneficial owner, the beneficial owner must provide a beneficial owner withholding certificate described in proposed § 1.1441–1(e)(2) or, if the payment is made on an account held at a foreign branch, documentary evidence may be substituted (see paragraph (c)(2)(ii)). The ability to use documentary evidence on foreign branch accounts is a significant change from current law and one that intends to reduce the burden on transactions outside the United States. Further, as under current regulations, the withholding certificate would not have to state a taxpayer identifying number (although one may be provided, if desired). See § 35a.9999–5(b), A–9.

In the case of a payment to a foreign person that acts as an intermediary (e.g., an agent, representative, nominee, etc.), the proposed procedures under section 1441 would require either that the intermediary furnish an intermediary withholding certificate or, if the intermediary acts as the agent of the withholding agent, that the intermediary be an authorized foreign agent. Under proposed § 1.1441–1(e)(3)(iv) or proposed § 1.871–14(c)(2)(iii), the certificate could be, as under current rules, a certificate to which the beneficial owner documentation is attached (see § 35a.9999–5(b), A–9). Alternatively, under proposed § 1.1441–1(e)(3)(ii), it could be a certificate by which the intermediary certifies for the beneficial owner (or other intermediaries) without being required to attach beneficial owner documentation. The latter certificate could be issued only by a qualified intermediary, i.e., a person that has an agreement with the IRS. The qualified intermediary certificate would be issued based upon certifications or documentation obtained by the qualified intermediary. The same standards would apply to these documents as are proposed to be applied to documents that a U.S. withholding agent is required to obtain when paying directly to a beneficial owner. Therefore, a taxpayer identifying number is not required to be shown on a beneficial owner withholding certificate provided to the qualified intermediary. Alternatively, the qualified intermediary could rely on documentary evidence for accounts held at foreign branches. In addition, different procedures may apply under the terms of a qualified intermediary's agreement with the IRS.

Where a withholding agent acts through an authorized foreign agent, certificates received by the agent would be deemed to be received by the withholding agent. In that case, no certificate would be required from the authorized agent. See proposed § 1.1441–7(c)(2) for the description of an authorized foreign agent and proposed § 1.1461–1 (b)(2)(iii) and (c)(4)(iii) for the filing of returns by the withholding agent and its authorized foreign agent. Paragraph (c)(2)(iv) specifies that other procedures may apply under a competent authority agreement with a country with which the United States has an income tax treaty.

The regulations clarify the consequences of a late-received Form W–8 or other documentation. Paragraph (c)(3) provides that the withholding certificate may be received by the withholding agent at any time before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect to the interest. The applicable period is described in section 6511(a). Under this rule, a foreign person would be allowed, for example, to provide the required certificate to a U.S. withholding agent (or its authorized foreign agent) at any time prior to filing an income tax return and still be able to qualify the interest as portfolio interest. However, a withholding agent that does not hold a valid certificate (or other valid documentation) when paying the interest would be required to withhold. Failure to do so would make the withholding agent liable for the tax if the required certification or documentation procedures are not complied with prior to the expiration of the beneficial owner's period of limitation. If a withholding agent fails to withhold although it does not hold a valid certificate, but the documentation procedures are ultimately complied with, a withholding agent would be liable for interest pursuant to section 1463 even though there is no underlying tax liability.

In addition, the withholding agent may be subject to penalties for failure to withhold tax. See proposed § 1.1441–1(f)(5).

Paragraphs (d) and (e) are reserved. Paragraph (d) will reflect the rules in § 35a.9999–5(e), regarding pass-through certificates. Paragraph (e) will reflect the rules in 35a.9999–5(b) A–12 through A–15 regarding foreign-targeted registered obligations. These rules are not reproposed. Under § 1.871–14(g), the rules contained in proposed regulation § 1.871–14 are proposed to be effective for payments of interest after December 31, 1997. However, withholding agents may continue to rely on valid Forms W–8 that they hold on the date that is 60 days after the regulations become final until the forms expire under the rules as in effect on April 22, 1996.

Section 1.1441–1 Requirement for the Withholding of Tax on Payments to Foreign Persons

This section states the general rules concerning withholding on payments to foreign persons. Paragraph (a) provides the general purpose and scope of the section. Paragraph (b) states the general rule that a withholding agent must withhold 30 percent of the gross amount of income subject to withholding if paid to a foreign person unless the beneficial owner of the income is a U.S. person or is a foreign person entitled to a reduced rate of tax. A withholding agent may grant a reduced rate at source in the case of a payment to a foreign person only if, before payment, it can associate the appropriate documentation with the payment. Therefore, actual knowledge that the beneficial owner is a foreign person would not excuse the obligation to obtain appropriate documentation. A withholding agent failing to act in accordance with these rules may ultimately be relieved from the liability for the tax under section 1461, but would, in any event, be liable for interest, and possibly, penalties. See paragraph (f)(5). For this purpose, payment to a foreign person includes a payment to a U.S. person if the withholding agent has actual knowledge or reason to know that the U.S. person is acting as the agent of a foreign person. These rules restate current law. See §§ 1.1441–1 and 1.1441–7(a)(1) of the existing regulations.

Paragraph (c) defines terms, including payee and beneficial owner. Paragraph (c)(3) defines a payee as the person to whom the payment is made. This definition has significance for purposes of coordinating the section 1441 withholding provisions with the 1099 reporting and backup withholding rules under chapter 61 of the Code and section 3406, respectively (the 1099 reporting and backup withholding provisions determine consequences of payments based on payees; in contrast, the section 1441 withholding provisions determine consequences of payments based on beneficial owner). In the case of a payment to a foreign partnership, paragraph (c)(3)(ii) provides that the partners, and not the partnership, are considered to be the payees. However, a foreign partnership could be considered a payee if it certified to the withholding agent that it is a qualified intermediary (see paragraph (e)(5) regarding qualified intermediaries) or if it certified that the income is effectively connected with a U.S. trade or business (in which case, the partnership must itself withhold the tax required under section 1446). The provisions specify how these rules would apply on a look-through basis to tiered partnership structures.

Under paragraph (c)(6), a beneficial owner is defined as the person who, under U.S. tax principles, would be required to include the amount paid in gross income. Therefore, under these principles, partners, and not partnerships, are the beneficial owners (unless the partner is itself a partnership, in which case, one looks through to the partners of the highest tier foreign partnership). Therefore, the identification of a beneficial owner is influenced by the classification of the entity to which the payment is made. This proposed rule revises § 1.1441–3(f) of the existing regulations that, in effect, treats a partnership as a beneficial owner for purposes of the withholding provisions. This provision has created difficulties for partners of a foreign partnership who wish to claim the benefit of a reduced rate at source based on their status, but may not do so because the entity does not qualify for the reduced rate. The proposed regulations would alleviate these difficulties by permitting beneficial owner information to be passed to the withholding agent or by permitting the partnership to be a qualified intermediary.

The IRS and Treasury are aware that some large investment partnerships hold significant amounts of U.S. portfolio type investments. The IRS and Treasury understand that generally these entities are treated as corporations under the provisions of section 7704(c)(3) and the regulations under that section. Therefore, the proposed revisions requiring beneficial owner documentation for partners would not adversely affect these entities. The IRS and Treasury solicit comments on this point.

Generally, the determination of the classification of an entity, including an entity organized in a foreign country, is made under U.S. tax rules. Because U.S. and foreign laws may differ on classification principles, the U.S. tax classification of an entity as a partnership or a corporation may differ from the tax treatment of that entity under the laws of a foreign country. Therefore, in the case of income paid to a foreign entity, the entity might be considered the beneficial owner under U.S. tax principles (because it is classified as an association taxable as a corporation under U.S. tax principles), but, if foreign tax principles are applied, its interest holders, rather than the entity, might be considered the beneficial owners. This dual characterization may give rise to difficulties in the application of income tax treaties. In order to alleviate these difficulties, paragraph (c)(6)(ii)(B) proposes that foreign tax principles, rather than U.S. tax principles, apply to identify the beneficial owner of income for which a claim of a reduced rate of withholding is made based upon a tax treaty. Under this proposed rule, when a benefit is claimed under a tax treaty with a particular country, the tax principles that govern the determination

of who the beneficial owner is for purposes of obtaining benefits under that treaty would be the principles in effect under the laws of that country. This clarification is intended to address the significant uncertainties resulting from the current lack of guidance on these issues. The IRS and Treasury intend to consult with treaty partners in order to promote uniformity in this area. Paragraph (c)(6)(iii) provides that the beneficial owner rules in the proposed regulations would not apply to trusts. Until further guidance is provided, the rules in the current regulations would continue to apply trusts. See § 1.1441–3 (f) and (g) of the existing regulations.

While different procedures would apply depending upon whether a payment is made to a corporation or a partnership, a withholding agent would not be required to determine the classification of an entity when making a payment to a foreign person. Rather, a withholding agent would be allowed to rely on the classification claimed by the entity, unless it had actual knowledge or reason to know otherwise.

Paragraph (d) deals with procedures that would enable a withholding agent to determine the circumstances in which it could consider that the payment is made to a U.S. person and is, therefore, exempt from section 1441 withholding. This paragraph replaces § 1.1441–5 of the existing regulations and proposes to replace Form 1078 with Form W–9, consistent with the manner in which a U.S. payee must generally provide a taxpayer identifying number under section 3406. In the case of a payment to an exempt recipient or a payment of scholarship, grant, pension, or annuities, for which no Form W–9 is required under section 3406, a person also would be permitted to use a Form W–9 to establish its U.S. status. The regulations specify the information that must be stated on such a certificate, which parallels that required under § 31.3406(h)–3(e)(2) in order for a payor to reasonably rely on a Form W–9. If no, or insufficient, documentation is provided, the presumptions in § 1.1441–1(f) would apply to determine whether the beneficial owner should be treated as a foreign or U.S. person.

In the case of a payment to a foreign person acting as an intermediary (e.g., agent, representative, or nominee) for a U.S. person, paragraph (d)(3) provides that the intermediary may transmit a Form W–9 for the U.S. person to claim U.S. status and avoid section 1441 withholding. If the U.S. person is not an exempt recipient, the withholding agent would then have to comply with the 1099 reporting requirements under chapter 61 of the Code, because, under these rules, the U.S. person would be treated as a payee. Similarly, as a result of the payee rules set forth in paragraph (c)(3)(ii) dealing with payments to foreign partnerships, a withholding agent may treat a payment to a foreign partnership as a payment made to a U.S. person to the extent of the U.S. partner's distributive share of that payment. Similarly, the withholding agent would have to comply with the 1099 reporting requirements.

Paragraph (e) describes the conditions for a withholding agent to rely upon a beneficial owner's claim of foreign status. Paragraph (e)(1) provides that a withholding agent may rely upon a claim of foreign status if, prior to making the payment, the withholding agent (1) Holds a beneficial owner withholding certificate or an intermediary withholding certificate, (2) complies with on-line confirmation procedures when prescribed by the IRS, and (3) has not received a notification from the IRS that the withholding certificate is incorrect or unreliable. The withholding agent's reliance on the withholding certificate is subject to the withholding agent's actual knowledge or reason to know otherwise. See standards of knowledge in proposed § 1.1441–7(b).

Paragraph (e)(2) sets forth the requirements for a beneficial owner withholding certificate. Generally, a withholding certificate would be a Form W–8 or, in the case of certain compensation for personal services, a Form 8233 (or an acceptable substitute) that is signed under penalties of perjury by the beneficial owner and contains certain required information. The certificate serves as a representation that the beneficial owner is not a U.S. person and that the conditions for claiming a reduced rate of withholding tax are satisfied. These conditions may vary depending upon the nature of the income or the type of exemption claimed.

Required information on a beneficial owner Form W–8 would include the beneficial owner's name, permanent residence address, the type of income to be received, and the basis for any reduced rate claimed. Generally, the Form W–8 would not be required to state the beneficial owner's taxpayer identifying number (''TIN''), except in limited cases (see paragraph (e)(4)(vii), below).

Paragraph (e)(3) sets forth the requirements for an intermediary withholding certificate. Intermediary withholding certificates may be provided by one of three types of persons: (1) A qualified intermediary, (2) a foreign partnership, or (3) an agent, nominee, or other representative that is not a qualified intermediary.

Information required from a qualified intermediary on a Form W–8 would include similar information as that required for the beneficial owner Form W–8 except that the information would relate to the intermediary. In addition, the Form W–8 would have to state a TIN and certify that the issuer is a qualified intermediary and has obtained the appropriate certificates or documentation with respect to the account holders covered by the Form W–8. A foreign partnership that is not a withholding agent (because it is not a qualified intermediary or acting for the account of others) would have to provide the same information about itself, and attach the partners' withholding certificates. In addition, the partnership would be required to state an EIN on the withholding certificate. See proposed § 1.1441–5(b) for the certificates required to be attached in the case of tiered partnerships. See also, proposed § 1.1461–1(c)(4)(v) for Form 1042–S filing requirements for the withholding agent.

An agent, nominee, or representative furnishing an intermediary certificate would have to provide information about itself, state an EIN for the intermediary (or an SSN or ITIN in the case of an individual) and certify that it is not acting for its own account and is using the Form W–8 to transmit beneficial owner certification for the payment to which the Form W–8 relates. These procedures are essentially similar to those in effect for portfolio interest on registered obligations under § 1.9999–5(b), A9 and that are proposed to be retained in proposed § 1.871–14(c)(2)(iii).

Paragraph (e)(4)(i) requires that, in the case of joint owners, each owner provide a withholding certificate. This rule would parallel the requirements for backup withholding purposes. See § 31.3406(h)–2(a).

Paragraph (e)(4)(ii)(A) provides the general rule that a withholding certificate would be valid for a period of three years or until the circumstances of the beneficial owner changed, making an item of information on the certificate incorrect. However, under paragraph (e)(4)(ii)(B), a withholding certificate that includes a TIN would be valid indefinitely if the income (or, under special procedures, the TIN) with which the certificate is associated were reported to the IRS. For example, a bank may rely on a claim of foreign status by an account holder if it holds a Form W–8 for the account holder even without a TIN. In that case, the certificate would be valid for a period of three years only.

If, however, the account holder were to state a TIN on the form and the bank adopted procedures by which it reports the TIN to the IRS as provided in proposed § 1.1461–1(d), the certificate would be valid indefinitely until a change in circumstances of the account holder made the information on the form incorrect.

Second, certificates furnished to claim a reduced rate of withholding on income that is effectively connected with the conduct of a trade or business within the United States would also be limited to three years in all circumstances. This is a change from existing regulations under § 1.1441–4(a)(2) that require that a new certificate be filed each year. This change would relieve the burden associated with annual renewal of these certificates and simplify compliance by providing uniform validity period rules. The 3-year period of validity for this certificate would extend from the date it is signed to the last day of the third succeeding calendar year. This change would insure a full 3-year validity period in all cases (and up to four years where the certificate is furnished at the beginning of the calendar year).

Under paragraph (e)(4)(iii), withholding certificates must be retained for as long as they are relevant for the determination of the withholding agent's liability under proposed § 1.1461–1. This rule would replace the 4-year retention period under current law and conform the rules under section 1441 to the retention period required for Forms W–9 under section 3406. This change is necessary because the Form W–8, like Form W–9, is proposed to be made valid indefinitely in certain circumstances. Paragraph (e)(4)(iv) anticipates the possibility that, in the future, a withholding agent may rely on electronically transmitted information otherwise required to be stated on a withholding certificate.

Paragraph (e)(4)(v) provides for on-line confirmation procedures for TIN's required to be stated on withholding certificates in order to verify their correctness and the claim that it belongs to a foreign person. Such procedures are being developed by the IRS and, when the system becomes operational, the IRS may require certain categories of withholding agents handling large volumes of payments to foreign persons (such as certain teaching institutions) to perform on-line confirmation of such TIN's. These procedures would be similar to those currently in use under section 3406 in order to notify payors of an incorrect TIN.

Paragraph (e)(4)(vi) defines an acceptable substitute form. As under section 3406, these regulations would permit the use of substitute forms provided the information furnished is the same as is required under the regulations and is certified to be correct under penalties of perjury. See § 31.3406(h)–3(c)(1).

Paragraph (e)(4)(vii) provides all of the circumstances in which a taxpayer is required to furnish a TIN on a withholding certificate for purposes of the regulations under sections 1441, 1442, and 1443. Taxpayers would be required to furnish a TIN when claiming the benefit of a reduced rate under an income tax treaty (other than with respect to dividends on publicly traded stocks) or because income is effectively connected with a U.S. trade or business. In addition, intermediaries, partnerships, foreign organizations claiming to be tax-exempt under section 501(c), and private foundations would be required to furnish a TIN. A TIN would be an IRS Individual Taxpayer Identification Number (ITIN), a Social Security Number (SSN), or an Employer Identification Number (EIN). A nonresident alien individual not eligible for a social security number would be able to obtain an ITIN from the IRS. See proposed regulations under section 6109 describing procedures for obtaining an ITIN.

Paragraph (e)(5)(i) provides that a qualified intermediary may furnish a single intermediary withholding certificate to a withholding agent on behalf of beneficial owners, other intermediaries, and U.S. payees. The qualified intermediary would have to obtain certification or documentation from these persons on whose behalf the intermediary withholding certificate is provided. Generally, the certification and documentation would be the same as that which a withholding agent is required to obtain, subject to such modifications as the intermediary's agreement with the IRS would provide. It is anticipated that the terms of the agreement would be flexible enough to accommodate the individual circumstances of a particular qualified intermediary, including any locally applicable know-your-customer rules or practices. Therefore, the agreement might acknowledge certain documentary evidence procedures already in place and not require additional documentation. Paragraph (e)(5)(ii) provides that a qualified intermediary is a foreign person that is a party to a withholding agreement with the IRS and is a clearing organization as defined in § 1.163–5(c)(2)(i)(D)(*8*), a financial institution as defined in § 1.165–12(c)(1)(iv), a partnership, or any other person acceptable within the discretion of the IRS. A qualified intermediary would be able to either assume primary responsibility for withholding and reporting to the IRS (if so permitted under its agreement with the IRS) or leave that responsibility to the withholding agent. A qualified intermediary that assumes primary withholding responsibility would present an intermediary withholding certificate to the withholding agent or another qualified intermediary representing that it will withhold all appropriate amounts and comply with all applicable reporting requirements. The withholding agent or other qualified intermediary would be allowed to rely on such a certificate and not withhold. However, the withholding agent would have to file Forms 1042 and 1042–S under section 1461 to report the payment to the qualified intermediary and the qualified intermediary's EIN. See proposed § 1.1461–1(b)(2)(ii) and (c)(4)(ii).

A qualified intermediary that does not assume primary withholding responsibility would present an intermediary withholding certificate to a U.S. withholding agent or another qualified intermediary representing that beneficial owners of U.S. income payments (other than gross proceeds) are not U.S. persons and, if applicable, qualify for a reduced rate of withholding. It is anticipated that a qualified intermediary would establish separate accounts for income subject to different withholding rates. A single intermediary withholding certificate should serve as documentation for all these separate accounts. In addition, the qualified intermediary would provide a Form W–9 for each beneficial owner that is a U.S. person to whom payments of income otherwise subject to withholding are made and for whom reporting is required under chapter 61 of the Code.

A qualified intermediary would generally have to agree to be subject to the same reporting requirements as apply to withholding agents under proposed § 1.1461–1(b) and (c), to allow periodic inspection of its records, and to pay any amount of tax liability determined to be due. The IRS intends to agree to arrangements with the qualified intermediary so that, for example, inspection of records may be minimized where the IRS otherwise gets sufficient access to beneficial ownership information, through annual reporting of TIN's, review of know-your-customer rules, and selection of appropriate account information, or through an exchange of information program under a tax treaty. In appropriate cases, the IRS may rely on audits performed by an

institution's approved external auditors where, for example, under an income tax treaty or local laws, the IRS would be given access to appropriate auditor's records to verify compliance. Records may include workpapers of, reports prepared by, and methodology employed by, the approved external auditors.

A proposed revenue procedure providing guidance with respect to withholding agreements has been published as Announcement 96–23 simultaneously with the publication of this document in the Federal Register.

Paragraph (e)(5)(v) specifies that a foreign partnership that is a qualified intermediary acting for its partners is a withholding agent with respect to its partners' distributive shares of income paid to the partnership. In that case, the partnership is subject to the same withholding and reporting procedures as would apply to a domestic partnership. Thus, any arrangement whereby the partnership would seek to shift primary withholding responsibility to the withholding agent under the provisions of paragraph (e)(5)(iv)(B) would not be recognized.

Paragraph (f) contains a set of presumptions upon which a withholding agent (for purposes of section 1441) and a payor (for purposes of the 1099 reporting provisions) would rely to determine whether to treat a person as U.S. or foreign if, at the time of payment, the withholding agent or payor does not have actual knowledge of the status of the person to whom the payment is made and lacks the required documentation or knows or has reason to know that the documentation it holds is incorrect or unreliable. A presumption under this paragraph (f) could be rebutted by providing or correcting the required documentation to the withholding agent or payor. Thus, these presumptions would assist the payor in determining whether the income paid is subject to the 1099 reporting and backup withholding regime (if paid to a U.S. person that is not an exempt recipient) or to the section 1441 withholding regime (if paid to a foreign person).

Presumptions of foreign status resulting from the application of these provisions would, when applied for purposes of section 1441, only affect whether the withholding agent should withhold 30 percent from the payment on the ground that the payment may, under the provisions, be treated as made to a foreign beneficial owner. However, the presumptions could not operate to deem the payee as having established proof of foreign status for purposes of claiming a reduced rate of tax under the Code or an income tax treaty.

Paragraph (f)(2)(i) addresses reportable payments to a non-exempt recipient (a non-exempt recipient is a person for whom the payor must file a Form 1099; see proposed § 1.6049–4(c)(1)(ii) for a list of exempt recipients). Where a withholding agent lacks the required documentation, it would presume that the payee is a U.S. individual. Accordingly, the withholding agent would withhold 31 percent under section 3406. Paragraph (f)(2)(ii) incorporates the concept of the 30-day grace period under § 31.3406(d)–3(a) for a payee to furnish a Form W–9 to the payor. Because it may take longer to obtain the required documentation from a foreign person than from a U.S. person, the proposed regulations allow a withholding agent to treat a payee as a beneficial owner that is a foreign person for up to 90 days from the date the agent credits the payee's account (or until the end of the calendar year if earlier) if the withholding agent has the name and a foreign address for the account holder or a facsimile copy or an electronic transmission of the information on a withholding certificate. This special rule would defer the obligation to backup withhold under section 3406 because there are sufficient indicia of foreign status, but does not defer the obligation to withhold under section 1441, if applicable. If the required documentation were provided or corrected within the 90-day grace period, the amount withheld may be refunded to the payee under the adjustment procedures described in proposed § 1.1461–2. The 90-day grace period would be terminated if any part of the proceeds in the account that are subject to the grace period were withdrawn (other than for purposes of withholding an amount of tax). If the required documentation were not provided or corrected by the expiration of the grace period, the payee would be presumed to be a U.S. payee for purposes of section 3406 and chapter 61 of the Code from the date the account was first credited.

A special rule for joint owners or payees is provided in paragraph (f)(2)(iii) that would permit a withholding agent to presume that a payment made to joint owners or payees for whom it does not hold the required documentation is made to U.S. payees. The grace period would apply to joint payees if each payee qualified for its application. If any one of them withdrew any portion of the funds in the account, then additional withholding under paragraph (f)(2)(ii)(A) would be required.

Paragraph (f)(2)(iv) addresses reportable payments to an exempt recipient. In that case, the withholding agent could presume that the payee is a foreign person if it knew the payee's TIN and the TIN began with the two digits ''98.'' The withholding agent also could presume that the payee is a foreign person if the payee had a foreign mailing address or the payment were made outside of the United States (as defined in proposed § 1.6049–5(e)). In other cases, the withholding agent could presume that the exempt recipient is a U.S. person. Thus, for example, a U.S. withholding agent making a payment of interest on a registered obligation to a corporation with an EIN beginning with the digits ''98'' would not have to backup withhold under section 3406 (because the corporation is an exempt recipient). However, it should withhold a 30 percent tax under section 1442 because the condition under § 1.871–14(c)(1)(iii) that a certificate of foreign status be received by the U.S. withholding agent for the interest to qualify as portfolio interest would not be satisfied. Thus, the withholding agent should treat the interest as not qualified for the portfolio interest exemption for purposes of section 1441(b)(9). Adjustments to the tax may be made at a later time in accordance with proposed § 1.1461–2 if the required documentation described in proposed § 1.871–14(c)(2) is later furnished. See proposed §§ 1.871–14(c)(3) and 1.1441–1(f)(5) for rules addressing late received documentation.

Paragraph (f)(3) contains special presumption provisions for certain payments that are not subject to backup withholding: scholarship and pension income. In the case of scholarship and grant income, the withholding agent or payor may generally treat the payee as a U.S. person unless it has U.S. visa information in its records concerning the payee. For pension and annuities, the payment would be presumed to be made to a U.S. person if the payor had the payee's Social Security number and the payment were made either to a U.S. mailing address or to a mailing address in a foreign country with which the United States has an income tax treaty in effect that exempts residents of the country from U.S. tax on that income. In all other cases, the payor could presume that the payee is a foreign person. A withholding agent may use these presumptions as a safe harbor or may, at its option, choose to withhold at a higher rate if it were unsure of the application of the presumption in a particular case.

Paragraph (f)(4) provides special rules for pass-through entities. Paragraph (f)(4)(i) provides rules for determining whether to treat a partnership as foreign or domestic. The withholding agent or payor could presume that the partnership is a foreign partnership if the withholding agent or payor actually knows that the partnership's EIN begins with the digits ''98,'' if the mailing address of the partnership is in a foreign country, if the payment is made outside of the United States (as defined in proposed § 1.6049–5(e)), or if the withholding agent or payor knows or had reason to know that the partnership is foreign.

Under paragraph (f)(4)(ii), a withholding agent or payor that makes a reportable payment to a person determined to be a foreign partnership could presume that any partner for which it does not hold the required documentation is a U.S. individual. In that case, the payee would be treated as a U.S. payee that is not an exempt recipient and the payment would be subject to reporting under chapter 61 of the Code and to backup withholding under section 3406.

Paragraph (f)(4)(iii) provides rules for partners' distributive shares. A domestic partnership could treat a partner as a U.S. payee if, at the time it is required to withhold on a reportable payment, it did not hold all of the required documentation for that partner. A foreign partnership that is a qualified intermediary under proposed § 1.1441–1(e)(5)(ii) could treat a partner as a foreign payee if, at the time it were required to withhold on a reportable payment, it could not associate the payment with the required documentation.

Paragraph (f)(5) clarifies that a withholding agent that does not act in accordance with the presumptions and fails to withhold the required amount may be liable under section 1461 or 3403 for the tax that should have been withheld based upon the presumptions in paragraph (f), unless the withholding agent can demonstrate either that the correct amount of tax was, in fact, withheld or that the beneficial owner paid the tax due. Proof of payment of tax could be established on the basis of a Form 4669 furnished by the beneficial owner certifying the amount of tax paid to the IRS. Proof that the correct amount of tax was, in fact, withheld, could be based upon obtaining the required documentation. Late-received documentation could be accepted as proof of status and entitlement to a reduced rate of tax. However, if the delays involved in obtaining this documentation affected its reliability, the IRS could require further proof of status or entitlement to a reduced rate. Further, pursuant to section 1463 or section 3403, the withholding agent would be liable for interest under section 6601, even though, ultimately, there is no underlying tax liability. Penalties may also apply.

Under paragraph (f)(6), a reportable payment is an amount reportable under section 3406(b) (without regard to any exception to reporting under section 6041, 6041A, 6042, 6045, 6049, 6050A, or 6050N).

Paragraph (f)(7) provides that if overwithholding occurs under section 1441 as a result of application of the presumptions in paragraph (f), adjustments may be made in accordance with proposed § 1.1461–2(a). Appropriate refunds and credits may be claimed under section 1464 or 6414. Amounts overwithheld under section 3406 are subject to adjustments pursuant to § 31.6413(a)-3(a)(1).

Paragraph (g) provides that these rules are effective for payments made after December 31, 1997. However, transition rules are provided so that valid certificates (as determined under current rules) that are outstanding on the date that is 60 days after these regulations are published as final regulations may continue to be relied upon for their period of validity. In addition, dividends on publicly traded stocks are given special transition relief. See proposed § 1.1441–6(b)(2).

section 1.1441–2 Income Subject to Withholding

Paragraph (a) restates the rules in §§ 1.1441–1 and –3(a) of the existing regulations limiting withholding to items of income from sources within the United States. Paragraph (b) simplifies § 1.1441–2(a) of the existing regulations by providing that, for purposes of chapter 3 of the Code, fixed or determinable, annual or periodical (FDAP) income is any income includable in income under section 61, subject to enumerated exceptions in paragraph (b)(2) (including certain exceptions for original issue discount and capital gains, including option premiums). Under these proposed rules, income paid under a national principal contract would be FDAP, but see proposed § 1.1441–4(a)(3) for an exemption from withholding.

Paragraph (b)(3) reflects the position adopted by the IRS in TIR–877 (December 27, 1966) and in Rev. Rul. 68–333, 1968–1 C.B. 390 that FDAP includes original issue discount paid by an original issuer of bonds or other obligations with original issue discount. However, under the authority of section 1441(c)(8), only certain items of original issue discount are currently subject to withholding of tax under Chapter 3. The lack of rules in this area in the past reflects the difficulties in determining the amount of OID upon which withholding should be applied. These proposed regulations, however, identify transactions in which information about the amount of original issue discount would generally be known or available to the withholding agent. Therefore, the proposed regulations require withholding on amounts paid upon sale by an obligor that is related to the original issuer. In addition, amounts that fail to qualify for the portfolio interest exemption under section 871(h) or 881(c) (because, for example, the statement described in section 871(h)(5) has not been furnished to the U.S. withholding agent) would also be subject to withholding, regardless of whether it is possible for the withholding agent to determine precisely the amount of OID. See proposed § 1.871–14(c)(2). If the required documentation were not furnished, the amounts could be treated as paid to a U.S. or foreign payee based upon the presumptions in proposed § 1.1441–1(f). If the amounts are presumed paid to a U.S. payee, backup withholding under section 3406 might apply. See § 31.3406(b)(2)–(2). If the amounts are presumed paid to a foreign payee, withholding under section 1441 would apply (unless the OID instrument had a maturity not exceeding 183 days from the date of issue).

Under these rules, the entire amount of OID (as determined on the date of issue) would have to be reported as taxable if the exact amount of OID were not known. Any amount of overwithholding may be adjusted or refunded in accordance with the procedures in proposed § 1.1461–2(a) or § 1.1464–1.

The proposed changes to the OID rules would be effective for OID on obligations issued after a date that is 60 days after these regulations are published as final regulations.

Paragraph (c) restates § 1.1441–2(b) of the existing regulations to eliminate the reference to pre-1967 payments. It also eliminates the reference to items of income under section 402(a)(2) and 403(a)(2), relating to payments from certain employees trusts or under employee annuities, in order to conform to the amendment made to sections 1441(b) and (c)(5) by Public Law 102–318 that deleted these sections from the requirement of withholding under section 1441.

Paragraph (d) lists exemptions from withholding for certain items that

otherwise constitute FDAP income. Paragraph (d)(1) lists the exceptions that are not conditioned upon furnishing documentation (e.g., interest on bearer or foreign targeted registered obligations, short-term obligations). However, documentation may be required under the 1099 reporting provisions in order to avoid reporting under sections 6041 or 6049 and backup withholding under section 3406. Paragraph (d)(2) lists two other exceptions, but those exceptions are conditioned upon furnishing documentation described in proposed § 1.871–14(c)(2). The exceptions are portfolio interest on registered obligations described in section 871(h)(2)(B) or 881(c)(2)(B) (other than foreign targeted obligations) and bank deposit interest described in section 871(i)(2)(A). Because bank deposit interest is not subject to beneficial owner documentation requirements under current rules, the regulations propose a transition rule that would allow interest paid on accounts in existence on or before a date that is 60 days after these regulations are published as final regulations to continue to be subject to current rules until December 31, 1999.

Paragraph (e) clarifies the meaning of *payment* for purposes of withholding. An amount would be considered paid when it is includable in income under the cash basis method of accounting. Under paragraph (e)(2), income reallocated under section 482 from a U.S. person to a related foreign person would be considered a payment for withholding tax purposes. A payment would also be considered to be made if income arose as a result of a secondary adjustment made after income is allocated under section 482, unless the taxpayer entered into a repatriation agreement that eliminated the liability for withholding. Paragraph (e)(3) provides that income is not considered paid if it is blocked under certain executive authority, but is considered paid on the date the blocking restriction is removed and, therefore, subject to withholding as of that date. Paragraph (e)(4) provides special payment rules for dividends. These rules are similar to those in effect for purposes of backup withholding. See § 31.3406(b)(2)–4. Paragraph (e)(5) coordinates the payment election for branch interest tax under § 1.884–4(c)(1) with section 6049 and the withholding provisions under section 1441.

Section 1.1441–3 Amounts Subject to Withholding

Paragraph (a) restates the rule in § 1.1441–2(a)(1) of the existing regulations that withholding is generally imposed on the gross amount of income. Paragraph (b) provides for special withholding rules for interest. Paragraph (b)(1) restates the rule in § 1.1441–3(c)(3) of the existing regulations that requires withholding on the entire amount of stated interest owed on an interest-bearing obligation, regardless of the character of the amounts paid. The heading is modified to eliminate any inference that this rule is limited to payments on defaulted interest coupons. Paragraph (b)(2) restates the exemption from withholding in § 1.1441–4(h) of the existing regulations regarding sales of obligations between interest payment dates. An anti-abuse rule is added that would require withholding where the withholding agent knew or had reason to know that the sale transaction was part of a plan the principal purpose of which was to avoid withholding through a pattern of sales and repurchases.

Paragraph (c) provides rules relating to corporate distributions and substantially relieves the withholding burden imposed under § 1.1441–3(b) of the existing regulations on these distributions. Under the proposed regulations, a corporation could determine the amount of a distribution subject to withholding based on a reasonable estimate of available earnings and profits for the taxable year. A corporation that made a reasonable estimate, but nonetheless underwithheld, would remain liable for the amount of tax underwithheld (and interest), but not penalties. These proposed regulations adopt the same ''reasonable estimate'' standard as is provided under § 31.3406(b)(2)–4(c)(2). Under paragraph (c)(2)(ii), an intermediary could rely on a reasonable estimate represented by the distributing corporation. The distributing corporation would be made liable for any amount of underwithholding where the withholding agent had relied on the representation and the estimate had not been reasonably determined.

Paragraph (c)(3) proposes special procedures for withholding on certain distributions made by a Regulated Investment Company (RIC). In order to determine whether a withholding obligation arises in that case, a RIC would benefit from the same exceptions that would apply to other corporations for distributions payable in stock or stock rights or distributions treated in part or in full as in exchange for stock. In addition, the proposed regulations provide that no withholding is required for a distribution that is a capital gain dividend defined in section 852(b)(3)(C) or an exempt interest dividend defined in section 852(b)(5)(A). Special procedures are proposed for implementing these exemptions, however, because a RIC must specifically designate the extent to which a distribution falls under one of these provisions. Under applicable rules, the designation may be made as late as 60 days after the close of the RIC's taxable year, and after making the designation, the RIC may find that the amount so designated exceeds what the Code and the regulations allow. This presents special difficulties under section 1441, which assumes that the amounts subject to withholding are fixed at the time they are paid.

To address these special difficulties, paragraph (c)(3) would allow a RIC to designate interim distributions as being subject to section 852(b)(3)(C) or 852(b)(5)(A). If it later determined that the designation was in excess of what was permitted and, as a result, had underwithheld, the RIC would have to satisfy the tax liability and could adjust the withholding pursuant to proposed § 1.1461–2(b). A RIC would not be subject to penalties for failure to withhold timely, provided the designation was based upon a reasonable estimate when made. However, interest would apply under section 6601. In addition, the RIC might be liable for penalties if the IRS determined that the estimates were not reasonably determined.

Paragraph (d) restates, without significant changes, the rule in § 1.1441–3(d) of the existing regulations regarding withholding on the full amount realized from the sale of property where the withholding agent does not know the amount of gain subject to withholding. A withholding agent may, however, determine gain based on the beneficial owner's withholding certificate if it indicates the beneficial owner's basis in the property sold. This rule is of limited application as most capital gains are exempt from withholding under section 1441.

Paragraph (e) restates the rule in § 1.1441–7(c) of the existing regulations pertaining to payments in kind. The property conversion requirement under current rules would be made optional. Instead, the withholding agent could choose to obtain payment from another source. The regulations further propose to clarify that the amount of a payment in kind is measured by the fair market value of the property transferred or of the services provided. Payments made in foreign currency require a conversion of the amount of tax using the spot rate (as defined in § 1.988–1(d)(1)) or a reasonable spot rate convention. Paragraph (e)(3) provides guidance

where the withholding agent's satisfaction of the beneficial owner's tax liability constitutes additional income to the beneficial owner that is subject to withholding. In that case, the final withholding tax liability would be calculated under a gross-up formula.

The provisions currently stated under § 1.1441–3(j), relating to conduit financing arrangements, are proposed to be incorporated without change into a new paragraph (f). These provisions are not reproposed.

The address rule in § 1.1441–3(b)(3) of the existing regulations would be eliminated and replaced by requirements to furnish appropriate documentation or to establish foreign status and, if applicable, residence in a treaty country. See proposed § 1.1441–1(e) and 1.1441–6. Section § 1.1441–3(c)(1) requiring withholding in the case of interest paid on obligations issued by the U.S. government would be deleted as unnecessary given the provisions in § 1.1441–2(a) describing income subject to withholding. Section § 1.1441–3(c)(4) addressing unknown owners would also be deleted because the presumption provisions in § 1.1441–1(f) provide guidance. The special rules for tax-free covenant bonds issued prior to 1934 are proposed to be deleted. Comments are solicited as to whether these rules are still necessary.

Section 1.1441–4 Certain Exemptions From Withholding

Paragraph (a)(1) restates, without significant change, the provisions in § 1.1441–4(a) of the existing regulations regarding the exemption from withholding for certain income effectively connected with the conduct of a trade or business within the United States. The regulations clarify that the exemption under this section does not apply to claim an exemption under an income tax treaty (i.e., income not attributable to a permanent establishment). Claims of treaty benefit must be made under the procedures described in proposed § 1.1441–6.

Under paragraph (a)(2)(i), a withholding agent could rely on a claim that income is effectively connected with the conduct of a trade or business within the United States if it held a withholding certificate so stating. The regulations do not permit a withholding agent to rely on a qualified intermediary withholding certificate to grant a reduced rate of withholding for income claimed to be effectively connected, except in the case of a qualified intermediary that is a partnership acting for its own account. A partnership that does not claim to be a qualified intermediary could also furnish an intermediary withholding certificate described in proposed § 1.1441–1(e)(3)(iii) (i.e., the transmittal certificate normally required from a partnership transmitting its partners' documentation under the procedures described in proposed § 1.1441–5(b)). For purposes of claiming an effectively connected income exemption, it would not be necessary to attach the partners' documentation to the certificate since the exemption is available regardless of the status of the partners and, under section 1446, the partnership is required to withhold. The validity period of a withholding certificate used to claim an effectively connected exemption is proposed to be extended from one year to three years (subject to amendment if a change in circumstances affected the character of the income that the beneficial owner anticipated would be effectively connected). This rule should significantly ease the burden on continuing transactions that generate effectively connected income every year.

The regulations propose to eliminate the requirement that the certificate be attached to the Form 1042–S; the withholding agent would be required to state the beneficial owner's TIN on the Form 1042–S. See proposed § 1.1461–1(c)(1)(i). If the withholding certificate were silent as to whether the income is effectively connected or if the required documentation were lacking, incorrect, or unreliable, the withholding agent should presume that the income is not effectively connected.

The rules provided in § 1.1441–4(f) of the existing regulations are proposed to be restated in a new paragraph (a)(2)(ii) and are not reproposed. Paragraph (a)(2)(iii) provides for special rules for payments made to joint owners that would require each joint owner to provide a withholding certificate certifying that the income is effectively connected with a trade or business in the United States. These rules are consistent with the joint owners rules provided under the section 3406 regulation. See § 31.3406(h)–2(a).

Paragraph (a)(3) provides that no withholding is required on income from national principal contracts regardless of whether a withholding certificate is provided. However, such income would have to be reported on a Form 1042 and 1042–S. This rule would significantly simplify the paper flows currently associated with these transactions.

Paragraph (a)(4) parallels the rule in proposed § 1.1441–1(f)(5) regarding the consequences of acting in a manner contrary to prescribed presumptions. Late received documentation could relieve the withholding agent from the tax liability. However, an interest charge would apply under section 6601 on the amount that should have been withheld even if, ultimately, there is no underlying tax liability. In addition, penalties might apply.

Paragraph (b) of the existing regulations concerning compensation for personal services of an individual is substantially unchanged. A new paragraph (b)(1)(ii) is added to require that withholding on distributions from certain qualified pension plans and annuities occur under section 1441 rather than under section 3405 as was required under § 1.1441–4T(b)(ii) (which expired on February, 1993). A new paragraph (b)(1)(vi) is also added that would allow employers to wage withhold on compensation that is otherwise exempt from wage withholding by reason of section 3402(e). This rule provides relief for employers of nonresident alien individuals who derive income from sources partly within and partly without the United States on a regular basis (e.g., crew members working on cruise ships). Without this rule, employers would have to withhold at the 30 percent rate instead of the lower wage withholding rate.

The provisions under paragraph (b)(2) of the existing regulations (dealing with a claim of reduced rate of withholding on personal service income under an income tax treaty) are unchanged with one exception. The 10-day review rule in paragraphs (b)(2)(i) and (iv) would be extended to 20 days. This extension is necessary because of the increase in the number of Forms 8233 that the IRS receives.

Paragraph (b)(6) is added to eliminate the requirement in § 1.1441–3(e) of the existing regulations to pro-rate the personal exemption based on the period during which a nonresident alien individual is present in the United States during the taxable year. Therefore, the entire personal exemption amount could be taken into account to determine the base amount on which to withhold.

Paragraph (c) incorporates the provisions in § 1.1441–2(c) of the existing regulations dealing with participants in certain exchange or training programs and provides additional guidance with respect to payments of scholarship or fellowship grants to nonresident alien individuals. It reflects 1988 and 1994 statutory amendments to section 1441 concerning certain visa holders. Such income is subject to a lower withholding rate of 14 percent under section 871(c). The regulations propose an alternate withholding election so that taxpayers

may choose to be subject to the withholding rates applicable to wages, which in many cases are likely to result in a lower rate. Also, individuals who receive both scholarship or grants and compensation income from the same withholding agent could choose to combine all income on Form 8233 to claim a reduced rate under a tax treaty for both types of income.

Paragraphs (d) (dealing with annuities) and (e) (dealing with central banks of issue and the Bank of International Settlement) merely reflect conforming changes regarding the proposed documentation requirements.

Section 1.1441–5 Withholding on Payments to Pass-Through Entities

The existing regulations in § 1.1441–5 address claims of U.S. status. These provisions are restated, with modifications, in proposed § 1.1441–1(d).

This section, as revised, would provide special withholding procedures for payments to partnerships. Paragraph (a) deals with domestic partnerships. As under current regulations, payments to domestic partnerships would not require withholding, even if the partners were foreign persons. A domestic partnership is the withholding agent for items of income included in the distributive share of a partner that is a foreign person. Paragraph (b) proposes to modify the current rules for payments to foreign partnerships to permit a look-through approach, so that claims of reduced rate could be presented by the partnership on behalf of the partners (including partners that are U.S. persons). The look-through approach would apply through tiers of foreign partnerships. In the alternative, a foreign partnership could, under an agreement with the IRS, become a qualified intermediary so that the partners' documentation would not have to be furnished to the withholding agent. See proposed § 1.1441–1(e)(5) for rules applicable to qualified intermediaries. Paragraph (b)(2) clarifies how the look-through approach would operate in the case of a tiered partnership. Generally, the partnership would have to look through tiers until it reached the beneficial owner (as determined under proposed § 1.1441–1(c)(6)). However, it could stop at any level in the chain that constitutes a payee (as defined in proposed § 1.1441–1(c)(3)).

Section 1.1441–6 Claim of a Reduced Rate Under an Income Tax Treaty

The proposed regulations eliminate the ''address'' rule in § 1.1441–6(c)(1) of the existing regulations and in regulations under several income tax treaties, which permits a withholding agent to grant a reduced rate of tax under a treaty based upon the address of the payee (including a nominee). Paragraph (b)(1) provides general procedures for reliance by a withholding agent on a claim for a reduced rate of withholding under a treaty based upon the documentation requirements described in proposed § 1.1441–1(e)(1)(i). A withholding agent could rely upon a beneficial owner withholding certificate described in proposed § 1.1441–1(e)(2) as establishing both foreign status and residence in the treaty country provided a TIN is stated on the certificate. In addition, in the case of dividends with respect to which an advance ruling is required in order to secure the reduced rate of tax under the tax treaty, the withholding certificate would have to state that the beneficial owner has obtained such a ruling. Such rulings are currently required under a very limited number of tax treaties: Austria, Denmark, Ireland, and Switzerland. See paragraph (e) regarding the procedures for obtaining such a ruling. Further, for amounts exceeding $500,000 in the aggregate for the taxable year paid to a beneficial owner related to the withholding agent, the beneficial owner would have to indicate on the certificate that it will file a Form 8833 under section 6114. The regulations under section 6114 are proposed to be modified accordingly. Claims of treaty benefit could also be made on the basis of an intermediary withholding certificate described in proposed § 1.1441–1(e)(3). Further, a U.S. withholding agent could act through an authorized foreign agent described in proposed § 1.1441–7(c)(2).

Paragraph (b)(2) provides special rules for certain dividends paid on stock that is traded on a U.S. established market. For these dividends, the withholding agent could grant treaty benefits based upon the same documentation procedures as are proposed to apply to portfolio interest on registered obligations (e.g., no TIN is required on a beneficial owner withholding certificate). See proposed § 1.871–14(c)(2). Paragraph (b)(3) provides that the competent authorities may agree to different certification procedures under an applicable tax treaty.

Paragraph (b)(4) clarifies the manner in which beneficial owners could claim benefits under a tax treaty where foreign law principles apply to identify the beneficial owner of a payment made to a foreign entity. Under proposed § 1.1441–1(c)(6)(ii)(B), the beneficial owner would be determined based upon the laws of the country whose tax treaty with the United States is invoked to claim a reduced rate of tax.

These procedures are intended to apply in a reciprocal manner. Therefore, paragraph (b)(4)(iv) provides that, if the IRS determined that a treaty partner is not identifying beneficial owners in a similar manner and, as a result, denies benefits under an otherwise applicable treaty to an entity organized in the United States or to interest holders residing in the United States, the benefits of these procedures could be suspended for entities organized, or interest holders residing, in that country until the competent authorities reached a reciprocal agreement on the application of treaty benefits in such cases. Suspension of benefits under this provision would be effective on a prospective basis only.

Paragraph (c) states the rules regarding certification of a TIN by the IRS. These procedures would apply to payments for which a Form W–8 is furnished with a TIN. They are directed to beneficial owners (or their agents) and are designed to ensure that the IRS can verify the beneficial owner's status as a resident of a treaty country based upon the information return later filed by the withholding agent on Form 1042–S. If the IRS determined that the TIN does not support the beneficial owner's claim of residence in the treaty country, it would so notify the withholding agent. The IRS could waive the requirement that a taxpayer certify its TIN with the IRS when it implements procedures to verify a taxpayer's status directly with a foreign competent authority. The IRS could also certify a TIN based upon representations made by a qualified intermediary.

The IRS would certify a TIN based upon a certificate of residence or documentary evidence. Paragraph (c)(3) describes a certificate of residence as a certificate issued by the tax authorities of the treaty country certifying that the taxpayer files income tax returns as a resident of that country and is current on his filing obligations. Paragraph (c)(4) describes documentary evidence as a document that is no more than three-years old and sufficiently identifies the person and the residence of that person in the treaty country.

Paragraph (e) incorporates the provisions in existing regulations that condition the benefit of the reduced five-percent rate on related party dividends to an advance ruling from the IRS determining that the parent-subsidiary relationship is not established or maintained with the principal purpose to secure the reduced rate. The ruling would be required only

if so required under an applicable treaty. It must be requested prior to the payment of the dividend. While a request made after payment would not disqualify the dividend from the benefit of the reduced rate if a favorable ruling is later obtained, the withholding agent would nevertheless withhold. Failure to do so would subject the withholding agent to an interest charge under section 6601. Also, the withholding agent would be liable for the tax and related penalties if a favorable ruling were not issued. See proposed § 1.1441–1(f)(5) regarding the consequences to the withholding agent when it does not withhold the full amount even though it does not hold the required documentation prior to payment.

The regulations are proposed to be effective for payments made after December 31, 1997. However, certificates issued on or before the date that is 60 days after these regulations are published as final regulations will continue to be valid until they expire, based upon existing regulations. In addition, because no documentation is currently required for dividends, the regulations propose a transition rule that would allow dividends paid on publicly-traded stock to accounts in existence on or before a date that is 60 days after these regulations are published as final regulations to continue to be subject to the current address rule until December 31, 1999.

Section 1.1441–7 General Provisions Relating to Withholding Agents

This section modifies § 1.1441–7 of the existing regulations dealing with withholding agents. Paragraph (a) clarifies that a withholding agent is any person that has the control, receipt, custody, disposal, or payment of an item of income and not merely a person that pays or causes an amount to be paid. If there are several withholding agents with respect to one payment, only one tax should be withheld and only one return should be filed.

Paragraph (b) restates the ''actual knowledge or reason to know'' standards applicable to a withholding agent as in effect under current law. The IRS and Treasury are aware that the application of a ''reason to know'' standard without limitation may be impractical in the case of financial institutions handling large volumes of transactions for many customers. Therefore, the regulations propose to limit the due diligence expected from withholding agents paying portfolio interest, deposit interest, or dividends on publicly traded stock. Under paragraph (b)(2)(ii), a withholding agent's due diligence regarding a beneficial owner certificate would be limited to examining the address stated on the certificate. If this information indicated that the beneficial owner might be a U.S. taxpayer or conflicted with information that the withholding agent otherwise had in its records for that account, the withholding agent would have to obtain specified documentation to verify the beneficial owner's claim of foreign status or residence. Paragraph (b)(3) proposes to incorporate rules consistent with those under section 3406 dealing with universal accounts. Therefore, if the withholding agent used a system of universal accounts, it would be required to use that system to determine the scope of its due diligence under the regulations.

Paragraph (c) restates and expands the provisions in § 1.1441–7(b) of the existing regulations pertaining to authorized agents and adds provisions regarding an authorized foreign agent. This new concept is intended to facilitate compliance by U.S. withholding agents that make payments through their agent abroad. By imputing the acts of a foreign agent to a U.S. withholding agent, the required documentation could remain with the foreign agent and would not have to be provided to the U.S. withholding agent. However, the regulations require that the agent be ''authorized'' in order to insure that the IRS can verify the foreign agent's compliance with the withholding procedures, which, in turn, would determine whether the U.S. withholding agent has itself complied. See proposed § 1.1461–1 (b)(2)(iii) and (c)(4)(iii) regarding corresponding filing requirements.

Section § 1.1441–7(b)(3) of the Existing Regulations is Proposed to be Deleted, Pending Comments on the Continuing Necessity of Providing Guidance on Tax-Free Covenant Bonds

Paragraph (d) restates without changes the provisions in § 1.1441–7(a)(2) of the existing regulations dealing with the United States as a withholding agent. Paragraph (e) restates without changes the provisions in § 1.1441–3(c)(2) of the existing regulations dealing with assumed obligations. Section § 1.1441–7(c) of existing regulations dealing with payments other than money would be deleted and restated in proposed § 1.1441–3(f) dealing with withholding procedures for payments in kind.

Section 1.1441–8T Foreign Government and International Organization Exemption From Withholding

This section exempts from withholding certain types of income excluded from gross income under section 892 that are paid to foreign governments and international organizations. Revisions are proposed to paragraph (b) of the existing regulations to conform the certification procedures to the proposed withholding certificate procedures described in proposed § 1.1441–1(e)(1)(i). Therefore, Form 8709 would be replaced by the standard withholding certificate (Form W–8), meaning that foreign governments and international organizations would be relieved from the requirement to furnish annual certification. A foreign government or an international organization would not be required to furnish a tax identifying number. However, if it did, the certificate would be valid indefinitely for income required to be reported on Form 1042 or for which the withholding agent reports the TIN to the IRS. See proposed § 1.1441–1(e)(4)(ii).

Section 1.1441–9 Exemption From Withholding on Exempt Income of Foreign Tax-Exempt Corporations and Foreign Private Foundations

This new section provides that income paid to a foreign organization described in section 501(c) would not be subject to withholding under section 1442 if the income were not subject to tax as unrelated business income under section 511 and the entity were exempt from tax under section 501(a). For purposes of granting a reduced rate, a withholding agent could rely on a withholding certificate satisfying the requirements of proposed § 1.1441–1(e)(1). A beneficial owner certificate must include a taxpayer identifying number and must certify that it will not be subject to tax under section 511, and that the IRS has issued a determination letter. In the absence of such a letter, the beneficial owner should provide an opinion of counsel stating that the organization meets the conditions for a tax exemption under section 501(c). Since the affidavit requirement for foreign foundations is proposed to be eliminated, foreign tax-exempt organizations would be subject to the same documentation requirements as would apply to foreign foundations under proposed § 1.1443–1(b).

Section 1.1461–1 Deposit and Return of Tax Withheld

The provisions in § 1.1461–1 of the existing regulations pertaining to ownership certificates for bond interest are proposed to be deleted. Interest on bonds described in this section would be subject to the regular procedures provided in the regulations under sections 1441 and 1443. The special rules would no longer be necessary in view of the substitute procedures provided in the proposed regulations. Comments are solicited as to the continuing need for provisions governing tax-free covenant bonds.

Section 1.1461–1 contains proposed procedures for withholding agents to pay the withheld tax and file the annual income tax return and information returns with respect to payments of income subject to section 1441 withholding. Paragraph (a) restates § 1.1461–3 of the existing regulations regarding the payment of amounts withheld. The provisions regarding pre-1973 years are proposed to be deleted as obsolete. Paragraph (b) revises § 1.1461–2(b) of the existing regulations on the filing of returns of amounts withheld. Paragraph (b)(1) clarifies that the Form 1042 must include the total amount of income paid during the preceding calendar year. Also, the filing date is changed from March 15 to February 28 in order to conform with the filing dates for Form 1099. The proposed regulations would eliminate the requirement to attach the Forms 1042–S to the return. Instead, the Forms 1042–S would have to be filed separately with a transmittal form. See paragraph (c)(1)(i).

Paragraph (b)(2) describes applicable return requirements for multiple withholding agents. Generally, as under current rules, only one Form 1042 would have to be filed for an item of income. Exceptions to this general rule are provided for payments to qualified intermediaries where the U.S. withholding agent would have to file a return, regardless of whether the qualified intermediary assumed primary withholding responsibility for the payment and regardless of whether the qualified intermediary were also required to file a return under its agreement with the IRS. Another exception would be provided for payments to an authorized foreign agent. In that case, the U.S. withholding agent and the authorized foreign agent would each be required to make a return. The return of the withholding agent would report amounts paid to the authorized foreign agent. The return of the authorized foreign agent would report amounts paid to the beneficial owner or its intermediaries.

Paragraph (b)(3) requires that changes to the originally filed Form 1042 be filed on an amended return on a new Form 1042X. This change is designed to facilitate the processing of returns by the IRS and would be consistent with the procedures for filing other amended returns.

Paragraph (c) revises the provisions in § 1.1461–2(c) of the existing regulations regarding the filing of information returns on Form 1042–S. As under existing regulations, any income subject to withholding must be reported on an information return on Form 1042–S and a return would be due irrespective of the fact that no tax was withheld (e.g., the beneficial owner claimed an exemption or the withholding agent failed to withhold).

The provisions of § 1.1461–2(c)(3) of the existing regulations requiring that the name of the beneficial owner be reported on Form 1042–S would be retained. However, more detailed guidance is provided regarding reporting of income paid to intermediaries. See paragraph (c)(4) below dealing with multiple agents. The proposed regulations eliminate as unnecessary the requirements under existing regulations to attach any certificate, form, or statement to the return.

Paragraph (c)(1)(ii) proposes new rules pertaining to joint owners. A single Form 1042–S may be provided to one of the joint owners. In that case, the withholding agent should provide the Form 1042–S to the joint owner whose status determines the tax withheld. Further, any one owner may request a separate Form 1042–S, but the total amounts of income and tax reported paid and withheld on all the forms 1042–S may not exceed the total amount of income actually paid and tax actually withheld.

Paragraph (c)(2) replaces § 1.1461–2(c)(1) of the existing regulations and states that the items of income that are subject to reporting on Form 1042–S are those items of income subject to withholding, income from a notional principal contract, and amounts described in sections 6041 through 6050P that are paid to a foreign person and are not exempt from reporting under those sections or the corresponding regulations. This provision is intended to standardize reports of payments to foreign persons to the IRS and should simplify compliance by withholding agents. Paragraph (c)(2)(ii) lists the exceptions to reporting on a Form 1042–S. As under current regulations, items of income exempt from reporting include portfolio interest on a bearer obligation and original issue discount on short-term obligations. An explicit exception for reporting on deposits described in section 871(i)(2)(A) would be added. However, bank deposit interest that is subject to withholding under section 1441 (because, for example, documentation was not furnished but payments were made to a foreign address; see special grace period provisions under proposed § 1.1441–1(f)(2)(i)(B)) would have to be reported. Also, interest on bank deposit interest paid to Canadian residents would have to be reported based upon provisions under final regulations under section 6049 published in the Rules and Regulations section of this issue of the Federal Register. In addition to the items excepted from reporting under existing § 1.1461–1(c)(1), other items are added that prevent duplicative reporting. Finally, the proposed regulations would clarify that to the extent group-term life insurance and other items of income required to be reported pursuant to the provisions in §§ 1.6041–2 and 1.6052–1 can be associated with wages required to be reported on a Form W–2, then such items may also be reported on a Form W–2 instead of a Form 1042–S.

Paragraph (c)(3) restates the provisions of § 1.1461–2(c)(2) of the existing regulations regarding the types of information to be included on Form 1042–S. It clarifies that the information could be based on the information furnished by or on behalf of the beneficial owner, as corrected based on the withholding agent's actual knowledge if necessary. In addition, the Form 1042–S would have to include the TIN of the beneficial owner if required to be shown on the withholding certificate. Also, a beneficial owner's TIN that the beneficial owner is not required to furnish but which is actually known to the withholding agent would have to be reported on Form 1042–S.

Paragraph (c)(4) is added to provide rules for filing Form 1042–S where there are multiple withholding agents. Generally, as with the Form 1042, only one Form 1042–S must be filed with respect to an item of income. Current rules requiring the withholding agent to identify the beneficial owners of payments made to agents, nominees, or representatives, if known, would be eliminated for payments to an intermediary that either claims to be a qualified intermediary or is an authorized foreign agent. In all other cases, the information on a Form 1042–S must be reported for each beneficial owner. This would modify § 1.1461–

2(c)(3)(i) of the existing regulations providing that beneficial owner information be reported only if known. For payments made to a person claiming to be a qualified intermediary or is an authorized foreign agent, each withholding agent in the chain would be permitted to report on one Form 1042–S reflecting the payment made to the next qualified intermediary or authorized foreign agent in the chain. In the case of a payment to an authorized foreign agent, however, the withholding agent would be excused from the requirement to report the beneficial owner information only to the extent that the authorized foreign agent actually complies with the filing requirements under paragraph (c)(4)(iv).

Paragraph (c)(5) is added to cross-reference the magnetic media filing requirements applicable to Forms 1042–S under § 1.6011–1(c). Generally, a filer of 250 or more Forms 1042–S must file on magnetic media, unless a waiver is granted.

Paragraph (d) would allow a withholding agent to provide a list of taxpayer identifying numbers furnished by or on behalf of beneficial owners to the extent the agent has relied upon such number to grant a reduced rate of withholding tax. This is a special filing procedure under which the reporting of the associated amount of income would not be have to be reported.

Finally, paragraph (e) clarifies the provisions regarding indemnification of withholding agents. Section 1461 indemnifies a withholding agent from the claim of any person for the amount of any payments made in accordance with the provisions of chapter 3 of the Code. Some commentators and withholding agents have expressed concerns that section 1461 could be interpreted to limit indemnification to amounts that were required to be withheld. The proposed regulations clarify that a withholding agent that withheld based upon a reasonable belief that such amount was withheld in accordance with chapter 3 of the Code would be treated for purposes of section 1461 as having withheld in accordance with chapter 3 (even though it is later determined that the withholding agent's application of the rules was incorrect). Additionally, a withholding agent would be indemnified against any claim of any person for the amount of any withholding made in accordance with the grace period provisions under proposed § 1.1441–1(f)(2)(ii).

Paragraph (f) restates without changes § 1.1461–2(f) of the existing regulations dealing with amounts that may not constitute gross income, in whole or in part. This rule would apply to amounts subject to withholding under proposed §§ 1.1441–3(b)(1) or 1.1441–3(d).

Paragraph (g) is added to provide guidance on requests of extensions of time to file Form 1042, Forms 1042–S, and to furnish Forms 1042–S to recipients. The rules with respect to such requests would parallel those under section 6081. A change would be made, however, to the form to be used for making a request for an extension of time to file Forms 1042–S.

Currently, these requests are made on Form 2758; the proposed regulations require such a request to be made on Form 8809.

Section 1.1461–2 Adjustments for Overwithholding and Underwithholding of Tax

This section has also been renumbered and, although the rules are the same as those of the current regulations in § 1.1461–4, it has been redrafted to simplify the language and to update the examples. Specifically, the rule for reimbursements remains the same, but the rule in proposed § 1.1461–4(b) with respect to the adjustment of tax payments or deposits is now titled ''set-offs,'' which more accurately describes the adjustment process.

Section 1.1462–1 Withheld Tax as Credit to Recipient of Income

Section 1.1462–1(a) is clarified by stating that the amount of income from which the tax is required to be withheld includes the amount calculated under the gross-up formula in proposed § 1.1441–3(e)(3).

Section 1.1463–1 Tax Paid by Recipient of Income

This section provides that if the income tax for which the beneficial owner and the withholding agent have joint liability under section 1461 has been paid by either one of them, the IRS may not collect from the other, regardless of the original liability for the tax. This section has been changed to reflect the 1989 statutory amendment (Pub. L. 101, 239, Sec. 7743(a)) that provides for the imposition of interest and penalties on the party that fails to withhold.

Prior Proposed Regulations Under Section 871 and Chapter 3 of the Code

In 1976, proposed regulations were published relating primarily to withholding and original issue discount. In 1984, proposed regulations were published relating primarily to claims of benefits under income tax treaties. These proposed regulations were contained in project number LR–2043, published on July 12, 1976 (41 FR 28517) and project number LR–271–83, published on September 10, 1984 (49 FR 35511). Both proposed regulations are being withdrawn on April 22, 1996.

Regulations Under Sections 6041, 6041A, 6042, 6045, 6049, and 6050N

These proposed regulations provide exceptions from information reporting and backup withholding under sections 3406, 6041, 6041A, 6042, 6045, 6049, and 6050N for payments to foreign beneficial owners and for income paid by certain foreign payors or middlemen.

Generally the regulations clarify and simplify the regulations under sections 3406, 6041, 6042, 6045, and 6049 that were proposed on February 29, 1988, at 53 FR 5991 (1988) (the 1988 proposed regulations). In addition, the regulations under these sections are proposed to be revised. The regulations also would add new exceptions from reporting (including the addition of middleman rules) to sections 6041, 6041A, and 6050N. These proposed revisions and new exceptions from reporting parallel the exceptions under these proposed regulations under sections 6042 and 6049. Further, parallel provisions are found in each section for: definitions of terms (such as non-U.S. payor or non-U.S. middleman); presumptions as to whether a payee is U.S. or foreign where the required documentation is lacking, incorrect, or unreliable; rules for payments to joint owners; and rules for converting into U.S. dollars amounts paid in foreign currency. In addition, the proposed regulations specify that the standard of knowledge applicable to payors and middlemen would be actual knowledge. Thus, the ''reason to know'' standard would not apply for purposes of the reporting provisions.

The subparagraphs under proposed § 1.6042–3(a) (dealing with the definition of dividends for purposes of information reporting under that section) are proposed to be restated with changes in drafting only. The substantive rules in that paragraph would be unchanged and are, therefore, not reproposed. Also, § 1.6042–3(b) (3) and (4) of the 1988 proposed regulations (relating to capital gain dividends from regulated investment companies and payments to exempt recipients) would be redesignated as subparagraphs (vii) and (viii), respectively, of proposed § 1.6042–3(b)(1). These rules are not reproposed.

This document also proposes to revise the definition of an exempt recipient in the case of a corporation. Section § 1.6049–4(c)(1)(ii)(A) of the 1988 proposed regulations provides that a person would be treated as a corporation, and therefore as an exempt

recipient not subject to information reporting, if the name of the payee or a corporate resolution provided to the payor clearly indicates corporate status (the eyeball test). These proposed regulations retain the eyeball test of the 1988 proposed regulations for payments (1) other than interest, dividends and broker proceeds paid to accounts established after a date that is 60 days after the date that these regulations are published as final regulations in the Federal Register and (2) other than interest, dividends and broker proceeds that are not paid to a person to whom the payor has an account relationship. For interest and dividends paid to a new account, the entity would be required to provide either a corporate resolution or similar document that clearly indicates corporate status, a Form W–9 with an EIN, or a Form W–8. For interest and dividends paid where an account relationship does not exist, the payor may continue to rely on the eyeball test if the payor also has a mailing address of the payee in the United States. The IRS and Treasury understand that financial institutions routinely request a corporate resolution when opening accounts for entities. Therefore, requiring such a document would not significantly increase burden and would improve compliance. This proposed rule is reflected in paragraph (c)(1)(ii)(A). In addition, the list of international organizations under paragraph (c)(1)(ii)(G) is proposed to be eliminated as a simplification measure.

In addition, the 1988 proposed regulations under § 1.6049–5 are proposed to be substantially redrafted, although without significant substantive changes. Paragraph (b)(6) provides an exception from reporting for amounts from sources outside the United States paid outside the United States by a non-U.S. payor or non-U.S. middleman. This provision duplicates that found in the 1988 proposed regulations at proposed §§ 1.6049–5(b)(8) and 1.6049–5(d)(3) (i), (ii), and the foreign source portion of proposed § 1.6049–5(d)(3)(iii).

Paragraph (b)(7) (which corresponds to § 1.6049–5(c)(6) of the 1988 proposed regulations) would except portfolio interest paid on bearer obligations if paid outside the United States. In these proposed regulations, this exception would not apply where a U.S. middleman acts as a custodian, nominee, or other agent of the payee and collects the amount for, or on behalf of, the payee, whether or not the middleman is also acting as agent of the payor. Paragraph (b)(8) (which corresponds to § 1.6049–5(c)(6) of the 1988 proposed regulations) provides an exception for portfolio interest paid on registered obligations.

The provisions of § 1.6049–5(b)(9) of the 1988 proposed regulations, which excepted from reporting amounts paid by an international organization (or its agent) on an obligation issued by the international organization are proposed to be incorporated in paragraph (b)(9) of these new proposed regulations. These rules are not reproposed.

Paragraph (b)(10) (which corresponds to § 1.6049–5(c)(5)(ii) of the 1988 proposed regulations) provides an exception for certain short-term foreign targeted obligations. Paragraph (b)(11) (which corresponds to § 1.6049–5(e)(1) (the parenthetical language) and § 1.6049–5(e)(2) (i) and (ii) of the proposed 1988 proposed regulations) provides an exception for certain foreign-targeted obligations issued by persons engaged in the banking business. Although the 1988 proposed regulations limited the exceptions at § 1.6049–5(e)(2) (i) and (ii) to Canadians, these proposed regulations expand the scope of the exceptions to apply to all beneficial owners. However, as under the 1988 proposed regulations, the exception would not apply where a U.S. middleman acts as an agent of the payee.

Paragraph (b)(12) (which corresponds to §§ 1.6049–5(b)(7) and (c) (1), (2), and (3) of the 1988 proposed regulations) would except any amount of U.S. source interest subject to withholding under section 1441. Such interest would be required to be reported on a Form 1042–S under proposed § 1.1461–1(c). This exception would replace § 1.6049–5(b)(1)(vi), (b)(1)(vi)(B)(1) and (b)(2)(iv) of the existing regulations, which provide an exception for reporting for bank deposit interest paid to a foreign person, but only if a Form W–8 (or documentary evidence in appropriate cases) is provided to the payor. The withholding certificate requirement for bank deposit interest is now found at proposed § 1.1441–2(d)(2).

Paragraph (b)(13) provides a new exception for assets blocked pursuant to an executive order.

Paragraph (b)(14) provides the general rule for exempting any other amount of otherwise reportable interest based on specified documentation furnished to the payor or middleman. The standards of documentation are described in paragraph (c) and would generally parallel the documentation standards proposed for purposes of claiming a reduced rate of withholding under section 1441. Therefore, the payor could rely on a beneficial owner or intermediary withholding certificate described in proposed § 1.1441–1(e)(1)(i) provided it complied with the procedures described in proposed § 1.1441–1(e)(4) (iv) and (v) (dealing with on-line confirmation and notification procedures). No taxpayer identifying number is required to be stated on a beneficial owner withholding certificate. These proposed regulations retain the permission under current regulations to furnish documentary evidence instead of a certificate for payments made to an off-shore account. The on-shore and off-shore distinction is similar to that found in the 1988 proposed regulations. The provisions of the 1988 proposed regulations contained in paragraphs (d), (e), (f), (g), (h), (i), and (l) are withdrawn. Proposed paragraphs (j) (relating to payments outside the United States) and (k) (dealing with original issue discount) of the 1988 proposed regulations would be renumbered as paragraphs (e) and (f), respectively. The provisions in these paragraphs are not restated.

Section 31.3401(a)(6)–1(e)—Income Exempt From Income Tax

This section is amended to reflect the new certification procedures under proposed §§ 1.1441–1(e).

Backup Withholding Regulations Under Section 3406

Several changes to the backup withholding regulations under section 3406 are proposed to conform those regulations to the proposed information reporting and chapter 3 withholding regulations. Section 31.3406(d)–3 (c) would be amended to extend to 90 days the current 30-day grace period applicable to readily tradeable instruments acquired directly from a payor if the payment were made to a person for whom indicia of foreign status existed, as described in proposed § 1.1441–1(f)(2)(i)(B).

Section 31.3406(g)–1(e) would revise the proposed regulations contained in project number IA–224–82 published in the Federal Register on September 27, 1990 (55 FR 39427) to restate the principles that no backup withholding applies under section 3406 to reportable payments made outside the United States even though documentary evidence of non-U.S. status may be required in order to exempt the payment from 1099 reporting, unless the payor has actual knowledge that the payee is a United States person. The regulations propose to add an exception for notional principal contract payments that are made outside the United States.

Amendments to § 31.6413(a)–3

The regulations under § 31.6413(a)–3 are proposed to be amended in order to

allow payers to refund backup withholding in certain circumstances. Those regulations currently prohibit a refund of backup withholding except when erroneous withholding has occurred. It is proposed to expand the definition of erroneous withholding to a situation where the withholding agent backup withholds because the payee fails to provide sufficient documentation as required under section 3406 and 1441 and the regulations under these sections. Where an appropriate withholding certificate is later provided, the withholding agent could treat the earlier withholding as erroneous withholding. However, the withholding certificate should to be received prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred. The amount refunded would be the amount actually withheld less the amount required to be withheld, if any, under chapter 3 of the Code.

Removal of Q&A Regulations

The existing regulations under part 35a are proposed to be removed in order to reflect the proposed revisions in this document.

Amendments to § 301.6109–1

Amendments to the regulations under this section are currently pending to authorize the IRS to issue taxpayer identifying numbers to certain foreign persons and to require a taxpayer to state a TIN on any tax return filed (other than an information return). These regulations are proposed to be further amended to require that a TIN be stated on withholding certificates as may be required under the regulations proposed under sections 1441, 1442, and 1443.

Amendments to § 301.6114–1

The regulations under section 6114 are proposed to be amended to require certain foreign entities to file a Form 8833 if they are claiming to be qualified under a limitation of benefits provision under an income tax treaty, even though the income is also reported on a Form 1042 by the withholding agent. The filing requirement would be limited to payments between related parties that exceed $500,000 for the taxable year. See proposed § 1.1441–6(b)(1).

Amendments to § 301.6402–3(e)

Paragraph (e) of the regulations under § 301.6402–3 is proposed to be amended to require that returns filed to claim a refund of tax include the taxpayer's TIN. In addition, the Form 1042–S would have to be attached to the return and also show the taxpayer's TIN.

Removal of Certain Regulations Under Tax Conventions

This document proposes to remove certain regulations issued under income tax conventions between the United States and Greece, Germany, Switzerland, Ireland, France, Austria, Pakistan, Sweden and Denmark. Removal of these regulations will be done in consultation with the competent authorities of these countries.

Special Analyses

It 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a 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 will be scheduled on a date, time, and place as will be published in the Federal Register.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensations.

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping

26 CFR 502

Greece, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 503

Germany, reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 509

Switzerland, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 513

Ireland, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 514

France, Reporting and recordkeeping requirements, Tax treaties.

26 CFR 516

Austria, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 517

Pakistan, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 520

Sweden, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 521

Denmark, Reporting and recordkeeping requirements, Tax treaties.

Proposed Amendment to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR chapter I is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order and removing the entry for § 1.1441–4T to read as follows:

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

Section 1.1441–2 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–3 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6). * * *

Section 1.1441–6 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–7 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6). * * *

§ 1.163–5 [Amended]

Par. 2. In § 1.163–5 paragraph (c)(2)(i)(B)(5) is amended by removing the language ''subdivision (iii) of A–5 of § 35a.9999–4T'' in the last sentence and adding ''§ 1.6049–5(c)(2)(ii)'' in its place.

Par. 3. Section 1.165–12(c) is amended by:

1. Removing paragraph (c)(1)(iii).
2. Redesignating paragraphs (c)(1)(iv) and (c)(1)(v) as paragraphs (c)(1)(iii) and (c)(1)(iv), respectively.
3. Amending paragraphs (c)(1)(i) and (c)(1)(ii) by removing the language ''(c)(1)(v)'' and adding ''(c)(1)(iv)'' in its place.
4. Revising newly designated paragraph (c)(1)(iii). The revision reads as follows:

§ 1.165–12 Denial of deduction for losses on registration-required obligations not in registered form.

* * * * *

(c) * * *

(1) * * *

(iii) The holder may deliver an obligation in bearer form that is offered or sold inside the United States only if the holder delivers it to a financial institution that is purchasing for its own account, the account of another foreign institution, or an exempt organization that will comply with the requirements of section 165(j)(3) (A), (B), or (C). The holder may deliver a registration-required obligation in bearer form that is offered and sold outside the United States to a person other than a financial institution only if the holder has evidence in its records that such person is not a U.S. citizen or resident and does not have actual knowledge that such evidence is false. Such evidence may include a statement by that person that is delivered electronically. For purposes of this paragraph (c), the term deliver includes a transfer of an obligation evidenced by a book entry including a book entry notation by a clearing organization evidencing transfer of the obligation from one member of the organization to another member. For purposes of this paragraph (c), the term deliver does not include a transfer of an obligation to the issuer or its agent for cancellation or extinguishment.

* * * * *

Par. 4. Section 1.871–14 is added to read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

(a) *General rule.* No tax shall be imposed under sections 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. But see section 871(h) or 882(a) if such interest is effectively connected with the conduct of a trade or business within the United States.

(b) *Rules concerning obligations not in registered form*—(1) *In general.* [Reserved] For further guidance, see § 35a.9999–5(a), Answer 1.

(2) *Convertible obligations.* [Reserved] For further guidance, see § 35a.9999–5(c), Answers 18 and 19.

(3) *Coordination with withholding and reporting rules.* See § 1.1441–2(d)(1)(i) for an exception from documentation requirements otherwise applicable for purposes of section 1441. See section 6049 and § 1.6049–5(b)(7) for rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406.

(c) *Rules concerning obligations in registered form*—(1) In general. In the case of interest paid on an obligation that is in registered form, the term *portfolio interest* means any interest (including original issue discount)—

(i) That is paid on an obligation issued after July 18, 1984;

(ii) That would be subject to tax under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) but for section 871(h) or 881(c); and

(iii) With respect to which a United States (U.S.) person otherwise required to deduct and withhold tax under section 1441(a) or 1442(a) receives a statement that meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a U.S. person.

(2) *Required statement.* A U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section.

(i) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) complies with the withholding certificate procedures described in § 1.1441–1(e)(1).

(ii) The U.S. person complies with the documentary evidence procedures described in § 1.6049–5(c)(2)(ii) (but only if payments are made outside the United States with respect to offshore accounts). See § 1.6049–5(e) for determining the place of payment and § 1.6049–5(d)(3) for a definition of offshore accounts.

(iii) [Reserved] For further guidance, see § 35a.9999–5(b), Answer 9, sentences 5 through 13.

(iv) The U.S. person complies with procedures that the U.S. competent authority may agree to with the competent authority of a country with which the United States has an income tax treaty in effect.

(3) *Time for providing certificate or documentary evidence.* Interest on a registered obligation shall qualify as portfolio interest if the withholding certificate or documentary evidence that must be provided is furnished before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect to such interest. See, however, § 1.1441–1(f)(5) for consequences to a withholding agent that makes a payment without withholding even though it cannot associate the payment with the required documentation prior to the payment.

(4) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (c), see § 1.1441–2(d)(2). For rules applicable to withholding certificates, see § 1.1441–1(e)(4). For application of presumptions when the U.S. person cannot associate the payment with the required documentation, see § 1.1441–1(f). For standards of knowledge applicable to withholding agents, see § 1.1441–7(b). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8). For rules relating to reporting on Forms 1042 and 1042–S, see § 1.1461–1(b) and (c).

(d) *Application of repeal of 30 percent withholding to pass-through certificates.* [Reserved] For further guidance, see § 35a.9999–5(e), Answers 21 and 22.

(e) *Foreign-targeted registered obligations.* [Reserved] For further guidance, see § 35a.9999–5(b), Answers 12 through 15.

(f) *Definitions.* For purposes of this section, the terms *foreign person* and *beneficial owner* have the meaning set forth in § 1.1441–1(c)(2) and (c)(6), respectively; the term *withholding agent* has the meaning set forth in § 1.1441–7(a); and the term *payment* has the meaning set forth in § 1.1441–2(e).

(g) *Effective date*—(1) *In general.* This section shall apply to payments of interest made after December 31, 1997.

(2) *Transition rule.* For purposes of paragraph (c)(2)(i) of this section, a withholding agent that holds a valid Form W–8 on a date that is 60 days after these regulations are published as final regulations in the Federal Register may

treat it as a valid withholding certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

Par. 5. Section 1.1441–0 is added to read as follows:

§ 1.1441–0 Outline of regulation provisions for section 1441.

This section lists captions contained in §§ 1.1441–1, 1.1441–2, 1.1441–3, 1.1441–4, 1.1441–5, 1.1441–6, 1.1441–7, 1.1441–8T, and 1.1441–9.

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) Purpose and scope.
(b) General rule of withholding.
(c) Definitions.
(1) Withholding.
(2) Foreign person.
(3) Payee.
(4) Individual.
(5) Foreign corporations.
(6) Beneficial owner.
(7) Chapter 3 of the Internal Revenue Code.
(d) Claim of U.S. status by payee or beneficial owner.
(1) In general.
(2) Payments to a payee that is a U.S. person.
(3) Payments to a foreign person acting for a U.S. payee.
(e) Beneficial owner's claim of foreign status.
(1) Withholding agent's reliance.
(2) Beneficial owner withholding certificate.
(3) Intermediary withholding certificate.
(4) Applicable rules.
(5) Qualified intermediaries.
(f) Presumptions.
(1) In general.
(2) Reportable payments to non-exempt recipients.
(3) Special rules for scholarships, grants, pensions, annuities, etc.
(4) Special rules for pass-through entities.
(5) Failure to act in accordance with presumptions.
(6) Reportable payment.
(7) Adjustment, refund, or credit of overwithheld tax.
(g) Effective date.
(1) In general.
(2) Transition rules.

§ 1.1441–2 Income subject to withholding.

(a) In general.
(b) Fixed or determinable annual or periodical income.
(1) In general.
(2) Exceptions.
(3) Original issue discount.
(4) Securities lending transactions.
(c) Other income subject to withholding.
(d) Items of income not subject to withholding under section 1441.
(1) Exemptions for which no withholding certificate or documentation is required.
(2) Exemptions for portfolio interest and income on bank, etc. deposits requiring a withholding certificate or documentation.
(e) Payment.
(1) General rule.
(2) Income allocated under section 482.
(3) Blocked income.
(4) Special rules for dividends.
(5) Certain interest accrued by a foreign corporation.
(6) Payments other than in U.S. dollars.
(f) Effective date.

§ 1.1441–3 Amounts subject to withholding.

(a) Withholding on gross amount.
(b) Withholding on payments on certain obligations.
(1) Withholding at time of payment of interest.
(2) No withholding between interest payment dates.
(c) Corporate distributions.
(1) General rule.
(2) Determination of accumulated and current earnings and profits on the date of payment.
(3) Special rules in the case of distributions from a regulated investment company.
(4) Overwithholding of tax.
(d) Withholding on certain gains.
(e) Payments other than in U.S. dollars.
(1) In general.
(2) Payments in foreign currency.
(3) Tax liability of beneficial owner satisfied by withholding agent.
(f) Conduit financing arrangements.
(g) Effective date.

§ 1.1441–4 Certain exemptions from withholding.

(a) Certain income connected with a U.S. trade or business.
(1) In general.
(2) Withholding agent's reliance on a claim of effectively connected income.
(3) Income on notional principal contracts.
(4) Failure to act in accordance with presumption.
(b) Compensation for personal services of an individual.
(1) Exemption from withholding.
(2) Manner of obtaining withholding exemption under tax treaty.
(6) Personal exemption.
(c) Special rules for scholarship and fellowship income.
(1) In general.
(2) Alternate withholding election.
(d) Annuities received under qualified plans.
(e) Income of foreign central bank of issue or the Bank for International Settlements.
(f) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–5 Withholding on payments to pass-through entities.

(a) Domestic partnerships.
(1) Exemption from withholding on payment to domestic partnerships.
(2) Withholding by a domestic partnership.
(b) Foreign partnerships.
(1) In general.
(2) Special rules in the case of tiered partnerships.
(3) Presumptions.
(4) Example.
(c) Trusts and estates. [Reserved]
(d) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–6 Claim of a reduced rate of tax under an income tax treaty.

(a) In general.
(b) Reliance on claim of treaty benefits.
(1) In general.
(2) Special rules for certain dividends.
(3) Competent authorities agreement.
(4) Special rules for payments to certain foreign entities.
(c) Proof of tax residence in a treaty country.
(1) In general.
(2) Certification of taxpayer identifying number.
(3) Certificate of residence.
(4) Documentary evidence establishing residence in the treaty country.
(d) Joint owners.
(e) Related party dividends under certain treaties.
(f) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–7 General provisions relating to withholding agents.

(a) Withholding agent defined.
(b) Standards of knowledge.
(1) In general.
(2) Reason to know.
(3) Universal accounts.
(c) Authorized agent.
(1) In general.
(2) Authorized foreign agent.
(3) Notification.
(4) Liability of U.S. withholding agent.
(5) Filing of returns.
(d) United States obligations.
(e) Assumed obligations.
(f) Conduit financing arrangements. [Reserved]
(g) Effective date.

§ 1.1441–8T Foreign government and international organization exemption from withholding (temporary).

(a) Foreign governments.
(b) Statement claiming exemption.
(c) Effective date.
(1) In general.
(2) Transition rules.

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization and foreign private foundations.

(a) Income not subject to tax under section 511.
(b) Statement claiming exemption.
(c) Effective date.
(1) In general.
(2) Transition rules.

Par. 6. Section 1.1441–1 is revised to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) *Purpose and scope.* This section and §§ 1.1441–2 through 1.1441–9 provide rules for withholding under section 1441 when a payment is made to a foreign person. This section provides definitions of terms used in

chapter 3 of the Internal Revenue Code and regulations under that chapter. It prescribes procedures to determine whether a tax must be withheld under chapter 3 of the Internal Revenue Code, including presumptions for determining whether a withholding agent should treat a payee as a United States (U.S.) person or a foreign person. Special procedures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441–2 describes the income subject to withholding under section 1441. Section 1.1441–3 provides rules regarding the amount subject to withholding. Section 1.1441–4 provides exemptions from withholding for certain income effectively connected with the conduct of a trade or business in the United States, including certain compensation for the personal services of an individual. Section 1.1441–5 provides rules regarding withholding on payments made to pass-through entities. Section 1.1441–6 provides rules regarding claiming a reduced rate of withholding under an income tax treaty. Section 1.1441–7 defines the term withholding agent and provides rules regarding withholding agents' obligations to withhold. Section 1.1441–8T provides rules for income received by a foreign government that is excluded from gross income under section 892. Section 1.1441–9 provides rules for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rule of withholding.* A withholding agent (as defined in § 1.1441–7(a)) must withhold 30 percent of the gross amount of a payment (as defined in § 1.1441–2(e)) of income subject to withholding made to a payee that is a foreign person unless the beneficial owner of the income is a foreign person entitled to a reduced rate of tax and for the withholding agent holds an appropriate withholding certificate or documentation or unless the beneficial owner of the income is a U.S. person. For this purpose, a payment to the U.S. agent of a foreign person is treated as a payment to a foreign person if the withholding agent has actual knowledge or reason to know of the agency relationship. For the documentation upon which a withholding agent may rely in order to treat a payee or beneficial owner as a U.S. person, see paragraph (d) of this section. For the documentation upon which a withholding agent may rely in order to treat a payee or a beneficial owner as a foreign person, see paragraph (e) of this section. For applicable presumptions if the withholding agent cannot associate the payment with the required documentation at the time of payment, see paragraph (f) of this section. For definitions of foreign person, payee, and beneficial owner, see paragraphs (c)(2), (3), and (6) of this section, respectively. For the determination of income subject to withholding, see § 1.1441–2(a). For a definition of an offshore account, see § 1.6049–5(d)(3). For withholding procedures applicable to payments to U.S. and foreign partnerships, respectively, see § 1.1441–5(a) and (b). For withholding procedures applicable to payments to U.S. and foreign trusts and estates, see § 1.1441–5(c).

(c) *Definitions*—(1) *Withholding.* The term *withholding* means the deduction and withholding of tax at the applicable rate from the payment of income.

(2) *Foreign person.* The term *foreign person* means a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a United States person for purposes of chapter 3 of the Internal Revenue Code. A United States person is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), or a State and the District of Columbia (including an agency or instrumentality thereof).

(3) *Payee*—(i) *General rule.* Except as otherwise provided in paragraph (c)(3)(ii) of this section, a payee is the person to whom a payment is made. See § 1.1441–2(e) for the determination of when a payment is considered made. Treatment of a person as a payee has consequences for purposes of withholding under chapter 3 of the Internal Revenue Code (see paragraph (b) of this section (relating to the general rule of withholding)) as well as for purposes of reporting income under the provisions of chapter 61 of the Internal Revenue Code and backup withholding under section 3406. See paragraph (d)(3) of this section for when a withholding agent may treat a payment to a foreign person as a payment made to a payee that is a U.S. person if the foreign person is acting for or representing the U.S. person.

(ii) *Payments to a foreign partnership.* For purposes of chapter 3 of the Internal Revenue Code, section 3406, and chapter 61 of the Internal Revenue Code, a payment made to a foreign partnership shall be treated as a payment made to the partners rather than to the partnership. A withholding agent may, however, treat a payment to a foreign partnership as made to the partnership (rather than to its partners) if, with respect to the partnership, it holds an intermediary withholding certificate described in paragraph (e)(3)(ii) of this section (relating to a certificate from a qualified intermediary) or an intermediary withholding certificate described in paragraph (e)(3)(iii) of this section (relating to a certificate from a foreign partnership) representing that the income to which the certificate relates is effectively connected with the conduct of a trade or business in the United States. In addition, if the withholding agent holds an intermediary withholding certificate described in paragraph (e)(3)(iv) of this section (relating to a certificate from an agent, nominee, representative, etc.), then the payee shall be the person on whose behalf the partnership is receiving the payment. In the case of tiered foreign partnerships that are not treated as payees under the provisions of this paragraph (c)(3)(ii), the payees shall be the partners of the next higher-tier foreign partnership. Thus, the rules of this paragraph (c)(3) shall apply through any number of tiers of foreign partnerships in order to determine which partner is treated as the payee. For example, if a payment is made to a foreign partnership (second tier) and one of the partners of the second tier partnership is another foreign partnership (first tier) with two individual partners, the payment to the second tier is treated as made to the individual partners of the first tier (unless the second tier partnership has furnished one of the intermediary withholding certificates referred to in this paragraph (c)(3)(ii)). If one of the partners in the first tier is a domestic partnership, the domestic partnership is treated as the payee under the provisions of paragraph (c)(3)(i) of this section, even though one of the partners of the domestic partnership might be a foreign partnership. If the first tier foreign partnership is a nominee and furnishes an intermediary withholding certificate described in paragraph (e)(3)(iv) of this section, the person on whose behalf the first tier partnership receives the payment is treated as the payee. See § 1.1441–5(b) for rules regarding procedures applicable to beneficial owners' claims of reduced rate of withholding under chapter 3 of the Internal Revenue Code.

(4) *Individual*—(i) *Alien individual.* The term *alien individual* means an individual who is not a citizen or a national of the United States. See § 1.1–1(c).

(ii) *Nonresident alien individual.* The term *nonresident alien individual* means a person described in section 7701(b)(1)(B), an alien individual who is

a resident of a foreign country under the residence article of an income tax treaty and § 301.7701(b)–7(a)(1) of this chapter, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under § 301.7701(b)–1(d) of this chapter. An alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Internal Revenue Code.

(5) *Foreign corporations.* For purposes of this section, a corporation created or organized in Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, is not treated as a foreign corporation if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for such corporation. Further, a payment made to a foreign government or an international organization shall be treated as a payment made to a foreign corporation for purposes of withholding under chapter 3 of the Internal Revenue Code.

(6) *Beneficial owner*—(i) *General rule.* In the case of a payment of income, the term *beneficial owner* means the person required under U.S. tax principles to include the amount paid in gross income under section 61 (determined without regard to an exclusion or exemption from gross income under the Internal Revenue Code). Thus, a nominee, agent, custodian, or any person acting in a similar capacity is not the beneficial owner. In the case of a scholarship, the student receiving the scholarship is the beneficial owner of that scholarship.

(ii) *Special rules for certain entities*—(A) *General rule.* The beneficial owners of income paid to a partnership are those persons that, under U.S. tax principles, are the taxpayers with respect to that income in their separate or individual capacities. For example, a partnership (first tier) that is a partner in another partnership (second tier) is not the beneficial owner of income paid to the second tier partnership since the first tier partnership is not liable for income tax under U.S. tax principles. See, however, § 1.1441–5(a) for applicable withholding procedures for payments to a domestic partnership. See also § 1.1441–5(b)(2) for applicable withholding procedures for payments to a foreign partnership where one of the partners (at any level in the chain of tiers) is a domestic partnership.

(B) *Special rules when an income tax treaty applies.* For purposes of claiming a reduction in the rate of withholding on income paid to a foreign entity based on an income tax treaty between the United States and a foreign country, the tax principles in effect under the laws of that foreign country shall apply to determine whether the entity or the persons holding an interest in that entity are required to include the amounts in income and, therefore, whether, under the principles of this paragraph (c)(6), the entity or the interest holders in the entity are the beneficial owners of the income. See § 1.1441–6(b)(4)(iii) permitting a withholding agent to treat, at its option, payments made to a single *foreign entity* as beneficially owned in part by the entity and, in part, by any one or more persons holding an interest in the entity. The possibility of dual treatment may also occur if a reduced rate of tax is claimed under the Internal Revenue Code for certain types of income and under a U.S. income tax treaty for other types of income or if reduced rates are claimed under different tax treaties. For purposes of this paragraph (c)(6)(ii)(B), the term foreign entity does not include a trust or an estate. See § 1.1441–6(b)(4) for procedures governing claims of benefits under an income tax treaty.

(C) *Trusts.* The provisions of paragraphs (c)(6)(i) and (c)(6)(ii)(A) of this section shall not apply to a trust, whether domestic or foreign. The beneficial owner of income paid to a trust shall be determined under the provisions of § 1.1441–3(f) and (g), as in effect on the date preceding the date on which this document is published as a final regulation in the Federal Register.

(7) *Chapter 3 of the Internal Revenue Code.* For purposes of the regulations under sections 1441, 1442, and 1443, any reference to chapter 3 of the Internal Revenue Code shall not include references to sections 1445 and 1446, unless the context indicates otherwise.

(d) *Claim of U.S. status by payee or beneficial owner*—(1) *In general.* Payments made to a U.S. person are not subject to the withholding of tax under section 1441, absent actual knowledge or reason to know that the U.S. person may be acting as an agent for a foreign person. See paragraph (b) of this section. Absent actual knowledge or reason to know otherwise, a withholding agent may apply the provisions of this paragraph (d) to a payment of income otherwise subject to withholding to determine whether to treat the payment as made to a U.S. person. See paragraph (f) of this section for applicable presumptions if the withholding agent cannot associate the payment with the required documentation prior to the time of payment.

(2) *Payments to a payee that is a U.S. person*—(i) *Reportable payments.* If a reportable payment (as defined in section 3406(b)) is made to a payee that is not an exempt recipient (as defined under the applicable information reporting provisions of chapter 61 of the Internal Revenue Code), the withholding agent may treat the payment as made to a U.S. person if the payee complies with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter (including requiring a payee to furnish its taxpayer identifying number) and the withholding agent meets all the requirements described in § 31.3406(h)–3(e) of this chapter regarding reliance by a payor on a Form W–9).

(ii) *Payments to exempt recipients and certain other payments.* If a reportable payment is made to a payee that is an exempt recipient (as defined under the applicable information reporting provisions of chapter 61 of the Internal Revenue Code) or is a scholarship, grant, pension, or annuity, a withholding agent may treat the payment as made to a U.S. person if the payee provides a certificate of U.S. status. For purposes of this paragraph (d)(2)(ii), a certificate of U.S. status is a Form W–9 (or such other form as the Internal Revenue Service may prescribe) that is signed under penalties of perjury by the payee and contains all required information. For purposes of this paragraph (d)(2)(ii), required information consists of the payee's name, permanent residence address, and taxpayer identifying number. The procedures described in § 31.3406(h)–3(a) of this chapter shall apply to payments to joint payees. A withholding agent that receives a Form W–9 in order to satisfy this paragraph (d)(2)(ii) must retain the form in accordance with the provisions of paragraph (e)(4)(iii) of this section relating to the retention of withholding certificates. The rules of this paragraph (d)(2)(ii) are only intended to provide a method by which a withholding agent may determine that a payee is not a foreign person and do not otherwise impose a requirement that documentation be furnished by an exempt recipient or for payments subject to this paragraph (d)(2)(ii).

(3) *Payments to a foreign person acting for a U.S. payee.* Absent actual knowledge or reason to know otherwise, for purposes of chapter 3 of the Internal Revenue Code, section 3406, and chapter 61 of the Internal Revenue Code, a withholding agent may treat a payment to a foreign person as a payment made to a payee that is a U.S. person if it receives an intermediary withholding certificate described in

paragraph (e)(3)(iv) of this section regarding the foreign person to which is attached the applicable certification described in paragraph (d)(2) of this section concerning the U.S. payee on whose behalf the foreign person is receiving the payment. See paragraph (e)(5) of this section for applicable procedures in the case of a payment to a foreign person acting as a qualified intermediary. See also, § 1.1441–5(b)(1) for applicable procedures in the case of a payment to a foreign partnership that is not a qualified intermediary.

(e) *Beneficial owner's claim of foreign status*—(1) *Withholding agent's reliance.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that the beneficial owner of income is a foreign person, if, prior to the payment, it complies with the requirements described in paragraphs (e)(1)(i), (ii), and (iii) of this section. For this purpose, a withholding agent acting through an authorized foreign agent is deemed to comply with such requirements to the extent its authorized foreign agent so complies. See § 1.1441–7(c)(2) for the description of an authorized foreign agent. In the case of a payment to a person other than an individual, a withholding agent may rely on the claim of entity classification made on the basis of the certification (or documentation, if applicable) furnished to the withholding agent, unless it has actual knowledge or reason to know that the classification claimed is incorrect.

(i) The withholding agent holds a beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or an intermediary withholding certificate described in paragraph (e)(3)(i) of this section.

(ii) The withholding agent complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required.

(iii) The withholding agent has not been notified by the Internal Revenue Service that any of the information on the withholding certificate is incorrect or unreliable.

(2) *Beneficial owner withholding certificate*—(i) *In general.* A beneficial owner withholding certificate is a statement by which the beneficial owner of the income paid represents that it is a foreign person and, if applicable, claims a reduced rate of withholding under section 1441. A separate withholding certificate must be submitted to each withholding agent. If the beneficial owner receives more than one type of income from a single payor, the beneficial owner may submit one withholding certificate to the single payor for the different types of income. See paragraph (c)(6)(ii)(B) of this section and § 1.1441–6(b)(4)(i) for the determination of beneficial owner when a benefit is claimed under an income tax treaty. A beneficial owner of an interest in a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds (within the same family of funds) may, in the discretion of the mutual fund, provide one withholding certificate for shares acquired or owned in any of the funds. See § 31.3406(h)–3(a)(2) of this chapter.

(ii) *Requirements for validity of certificate.* A beneficial owner withholding certificate is valid only if it is provided on a Form W–8 (or, in the case of personal services income described in § 1.1441–4(b), a Form 8233), its validity period has not expired, it is signed under penalties of perjury by the beneficial owner and it contains all of the information described in this paragraph (e)(2)(ii). The required information is the name, permanent residence address, and taxpayer identifying number (TIN) of the beneficial owner (if required), the basis for the reduced rate of withholding claimed, if applicable, (including any applicable tax treaty provisions), and any other information as may be required (in addition to, or in lieu of, the information described in this paragraph (e)(2)(ii)) by the regulations under section 1441 or by a form or accompanying instructions. A permanent residence address is the address in the country where the person claims to be a resident for purposes of that country's income tax. The address of a financial institution with which the beneficial owner maintains an account, a post office box, or an address used solely for mailing purposes is not a residence address for this purpose. If the beneficial owner is an individual who does not to have a tax residence in any country, the address is where the beneficial owner normally resides. If the beneficial owner is a corporation, then the address is where the corporation maintains its principal office in its country of incorporation. Instead of the Form W–8 (or the Form 8233, if applicable), the withholding agent may rely on an acceptable substitute form or such other form as the Internal Revenue Service may prescribe. See paragraph (g)(2) of this section for continued validity of certificates during the transition period. See paragraph (e)(4)(vii) of this section for circumstances in which a taxpayer identifying number is required on a beneficial owner withholding certificate.

(3) *Intermediary withholding certificate*—(i) *In general.* An intermediary withholding certificate is a statement by which a foreign payee represents that it is not the beneficial owner of the income paid or is a statement furnished by a partnership for its partners. It is used either to make representations regarding the status of beneficial owners of the income or to transmit appropriate documentation to the withholding agent. This paragraph (e)(3) describes the requirements for the validity of an intermediary withholding certificate issued either by a qualified intermediary, by a foreign partnership that is not a qualified intermediary, or by any other person that is neither a qualified intermediary nor a foreign partnership.

(ii) *Intermediary withholding certificate from a qualified intermediary.* In the case of an intermediary withholding certificate issued by a qualified intermediary (described in paragraph (e)(5)(ii) of this section), the certificate is valid only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the Internal Revenue Service may prescribe), it is signed under penalties of perjury by an officer or partner of the qualified intermediary with authority to sign for the intermediary, and it contains the information and certifications described in this paragraph (e)(3)(ii).

(A) The name, permanent residence address (as described in paragraph (e)(2)(ii) of this section), and the employer identification number of the qualified intermediary.

(B) A certification that the issuer is a qualified intermediary.

(C) A certification that the issuer has obtained, as required in the withholding agreement with the Internal Revenue Service, the appropriate certificates (such as Forms W–8 or W–9) or any other documentation regarding its account holders or partners.

(D) A statement whether the qualified intermediary is assuming primary withholding responsibility for the amounts to which the certificate relates.

(E) If the information is not assuming primary withholding responsibility, the information and certificates required under paragraph (e)(5)(iv)(B) of this section regarding the basis for any reduced rate of withholding tax claimed.

(F) Any other information or certification as may be required (in addition to, or in lieu of, the information and certifications described in this paragraph (e)(3)(ii)) by the form or accompanying instructions.

(iii) *Intermediary withholding certificate from a foreign partnership.* In the case of an intermediary withholding

certificate issued under the provisions of § 1.1441–5(b) by a foreign partnership that is not a qualified intermediary, the certificate is valid only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the Internal Revenue Service may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, and it contains the information and certifications described in this paragraph (e)(3)(iii).

(A) The name, permanent residence address (as described in paragraph (e)(2)(ii) of this section), and the employer identification number of the partnership.

(B) The basis for the reduced rate of withholding claimed, expressed in relation to the distributive share of each partner to which the certificate relates.

(C) The appropriate withholding certificates for the partners as required under § 1.1441–5(b)(1) (except for an intermediary withholding certificate furnished in order to claim a reduced rate for income effectively connected with the conduct of a trade or business in the United States).

(D) A statement that the income is effectively connected with the conduct of a trade or business in the United States, if applicable.

(E) Any other information or certification as may be required (in addition to, or in lieu of, the information described in this paragraph (e)(3)(iii)) by the form or accompanying instructions.

(iv) *Intermediary withholding certificate from an agent, nominee, representative, etc.* In the case of an intermediary withholding certificate issued by a person that is not a qualified intermediary and is not acting for its own account, the certificate is valid if it is described in this paragraph (e)(3)(iv). In addition, a certificate furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c) or to qualify dividends on publicly traded stock (as defined in § 1.1441–6(b)(2)) is valid if it is described in § 1.871–14(c)(2)(iii). A certificate is described in this paragraph (e)(3)(iv) if it is furnished on a Form W–8 (or an acceptable substitute form, or such other form as the Internal Revenue Service may prescribe), it is signed under penalties of perjury by a person authorized to sign for the issuer of the certificate, and it contains the information and certifications described in this paragraph (e)(3)(iv).

(A) The name, permanent resident address (as described in paragraph (e)(2)(ii) of this section) and the taxpayer identifying number of the issuer of the certificate.

(B) A certification that the issuer is not acting for its own account and is using the certificate as a form to transmit beneficial owner documentation for the payment to which the certificate relates (or other applicable documentation concerning the person for whom the intermediary is receiving the payment.

(C) If furnishing an intermediary certificate to transmit more than one withholding certificate, the certificate may indicate the basis for the reduced rate of withholding claimed, based upon the attached withholding certificates.

(D) Any other information or certification as may be required (in addition to, or in lieu of the information and certification described in this paragraph (e)(3)(iv)) by the form or accompanying instructions.

(4) *Applicable rules*—(i) *Joint owners.* In the case of a payment to joint owners, a withholding certificate must be provided by each owner claiming to be a foreign person.

(ii) *Period of validity*—(A) *Three year period.* Except as otherwise provided in paragraph (e)(4)(ii)(B) of this section, a beneficial owner withholding certificate or an intermediary withholding certificate shall remain valid for three years or until such time as a change in circumstances makes any information on the certificate incorrect.

(B) *Validity period where TIN provided.* A withholding certificate furnished with a taxpayer identifying number shall remain valid until such time as a change in circumstances makes any information on the certificate incorrect but only if the income for which such certificate is furnished is required to be reported under § 1.1461–1(c)(2)(ii) or the taxpayer identifying number furnished on the certificate is reported to the Internal Revenue Service under the procedures described in § 1.1461–1(d).

(C) *Withholding certificate for effectively connected income.* Notwithstanding paragraph (e)(4)(ii)(B) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of tax for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to three years.

(D) *Computation of three-year period.* The three-year validity period shall start from the date that the certificate is signed until the last day of the third succeeding calendar year. For example, a certificate signed on September 30, 1998 remains valid through December 31, 2001.

(E) *Change in circumstances.* If a change in circumstances makes any information on the certificate incorrect, then the issuer of the certificate must inform the withholding agent within 30 days of the change and issue a new certificate. If a beneficial owner withholding certificate is used to claim foreign status only (and not, also, residence in a particular foreign country for purposes of an income tax treaty), a change of address is a change in circumstances for purposes of this paragraph (e)(4)(ii)(E) only if it changes to an address in the United States. Further, a change of address within a foreign country is not a change in circumstances for purposes of this paragraph (e)(4)(ii)(E). A withholding agent may require a new certificate at any time prior to a payment, even though the withholding agent has no actual knowledge or reason to know that any information stated on the certificate has changed.

(iii) *Retention of withholding certificate.* A withholding agent must retain each withholding certificate for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and § 1.1461–1.

(iv) *Electronic transmission of information.* Under procedures issued by the Internal Revenue Service, a withholding agent may be permitted to receive in electronic form the information required to be included on a withholding certificate or a certificate of U.S. status.

(v) *Electronic confirmation of information on withholding certificate.* Under procedures issued by the Internal Revenue Service, a withholding agent may be required to use an electronic on-line system to confirm with the Internal Revenue Service information concerning any taxpayer identifying number stated on a withholding certificate or a certificate of U.S. status.

(vi) *Acceptable substitute form.* For purposes of the regulations under section 1441, 1442, and 1443, the term *acceptable substitute* in the case of a Form W–8 or Form 8233 described in paragraph (e)(2) or (e)(3) of this section is a document prepared and furnished based on the rules set forth in § 31.3406(h)-3(c)(1) of this chapter (relating to substitutes for a Form W–9).

(vii) *Requirement of taxpayer identifying number.* A taxpayer identifying number must be stated on a withholding certificate when required by this paragraph (e)(4)(vii). A taxpayer identifying number is required to be stated on a beneficial owner certificate if the beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than with respect to dividends on stock traded on

a U.S. established financial market), an exemption from withholding because income is effectively connected with a U.S. trade or business, an exemption under section 871(f) for certain annuities received under qualified plans, or an exemption based on a foreign organization's tax exempt status under section 501(c) or private foundation status. In addition, a taxpayer identifying number is required to be stated on all intermediary withholding certificates. A taxpayer identifying number is an IRS individual tax identification number, an employer identification number, or a social security number as described in section 6109 and § 301.6109–1 of this chapter, or any other identifier the Commissioner may designate.

(5) *Qualified intermediaries*—(i) *General rule.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish an intermediary withholding certificate to a withholding agent for purposes of certifying on behalf of beneficial owners, intermediaries (such as agents or nominees acting for the accounts of others), other qualified intermediaries or U.S. payees for the purpose of claiming reduced rates of withholding tax under section 1441, 1442, or 1443. Such certificate is in lieu of transmitting withholding certificates or other required documentation to a withholding agent. While the qualified intermediary is generally required to obtain withholding certificates or other appropriate documentary evidence from beneficial owners or payees pursuant to its agreement with the Internal Revenue Service, it is not required to attach such documentation to the intermediary withholding certificate.

(ii) *Definition of qualified intermediary.* The term *qualified intermediary* means a foreign person that is a party to a withholding agreement with the Internal Revenue Service and that is—

(A) A financial institution (as defined in § 1.165–12(c)(1)(iv)) or a clearing organization (as defined in § 1.163–5(c)(2)(i)(D)(*8*));

(B) A partnership; or

(C) Any other person acceptable to the Internal Revenue Service.

(iii) *Withholding agreement*—(A) *In general.* The Internal Revenue Service may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the Internal Revenue Service may prescribe. The withholding agreement shall include the terms, conditions and procedures that the Internal Revenue Service shall deem appropriate to insure the collection of the tax due and reporting of information under sections 1441, 1461, 3406 and chapter 61 of the Internal Revenue Code.

(B) *Terms of the withholding agreement.* Generally, the agreement must include provisions dealing with defining, obtaining, and maintaining appropriate certification and documentation upon which the foreign person may rely to ascertain the nationality and residence of beneficial owners and U.S. payees, reporting account information to the Internal Revenue Service or otherwise making the account information available to the Internal Revenue Service, and, if applicable, acting as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter (as proposed in project number INTL–0024–94, published on June 8, 1995 (60 FR 30211)). In addition the agreement must specify the manner in which the Internal Revenue Service will verify compliance with the agreement. In appropriate cases, the Internal Revenue Service may agree to rely on audits performed by an intermediary's approved external auditor's records (including workpapers of the auditor and reports prepared by the auditor indicating the methodology employed to verify the entity's compliance with the agreement). For this purpose, the agreement shall specify which auditor or class of auditors is approved. An external auditor may not be approved unless it is subject to regulatory supervision under the laws of the country in which a significant part of the intermediary activities under the agreement are expected to occur, its internal procedures require it to verify that the intermediary complies with the terms of the withholding agreement and to report non-compliance findings under the agreement in the same manner as it is required to report other findings of non-compliance with applicable local laws and regulatory requirements, and the auditor's relevant records (i.e., workpapers and reports) are available to the Internal Revenue Service. The agreement must include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the agreement result in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the agreement shall provide that a qualified intermediary that withholds any amount of tax must make deposits of the tax as required under § 1.1461–1(a). The Internal Revenue Service may require the posting of a bond conforming to the requirements of § 301.7101–1 of this chapter as to form of bond or surety required. The agreement shall specify the scope of the agreement in the case of a foreign person with branches or relevant intermediary activities in more than one country. To determine the terms of any particular withholding agreement, the Internal Revenue Service will consider appropriate factors including whether or not the foreign person agrees to assume primary responsibility as a withholding agent, the type of local ''know-your-customer'' laws and practices to which it is subject, the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign person, the volume of investments in U.S. securities (determined in dollar amounts and number of account holders), and financial condition of the foreign person.

(iv) *Assignment of primary withholding responsibility*—(A) *In general.* A partnership that is a qualified intermediary acting for its own account must assume primary withholding responsibility. Any other qualified intermediary may assume primary withholding responsibility only if it is permitted to do so under its agreement with the Internal Revenue Service. A withholding agent and a qualified intermediary may arrange on who of the withholding agent or the qualified intermediary shall have primary responsibility for any amount required to be withheld under this section and section 3406 for any one or more classes of beneficial owners or payees and for any or more types of income expected to be paid to the intermediary. In a relationship between a withholding agent and a qualified intermediary, the qualified intermediary may agree to assume primary withholding responsibility for some types of income and not others. However, unless otherwise specified in the agreement, primary withholding responsibility for a type of income must be assumed for all beneficial owners and payees of that income or for none of them.

(B) *Applicable procedures when a qualified intermediary does not assume primary withholding responsibility.* When a qualified intermediary does not assume primary withholding responsibility, the intermediary withholding certificate must contain the information described in this paragraph (e)(5)(iv)(B) or in any agreement between the qualified intermediary and the Service. The certificate must separately identify the assets that are associated with each U.S. payee to

which the certificate relates and that generate the type of income described in § 1.1441–2(a) (i.e., income that would be subject to withholding if paid to a foreign person). The qualified intermediary must furnish a Form W–9 for each U.S. payee that is not an exempt recipient and the name and address of each U.S. payee that is an exempt recipient. The intermediary withholding certificate must also separately identify the assets associated with non-U.S. payees to which the certificate relates and the applicable withholding tax rate or rates. If different withholding tax rates apply, the intermediary withholding certificate must indicate the applicable rate for each class of non-U.S. payees to which different withholding rates apply and the assets associated with each class. For payments that the intermediary withholding certificate states are made to U.S. payees, a withholding agent dealing with a qualified intermediary that has not assumed primary withholding responsibility must comply with applicable reporting requirements under chapter 61 of the Internal Revenue Code in the same manner as if it had received a Form W–9 (or acceptable substitute form) directly from the U.S. payee. The withholding agent must also comply with the return requirements under section 1461 and § 1.1461–1 (b)(2)(ii) and (c)(4)(ii) for payments made to non-U.S. payees.

(C) *Applicable procedures when qualified intermediary assumes primary withholding responsibility.* A withholding agent relying on an intermediary withholding certificate from a qualified intermediary representing that the qualified intermediary assumes primary withholding responsibility as permitted under its agreement with the Internal Revenue Service is relieved from the obligation to withhold on payments made to the intermediary. The withholding agent must comply with the return requirements under section 1461 and § 1.1461–1 (b)(2)(ii) and (c)(4)(ii) for payments made to the qualified intermediary.

(v) *Special rules for qualified intermediaries that are foreign partnerships.* A foreign partnership that is a qualified intermediary shall be a withholding agent with respect to its partner's distributive share of income subject to withholding that is paid to the partnership. Therefore, it shall withhold under the same procedures and at the same time as is prescribed for withholding by a domestic partnership. See § 1.1441–5(a)(2) for withholding procedures applicable to domestic partnerships. In addition, the partnership shall not be relieved from its obligation to make a return on Form 1065 as required under section 6031 and the regulations under that section and to furnish the statements required under section 6031(b) and the regulations under that section.

(f) *Presumptions*—(1) *In general*—(i) *Reliance.* Absent actual knowledge or reason to know otherwise, a withholding agent or a payor described in § 31.3406(a)–2 of this chapter may rely on the presumptions of this paragraph (f) to determine whether to treat a beneficial owner or a payee as a U.S. or a foreign person when, before making a payment of income subject to withholding, or a payment subject to reporting under chapter 61 of the Internal Revenue Code, the withholding agent or payor cannot associate the payment with the required documentation. When applying the provisions of this section, any presumption of foreign status pursuant to this paragraph (f) shall have effect only for purposes of applying the provisions of paragraph (b) of this section (regarding the rules of withholding) and may not be relied upon for purposes of granting a reduced rate of withholding under the Internal Revenue Code (e.g. section 1441(c)(9) or (c)(10)) or under an income tax treaty.

(ii) *Required documentation.* For purposes of this paragraph (f), the term *required documentation* means the applicable documentation that is required to be furnished in connection with the payment under this section, under § 1.871–14(c)(2), or under chapter 61 of the Internal Revenue Code. A withholding agent or payor is not able to associate a payment with required documentation if, for that payment, it lacks documentation, the documentation it holds lacks information, or the withholding agent or payor knows or has reason to know that information associated with the required documentation is incorrect or unreliable. For purposes of this paragraph (f)(1), a withholding agent or payor has reason to know that information is incorrect or unreliable if the withholding agent or payor would have reason to know under the rules of § 1.1441–7(b)(2) or cannot reasonably rely on a Form W–9 (or an acceptable substitute) under § 31.3406(h)–3(e) of this chapter. For purposes of this paragraph (f)(1), a Form W–9 (or an acceptable substitute) must contain the information described in § 31.3406(h)–3(e)(2)(i) through (iv) of this chapter in order for a payor to reasonably rely on the Form W–9. In the case of other documentation, the required information shall include only the name, permanent residence address, taxpayer identifying number (when required), and signature under penalties of perjury (when required).

(2) *Reportable payments to non-exempt recipients*—(i) *In general.* Except as otherwise provided in paragraphs (f)(2)(ii) and (f)(4) of this section, a reportable payment (as defined in paragraph (f)(6) of this section) made to a payee who is an individual or other non-exempt recipient is presumed made to a U.S. payee for purposes of chapter 61 of the Internal Revenue Code, section 3406, and this section if, before payment, the withholding agent or payor cannot associate the payment with the required documentation (as determined under paragraph (f)(1)(i) of this section). In such a case, the withholding agent or payor must treat the payment as a payment that may be subject to reporting under chapter 61 of the Internal Revenue Code and the regulations under that chapter and to backup withholding under section 3406 and the regulations under that section.

(ii) *Special grace period for certain reportable payments in the case of indicia of a foreign payee*—(A) *General rule.* This paragraph (f)(2)(ii)(A) applies to payments of dividends, interest, original issue discount, broker proceeds described in § 1.6045–1(d)(5), and exchanges of personal property or services through barter exchanges described in § 1.6045–1(e)(2). A withholding agent or payor may treat the payee as a beneficial owner that is a foreign person for the grace period described in this paragraph (f)(2)(ii)(A) if, at the time a payment is first credited to an account, the withholding agent or payor has the name and an address in a foreign country for the account holder or a facsimile copy or an electronic transmission of the information contained in a withholding certificate described in paragraph (e)(2) or (e)(3) of this section. The grace period is 90 days from the date that the withholding agent or payor first credits the account or, if shorter, until the end of the calendar year. If this paragraph (f)(2)(ii)(A) applies, the withholding agent may then treat the payee as a beneficial owner that is a foreign person and is, therefore, required to withhold under section 1441 on the basis of this presumption from the time that the amounts are credited to the account.

(B) *Additional withholding in the event of payments or withdrawals.* If, at any time before provision or correction of the required documentation within the grace period specified in paragraph (f)(2)(ii)(A) of this section, the withholding agent loses control over

any part or all of the amounts in an account described in paragraph (f)(2)(ii)(A) of this section (such as by making an actual payment from the account or allowing withdrawal of any part or all of the amounts in the account, other than for purposes of withholding an amount of tax), then the withholding agent or payor must treat the payee as a U.S. person for all amounts credited to the account during the grace period. Accordingly, the payor must withhold to the extent required under section 3406 on all reportable payments made to the account during the period to which the grace period applies and thereafter. The amount of backup withholding is equal to 31 percent of the reportable payments reduced by any amount previously withheld from the amounts credited to the account.

(C) *Application of withholding upon expiration of grace period.* If, upon the termination of the grace period described under paragraph (f)(2)(ii)(A) of this section, the required documentation has not been furnished or corrected, the payee is then presumed to be a U.S. person for purposes of section 3406 and chapter 61 of the Internal Revenue Code. Accordingly, the payor must withhold to the extent required under section 3406 on all reportable payments credited to the account during the grace period and thereafter (until appropriate documentation has been furnished or corrected). Any amount withheld from the payments subject to the grace period may be credited toward any amount of backup withholding due under section 3406. If the required documentation is furnished or corrected on or before the expiration of the grace period described in paragraph (f)(2)(ii)(A) of this section and establishes that the beneficial owner is a foreign person, then any amount withheld on any payment made during the grace period will be treated as having been withheld under section 1441. To the extent such amount exceeds the amount of tax ultimately determined to be owed under section 1441, the excess shall be treated as an amount of overwithholding subject to adjustment under § 1.1461–2(a), or refund or credit under § 1.1464–1. If, on the other hand, U.S. status is established by required documentation on or before expiration of the grace period, then any amount withheld from the payments made during the grace period may be credited towards any amount of backup withholding due under section 3406. To the extent such tax exceeds the amount required to be withheld under section 3406, the excess shall be treated as erroneously withheld from the payee and shall be subject to adjustments as provided in § 31.6413(a)–3 of this chapter.

(iii) *Joint owners or payees.* A withholding agent or payor may presume that a payment made to joint owners or payees for whom it cannot associate the required documentation for all payees is made to U.S. individuals. For purposes of applying this paragraph (f)(2)(iii), the grace period rules in paragraph (f)(2)(ii)(A) of this section shall apply only if each payee qualifies for it. In that case, the rules of paragraph (f)(2)(ii)(B) of this section would apply when any one of the joint account holders receives a payment, makes a withdrawal, or reinvests any portion of the funds in the account that are subject to the grace period.

(iv) *Special rules for exempt recipients.* If the payee is an exempt recipient described in § 1.6049–4(c)(1)(ii) and the withholding agent or payor has actual knowledge of the payee's employer identification number, then the withholding agent or payor may presume that the payee is a foreign person if the employer identification number begins with the two digits ''98.'' The withholding agent or payor may also presume that the payee is foreign if the withholding agent's or payor's communications with the payee are mailed to an address in a foreign country, or if the payment is made outside the United States (as defined in § 1.6049–5(e)). In other cases, the withholding agent or payor may presume that the exempt recipient is a U.S. person and, therefore, subject to section 3406 and chapter 61 of the Internal Revenue Code and the regulations under those provisions. If a withholding agent or payor treats a payee as a foreign person pursuant to the presumption of this paragraph (f)(2)(iv), it must treat the payee as the beneficial owner and apply the provisions of section 1441, § 1.871–14, and chapter 61 of the Internal Revenue Code accordingly. If the withholding agent treats the payee as a foreign person, it is subject to the return requirements of § 1.1461–1(b) and (c). The presumption of this paragraph (f)(2)(iv) may be rebutted by providing the required documentation to the withholding agent or payor.

(3) *Special rules for scholarships, grants, pensions, annuities, etc.*—(i) *Scholarships and grants.* A payment representing scholarship or fellowship grant income (as defined in section 117) is presumed made to a U.S. person if the withholding agent or payor has a record of the payee's U.S. visa status in its records. In that case, the withholding agent or payor has reason to know that such individual is a foreign person and, therefore, the presumption of this paragraph (f)(3)(i) shall not apply.

(ii) *Pensions, annuities, etc.* A withholding agent or payor may presume that a payment from a trust described in section 401(a), an annuity plan described in section 401(a), an annuity plan described in section 403(a), or a payment with respect to any annuity, custodial account, or retirement income account described in section 403(b) is made to a U.S. or foreign person under the rules of this paragraph (f)(3)(ii).

(A) Such payment is presumed made to a U.S. person, if the withholding agent or payor has a Social Security number for the payee and a mailing address as described in this paragraph (f)(3)(ii)(A). A mailing address is an address used for purposes of information reporting or otherwise communicating with the payee that is an address in the United States or in certain foreign countries with which the United States has an income tax treaty. For this purpose, a income tax treaty must provide that the payee, if an individual resident in that country, would be entitled to an exemption from U.S. tax on amounts described in this paragraph (f)(3)(ii).

(B) Such payment is presumed made to a foreign person in all cases not described in paragraph (f)(3)(ii)(A) of this section.

(4) *Special rules for pass-through entities*—(i) *Payments to partnerships.* In the case of a payment to a partnership, the presumptions of this paragraph (f)(4)(i) shall apply to determine whether to treat the partnership as a domestic or foreign partnership. This determination must be made before determining who are the payees under paragraph (c)(3) of this section. If the withholding agent or payor has actual knowledge of the partnership's employer identification number, then the withholding agent or payor may presume that the partnership is a foreign partnership if the employer identification number begins with the two digits ''98.'' The withholding agent or payor may also presume that the partnership is foreign if the withholding agent's or payor's communications with the partnership are mailed to an address in a foreign country, or if the payment is made outside the United States (as defined in § 1.6049–5(e)). In all other cases, the withholding agent or payor may presume that the partnership is domestic. The presumptions in this paragraph (f)(4)(i) may be rebutted by

providing the required documentation to the withholding agent or payor.

(ii) *Payments to a foreign partnership*. A withholding agent or payor that makes a reportable payment to a partnership that it treats as a foreign partnership may presume that a partner is a U.S. payee that is not an exempt recipient if, before payment, the withholding agent cannot associate the payment with the required documentation for the partner. See paragraph (c)(3)(ii) of this section treating partners of a foreign partnership as payees. In such case, the withholding agent or payor must treat the portion of the payment allocable to the partner as made to a U.S. payee who is not an exempt recipient. Thus, the payment may be subject to reporting under chapter 61 of the Internal Revenue Code and the regulations under that chapter and to backup withholding under section 3406 and the regulations under that section. The portion of a payment allocable to a partner shall be determined based on the distributive shares of the partnership income allocable to each partner.

(iii) *Partners' distributive shares*—(A) *Domestic partnership*. For purposes of this paragraph (f)(4)(iii)(A), a domestic partnership may presume that a partner is a U.S. payee that is not an exempt recipient if, at the time it is required to withhold on the amount, the partnership cannot associate the payment with the required documentation for that partner and the amount relates to a reportable payment made to the partnership.

(B) *Foreign partnership*. For purposes of this paragraph (f)(4)(iii)(B), a foreign partnership that is a qualified intermediary may treat a partner as a foreign payee if, at the time it is required to withhold on the amount, it cannot associate the amount with the required documentation for that partner.

(5) *Failure to act in accordance with presumptions*. A withholding agent that, contrary to the presumptions in this paragraph (f), grants a claim of reduced rate of withholding under section 1441 on income subject to withholding will be liable under section 1461 for the tax required to be withheld under section 1441, without the benefit of a reduced rate unless the withholding agent can demonstrate to the satisfaction of the District Director or the Assistant Commissioner (International) that the proper amount of tax, if any, was in fact paid to the Internal Revenue Service. Proof of payment of tax may be established on the basis of a Form 4669 (or such other form as the Internal Revenue Service may prescribe), establishing the amount of tax, if any, actually paid by the beneficial owner on the income. Proof that a reduced rate of withholding was appropriate may also be established on the basis of the required documentation described in paragraph (f)(1)(ii) of this section. However, if the required documentation was not received by the withholding agent before the time the payment was made or within the grace period specified in paragraph (f)(2)(ii)(A) of this section, then the Commissioner, or his or her delegate, may require additional proof if it determines that the delays in obtaining the required documentation affect its reliability. The withholding agent will be liable for interest under section 6601 regardless of whether the underlying tax liability is due. In addition, the withholding agent may be subject to penalties.

(6) *Reportable payment*. Solely for purposes of the presumptions in this paragraph (f), a reportable payment is any payment of income subject to withholding (as defined in § 1.1441–2(a)) or any payment described in section 3406(b), notwithstanding the provisions in sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A, 6050N and the regulations under those sections that provide exemptions from reporting based upon the status of the payee as a foreign person. For example, a payment of interest described in § 1.6049–5(b)(14) as a non-reportable payment if paid to a foreign person is treated as a reportable payment for purposes of this paragraph (f). Accordingly, the withholding agent or payor must determine under the presumptions described in this paragraph (f) whether to treat the beneficial owner or payee as a foreign or U.S. person. See sections 6041 through 6049 and sections 6050A and 6050N and the regulations under those sections for reporting requirements for amounts treated as reportable payments for purposes of this paragraph (f).

(7) *Adjustment, refund, or credit of overwithheld tax*. If, as a result of the presumption rules of paragraph (f) of this section, the amount withheld under section 1441 is greater than the tax due, adjustments may be made in accordance with the procedures described in § 1.1461–2(a). Alternatively, refunds or credits may be claimed in accordance with the procedures described in § 1.1464–1, relating to refunds or credits claimed by the beneficial owner, or § 1.6414–1, relating to refunds or credits claimed by the withholding agent. If an amount was withheld under section 3406, see § 31.6413(a)-3(a)(1) of this chapter.

(g) *Effective date*—(1) *In general*. This section applies to payments of income made after December 31, 1997.

(2) *Transition rules*. For purposes of paragraph (e)(2)(i) and (d)(2)(ii) of this section, a withholding agent that holds a valid Form W–8, 1001, 4224, 1078, or a statement described in § 1.1441–5(b) (as contained in 26 CFR Part 1, edition revised April 1, 1995) on the date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid withholding certificate until its validity expires under applicable provisions as in effect on April 22, 1996. In addition, the documentation requirements for dividends on stock traded on a U.S. established financial market described in § 1.1441–6(b)(2) shall apply only to accounts established after the date that is 60 days after these regulations are published as final regulations in the Federal Register. For accounts established on or before that date, the documentation requirements under this section shall apply to payments made after December 31, 1999.

Par. 7. Section 1.1441–2 is revised to read as follows:

§ 1.1441–2 Income subject to withholding.

(a) *In general*. For purposes of the regulations under section 1441, the term *income subject to withholding* means items of income from sources within the United States (not including items listed in paragraph (d)(1) of this section) that constitute either fixed or determinable annual or periodical income described in paragraph (b) of this section or other income subject to withholding described in paragraph (c) of this section. Withholding applies to the gross amount of the payment made to a foreign person. See part I (section 861 and following), subchapter N, chapter 1 of the Internal Revenue Code, and the regulations under such part for rules governing the determination of the source of income. See section 884(f) and the regulations thereunder to determine the circumstances under which interest paid by a foreign corporation is U.S. source income.

(b) *Fixed or determinable annual or periodical income*—(1) *In general*. For purposes of chapter 3 of the Internal Revenue Code, fixed or determinable annual or periodical income is all income included in gross income under section 61 (including original issue discount), except for the items listed in paragraph (b)(2) of this section.

(2) *Exceptions*. For purposes of chapter 3 of the Internal Revenue Code, the items of income described in this paragraph (b)(2) are not fixed or

determinable annual or periodical income—

(i) Gains derived from the sale of property (including market discount and option premiums), except for gains described in paragraph (b)(3) or (c) of this section;

(ii) Insurance premiums within the meaning of section 4372 paid to a foreign insurer or reinsurer;

(iii) Items of U.S. source income that are excluded from gross income under any provision of law without regard to the identity of the holder, such as interest excluded from gross income under section 103(a); and

(iv) Any other income that the Internal Revenue Service may determine, in published guidance, is not fixed or determinable annual or periodical income.

(3) *Original issue discount.* Amounts of original issue discount are fixed or determinable annual or periodical income. However, based on the authority of section 1441(c)(8), only the original issue discount described in this paragraph (b)(3) may be subject to withholding.

(i) *Amounts paid by original issuer.* Amounts paid by the original issuer (or its paying agent) to the beneficial owner on any obligation issued after March 31, 1972 and payable more than 6 months from the date of original issue that represent original issue discount realized by the beneficial owner upon the retirement of the obligation, or upon payment by the issuer on the obligation, to the extent that the amount is subject to tax under section 871(a)(1)(C) or under section 881(a)(3). This paragraph (b)(3)(i) only applies to original issue discount as defined in section 1273(a)(1). Therefore, it does not apply to market discount as defined in section 1278(a)(2).

(ii) *Amounts paid by related obligor.* Amounts paid by the obligor (or its paying agent) on obligations issued after the date that is 60 days after these regulations are published as final regulations in the Federal Register and payable more than 6 months from the date of original issue representing an amount of original issue discount if the obligor is related to the original issuer (within the meaning of section 163(e)(3)), to the extent such accrued amount is subject to tax under section 871(a)(1)(C)(ii) or under section 881(a)(3)(B).

(iii) *Amounts paid in a sale between related parties.* Amounts paid on the sale or exchange of obligations issued after the date that is 60 days after these regulations are published as final regulations in the Federal Register and payable more than 6 months from the date of original issue representing an amount of original issue discount if the seller is related to the purchaser within the meaning of section 163(e)(3), to the extent such accrued amount is subject to tax under section 871(a)(1)(C)(i) or under section 881(a)(3)(A).

(iv) *Amounts actually known to be taxable original issue discount.* Amounts paid on obligations issued after the date that is 60 days after these regulations are published as final regulations in the Federal Register and payable more than 6 months from the date of original issue representing an amount of original issue discount if the obligor (or the seller in the case of a sale or exchange of obligations) has actual knowledge of the amount subject to tax under section 871(a)(1)(C) or under section 881(a)(3).

(v) *Amounts for which required documentation is not furnished.* Any amount of original issue discount paid on obligations issued after the date that is 60 days after the publication of these regulations as final regulations in the Federal Register and payable more than 6 months from the date of original issue representing an amount that fails to qualify as portfolio interest under section 871(h) or 881(c) (because of the failure to furnish the statement described in section 871(h)(5) and § 1.871–14(c)(2)), to the extent the amount is subject to tax under section 871(a)(1)(C)(ii) or under section 881(a)(3)(B). The applicable rate of withholding tax shall be applied to the entire amount of stated interest, if any, and original issue discount on the obligation as determined on the date of original issue if the withholding agent does not know what proportion of the payment on the obligation represents taxable income. Adjustments to any amount of overwithheld tax may be made in compliance with the procedures described in § 1.1461–2(a). Alternatively, refunds may be claimed in compliance with the procedures in § 1.1464–1.

(4) *Securities lending transactions.* [Reserved]

(c) *Other income subject to withholding.* Withholding is also required on the gross amount of the following items of income:

(1) Gains described in sections 631(b) or (c), relating to treatment of gain on disposal of timber, coal, or domestic iron ore with a retained economic interest.

(2) Gains subject to the 30 percent tax under section 871(a)(1)(D) or section 881(a)(4), relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property.

(d) Items of income not subject to withholding under section 1441—(1) *Exemptions for which no withholding certificate or documentation is required.* The items of income described in this paragraph (d)(1) are not subject to withholding of tax under section 1441 regardless of the fact that no withholding certificate or other documentation has been furnished to establish foreign or U.S. status.

(i) Portfolio interest paid on bearer obligations that are described in section 871(h)(2)(A) or 881(c)(2)(A) and § 1.871–14(b). See § 1.6049–5(b)(7) regarding exemption from reporting under section 6049, and thus, from backup withholding under section 3406.

(ii) Original issue discount on any obligation payable less than 6 months from the date of original issue described in section 871(g)(1)(B)(i). See § 1.6049–5(b)(10), (11), and (14) for exemptions from reporting under section 6049, and thus, from backup withholding under section 3406.

(iii) Any amount of original issue discount not described in paragraph (b)(3) of this section. See § 1.6049–5(b)(10) and (11) for exemptions from reporting under section 6049, and thus, from backup withholding under section 3406.

(iv) Proceeds from a wager placed by a nonresident alien individual in the games of blackjack, baccarat, craps, roulette, or big-6 wheel.

(2) *Exemptions for portfolio interest and income on bank, etc. deposits requiring a withholding certificate or documentation*—(i) *In general.* No withholding is required under sections 1441(c)(9) and (c)(10) on interest and original issue discount that either qualifies as portfolio interest on an obligation in registered form described in section 871(h)(2)(B) or 881(c)(2)(B) (including interest on a foreign-targeted registered obligation described in § 1.871–14(e)) or is paid on deposits described in section 871(i)(2)(A). A withholding agent may exempt from withholding an amount of interest and original issue discount paid on deposits described in section 871(i)(2)(A) only if, prior to the payment, the withholding agent complies with the procedures described in § 1.871–14(c). The preceding sentence does not apply to amounts of original issue discount described in paragraph (d)(1)(ii) of this section or in § 1.6049–5(b)(10) or (11).

(ii) *Transition rule.* The documentation requirements for interest on deposits described in section 871(i)(2)(A) shall apply to payments made after December 31, 1997 with respect to accounts established after the date that is 60 days after these

regulations are published as final regulations in the Federal Register. For accounts established on or before that date, the documentation requirements under this section shall apply to payments made after December 31, 1999.

(e) *Payment*—(1) *General rule.* A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash basis method of accounting. A payment is considered made whether it is made directly to the beneficial owner or paid to another person for the benefit of the beneficial owner (e.g., to the agent of the beneficial owner). Thus, a payment of income is considered made to a beneficial owner if it is paid in complete or partial satisfaction of the beneficial owner's debt to a creditor.

(2) *Income allocated under section 482.* A payment is considered made to the extent income subject to withholding is allocated under section 482. Further, income arising as a result of a secondary adjustment made in conjunction with a reallocation of income under section 482 from a foreign person to a related U.S. person is considered paid to a foreign person unless the taxpayer to whom the income is reallocated has entered into a repatriation agreement with the Internal Revenue Service and the agreement eliminates the liability for the withholding tax. For purposes of determining the liability for withholding tax, the payment of income is deemed to have occurred on the dates of the transactions that give rise to the allocation of income and the secondary adjustments, if any.

(3) *Blocked income.* Income is not considered paid if it is blocked under executive authority, such as the President's exercise of emergency power under the Trading with the Enemy Act, 50 U.S.C. App. 5, or the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq. However, on the date that the blocking restrictions are removed, the income that was blocked is considered constructively received by the beneficial owner (and therefore paid for purposes of this section) and subject to withholding under § 1.1441–1.

(4) *Special rules for dividends.* For purposes of sections 1441 and 6042, in the case of stock for which the record date is earlier than the payment date, dividends are considered paid on the payment date. In the case of a corporate reorganization, if a beneficial owner is required to exchange stock held in a former corporation for stock in a new corporation before dividends that are to be paid with respect to the stock in the new corporation will be paid on such stock, the dividend is considered paid on the date that the payee or beneficial owner actually exchanges the stock and receives the dividend. See § 31.3406(a)–4(a)(2) of this chapter.

(5) *Certain interest accrued by a foreign corporation.* For purposes of sections 1441 and 6049, a foreign corporation shall be treated as having made a payment of interest as of the last day of the taxable year if it has made an election under § 1.884–4(c)(1) to treat accrued interest as if it were paid in that taxable year.

(6) *Payments other than in U.S. dollars.* For purposes of section 1441, a payment includes amounts paid in a medium other than U.S. dollars. See § 1.1441–3(e) for rules regarding the amount subject to withholding in the case of such payments.

(f) *Effective date.* This section applies to payments of income made after December 31, 1997.

Par. 8. Section 1.1441–3 is amended by:

1. Revising the heading of the section.
2. Revising paragraphs (a) through (e).
3. Removing paragraph (f).
4. Redesignating paragraph (j) as paragraph (f).
5. Revising paragraph (g).
6. Removing paragraphs (h) and (i).
7. Removing the OMB parenthetical and the authority citation at the end of the section.

The revisions read as follows:

§ 1.1441–3 Amounts subject to withholding.

(a) *Withholding on gross amount.* Except as otherwise provided in regulations under section 1441, the amount subject to withholding under § 1.1441–1 is the gross amount of income subject to withholding. The gross amount of income subject to withholding may not be reduced by any deductions, except to the extent that one or more personal exemption is allowed as provided under § 1.1441–4(b)(6).

(b) *Withholding on payments on certain obligations*—(1) *Withholding at time of payment of interest.* When making a payment on an interest-bearing obligation, a withholding agent must withhold under § 1.1441–1 upon the gross amount of stated interest payable on the interest payment date, regardless of whether the payment constitutes a return of capital or the payment of income within the meaning of section 61. To the extent an amount was withheld on an amount of capital rather than interest, adjustments to any amount of overwithheld tax may be made under the procedures described in § 1.1461–2(a). Alternatively, refunds or credits may be claimed by the beneficial owner under the procedures described in § 301.6402–2 of this chapter.

(2) *No withholding between interest payment dates*—(i) *In general.* A withholding agent is not required to withhold tax under § 1.1441–1 upon interest accrued on the date of a sale of debt obligations when that sale occurs between two interest payment dates, even though the interest is subject to tax under section 871 or section 881. See § 1.6045–1(c) for reporting requirements by brokers with respect to sale proceeds. The exemption from withholding granted by this paragraph (b)(2) is not subject to the withholding certificate procedures described in § 1.1441–1(e)(1). However, the exception is not a determination that the accrued interest is not fixed or determinable annual or periodical income.

(ii) *Anti-abuse rule.* The exemption in paragraph (b)(2)(i) of this section does not apply if the sale of securities is part of a plan the principal purpose of which is to avoid tax by selling and repurchasing securities and the withholding agent has actual knowledge or reason to know of such plan.

(c) *Corporate distributions*—(1) *General rule.* Subject to the provisions of this paragraph (c), a corporation making a distribution with respect to its stock is not required to withhold under section 1441,1442, or 1443 on the portion of the distribution—

(i) That is treated as a nontaxable distribution payable in stock or stock rights;

(ii) That is treated as a distribution in part or full payment in exchange for stock;

(iii) That is not paid out of accumulated earnings and profits or current earnings and profits;

(iv) That is paid by a regulated investment company and is a capital gain dividend (as defined in section 852(b)(3)(C)) or an exempt interest dividend (as defined in section 852(b)(5)(A)); or

(v) That is paid by a real property holding corporation (defined in section 897(c)(2)) or a real estate investment trust (defined in section 856) and is subject to withholding under section 1445 and the regulations under that section.

(2) *Determination of accumulated and current earnings and profits on the date of payment*—(i) *General rule.* In order for a corporation to determine the amount of withholding tax due on any distribution with respect to stock, the distributing corporation may, at its option, either treat the entire distribution as a dividend as defined in section 316 or may treat only a portion

of the distribution as a dividend if, prior to, and at a time reasonably close to the date of payment, the distributing corporation makes a reasonable estimate of the portion of the distribution that is not a dividend based upon expected earnings and profits as relevant facts and circumstances shall indicate. A reasonable estimate may be made based on the procedures described in § 31.3406(b)(2)–4(c)(2) of this chapter.

(ii) *Procedures in case of underwithholding.* A distributing corporation that determines at the end of the taxable year of the distribution that it underwithheld under section 1441 shall be liable under section 1461 for the amount underwithheld. No penalties shall be imposed for failure to withhold and deposit tax if—

(A) The corporation made a reasonable estimate as provided in paragraph (c)(2)(i) of this section; and

(B) Either—

(*1*) The corporation pays over the underwithheld amount on or before the date that it is required to file a return on Form 1042 for the calendar year of the distribution pursuant to § 1.1461–2(b); or

(*2*) The corporation is not a calendar year taxpayer and it files an amended return on Form 1042X (or such other form as the Commissioner may prescribe) for the calendar year in which the distribution is made and pays the additional amount of tax and interest within 60 days of the close of the taxable year of the distribution.

(iii) *Reliance on reasonable estimate by intermediary.* For purposes of determining whether the payment of a corporate distribution is a dividend, a withholding agent that is not the distributing corporation may rely on representations made by the distributing corporation regarding the reasonable estimate of expected earnings and profits made pursuant to paragraph (c)(2)(i) of this section. Failure by the withholding agent to withhold the required amount due to an erroneous estimate that the Internal Revenue Service has determined was not reasonably made shall be imputed to the distributing corporation. Therefore, the Internal Revenue Service may collect any additional amount from the distributing corporation and subject the corporation to applicable interest and penalties as a withholding agent.

(3) *Special rules in the case of distributions from a regulated investment company.* If the amount of distributions designated as subject to section 852(b)(3)(C) or 852(b)(5)(A) exceeds the amount permitted to be designated under those sections for the taxable year, then no penalties will be asserted for any resulting underwithholding provided the designations were based on a reasonable estimate (made pursuant to paragraph (c)(2)(i) of this section) and adjustments to the amount withheld are made within the time period described in paragraph (c)(2)(ii)(B) of this section. Any adjustment to the amount of tax due and paid to the Internal Revenue Service by the withholding agent as a result of underwithholding shall not be treated as a distribution for purposes of section 562(c) and the regulations thereunder. Any amount of U.S. tax that a foreign shareholder is treated as having paid on the undistributed capital gain of a regulated investment company under section 852(b)(3)(D) may be claimed by the foreign shareholder as a credit or refund under § 1.1464–1. The procedures described in paragraph (c)(2)(iii) of this section shall apply in the case of distributions made to an intermediary.

(4) *Overwithholding of tax.* If the tax on any distribution has been overwithheld, adjustments may be made in accordance with the procedures described in § 1.1461–2(a). Alternatively, refunds or credits may be claimed in accordance with § 1.1464–1, relating to refunds or credits claimed by the beneficial owner, or § 1.6414–1, relating to refunds or credits claimed by the withholding agent.

(d) *Withholding on certain gains.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim regarding the amount of gain described in § 1.1441–2(c) if the beneficial owner withholding certificate, or other appropriate withholding certificate, states the beneficial owner's basis in the property giving rise to the gain. In the absence of a withholding certificate, the withholding agent may withhold an amount under § 1.1441–1 that is necessary to assure that the tax withheld is not less than 30 percent of the recognized gain. For this purpose, the recognized gain is determined without regard to any deduction allowed by the Internal Revenue Code from the gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain. Adjustments to any amount of overwithheld tax may be made in accordance with the procedures described in § 1.1461–2(a). Alternatively, refunds or credits may be claimed in accordance with § 1.1464–1, relating to refunds or credits claimed by the beneficial owner, or § 1.6414–1, relating to refunds or credits claimed by the withholding agent.

(e) *Payments other than in U.S. dollars*—(1) *In general.* The amount of a payment made in a medium other than U.S. dollars is measured by the fair market value of the property or services provided in lieu of U.S. dollars. The withholding agent may liquidate the property prior to payment in order to withhold the required amount of tax under section 1441 or obtain payment of the tax from an alternative source. However, the obligation to withhold under section 1441 is not deferred even if no alternative source can be located. Thus, for purposes of withholding under chapter 3 of the Internal Revenue Code, the provisions of § 31.3406(h)–2(b)(2)(ii) of this chapter (relating to backup withholding from another source) shall not apply. If the withholding agent satisfies the tax liability related to such payments, the rules of paragraph (e)(3) of this section apply.

(2) *Payments in foreign currency.* If the amount subject to withholding tax is paid in a currency other than the U.S. dollar, the amount of withholding tax under section 1441 shall be determined by applying the applicable rate of withholding to the foreign currency amount and converting the amount withheld into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently for all non-dollar amounts withheld from year to year. Such convention cannot be changed without the consent of the Commissioner. The U.S. dollar amount so determined shall be treated by the beneficial owner as the amount of tax paid on the income for purposes of determining the final U.S. tax liability and, if applicable, claiming a refund or credit of tax.

(3) *Tax liability of beneficial owner satisfied by withholding agent*—(i) *General rule.* In the event the satisfaction of a tax liability of a beneficial owner by a withholding agent constitutes income to the beneficial owner and such income is of a type that is subject to withholding, the amount of the payment deemed made by the withholding agent for purposes of this paragraph (e)(3) shall be determined under the following gross-up formula:

$$\text{Payment} = \frac{\text{Gross payment without withholding}}{1 - (\text{tax rate})}$$

(ii) *Example.* The following example illustrates the provisions of this paragraph (e)(3):

Example. College X awards a qualified scholarship within the meaning of section 117(b) to foreign student, FS, who is in the United States on an F visa. FS is a resident of a country that does not have an income tax treaty with the United States. The scholarship is $20,000 to be applied to tuition, mandatory fees and books, plus benefits in kind consisting of room and board and roundtrip air transportation. College X agrees to pay any U.S. income tax owed by FS with respect to the scholarship. The fair market value of the room and board measured by the amount College X charges non-scholarship students is $6,000. The cost of the roundtrip air transportation is $2,600. Therefore, the total fair market value of the scholarship received by FS is $28,600. However, the amount taxable is limited to the fair market value of the benefits in kind ($8,600) because the portion of the scholarship amount for tuition, fees, and books is not included in gross income under section 117. Under the gross-up formula, College X is deemed to make a payment of $10,000 ($8,600 divided by (1–.14). The U.S. tax that must be deducted and withheld from the payment under section 1441(b) is $1,400 (.14 x $10,000). College X reports scholarship income of $30,000 and $1,400 of U.S. tax withheld on Forms 1042 and 1042–S.

* * * * *

(g) *Effective date.* This section applies to payments of income made after December 31, 1997.

Par. 9. Section 1.1441–4 is amended by:

1. Revising the section heading.
2. Revising paragraphs (a) and (b)(1)(ii).
3. Adding paragraph (b)(1)(vi).
4. Revising the last sentence of paragraph (b)(2)(i).
5. Revising the introductory text of paragraph (b)(2)(ii).
6. Paragraph (b)(2)(ii) is amended by:
a. Revising paragraph (b)(2)(ii)(A).
b. Redesignating paragraph (b)(2)(ii)(H) as paragraph (b)(2)(ii)(J) and amending newly designated paragraph (b)(2)(ii)(J) by removing the period and adding ''; and'' in its place.
c. Redesignating paragraphs (b)(2)(ii) (B), (C), (D), (E), (F) and (G) as paragraphs (b)(2)(ii) (D), (E), (F), (G), (H) and (I), respectively.
d. Adding new paragraphs (b)(2)(ii) (B), (C), and (K).
e. Amending newly designated paragraph (b)(2)(ii)(I) by removing the language '', and'' and adding a semicolon in its place.
f. Amending newly designated paragraphs (b)(2)(ii) (D), (E), (F), (G), and (H) by removing the comma at the end of the paragraphs and adding a semicolon in its place.
7. The concluding text of paragraph (b)(2)(iv) is amended by:
a. Removing the language ''ten'' and adding ''20'' in its place.
b. Removing the language ''Director of Foreign Operations'' and adding ''Assistant Commissioner (International)'' in its place.
8. Revising paragraph (b)(2)(v).
9. Adding paragraph (b)(2)(vi).
10. Adding paragraph (b)(6).
11. Revising paragraphs (c), (d), (e), and (f).
12. Removing paragraphs (g), (h), and (i).
13. Removing the OMB parenthetical and the authority citation at the end of the section.

The revisions and additions read as follows:

§ 1.1441–4 Certain exemptions from withholding.

(a) *Certain income connected with a U.S. trade or business*—(1) *In general.* No withholding is required under section 1441 on income otherwise subject to withholding if the income is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and is includible in the beneficial owner's gross income for the taxable year. For purposes of this paragraph (a), an amount is not deemed to be includible in gross income if the amount is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and the beneficial owner claims an exemption from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States. To claim a reduced rate of withholding because the income is not attributable to a permanent establishment, see § 1.1441–6(b)(1). This paragraph (a) does not apply to income of a foreign corporation to which section 543(a)(7) applies for the taxable year or to compensation for personal services performed by an individual. See paragraph (b) of this section for compensation for personal services performed by an individual.

(2) *Withholding agent's reliance on a claim of effectively connected income*—(i) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim of exemption based upon paragraph (a)(1) of this section if, prior to the payment to the foreign person, the withholding agent complies with the requirements of § 1.1441–1(e)(1) and is furnished either a beneficial owner withholding certificate (including one that is transmitted with an intermediary withholding certificate described in § 1.1441–1(e)(3)(iv)), or an intermediary withholding certificate described in § 1.1441–1(e)(3)(ii) from a partnership acting for its own account (regardless of whether the distributive share information is stated on the certificate and whether the certificates described in § 1.1441–1(e)(3)(iii)(C) are attached). For purposes of this paragraph (a), a withholding certificate is not valid unless it includes a taxpayer identifying number. A statement on the withholding certificate that the income is effectively connected with the conduct of a trade or business in the United States and that the income will be reported by the beneficial owner on an income tax return will satisfy the requirement of § 1.1441–1(e)(2)(ii) or (e)(3)(iii) that the certificate describe the basis for the claim of reduced rate. A withholding agent may presume that the income is not effectively connected with the conduct of a trade or business in the United States if the withholding certificate is silent or if the withholding agent cannot associate the payment with the required documentation (as defined in § 1.1441–1(f)(1)). See § 1.1441–1(e)(4)(ii)(B)(*2*) for the period of validity applicable to a certificate provided under this section. A withholding certificate shall be effective only for the item or items of income specified therein. In compliance with § 1.1441–1(e)(3)(ii)(A), the validity of the certificate expires when subsequent circumstances arising during the taxable year indicate that the income to which the certificate relates is not, or is no longer expected to be, effectively connected with the conduct of a trade or business within the United States.

(ii) *Exemption of certain foreign partnerships and foreign corporations.* [Reserved] For guidance prior to the date these regulations are published as final regulations in the Federal Register, see § 1.1441–4(f) as contained in the 26 CFR Part 1, edition revised April 1, 1995.

(iii) *Payment to joint owners.* In the case of payments to joint owners, a withholding certificate must be provided by each beneficial owner claiming a reduced rate certifying that the income is effectively connected with the conduct of a trade or business within the United States.

(3) *Income on notional principal contracts.* A withholding agent that pays income attributable to a notional principal contract described in § 1.863–7(a) shall have no obligation to withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. For rules regarding the obligation to file a return, see §§ 1.1461–1(c)(1)(i) and 1.6041–1(d)(5).

(4) *Failure to act in accordance with presumption.* A withholding agent that does not withhold, contrary to the presumption set forth in paragraph (a)(2) of this section that income is not effectively connected with the conduct of a trade or business within the United States, shall be liable for the tax imposed under section 1461, without the benefit of a reduced rate, unless the withholding agent can demonstrate to the satisfaction of the District Director or the Assistant Commissioner (International) that the income is effectively connected and was included in the Federal income tax return of the beneficial owner and that the proper amount of tax, if any, has been paid to the Internal Revenue Service. Proof of payment of tax may be established on the basis of a Form 4669 (or such other form as the Internal Revenue Service may prescribe) establishing the amount of tax, if any, actually paid by the beneficial owner on the income. Proof that a reduced rate of withholding was appropriate may be established by an appropriate withholding certificate described in § 1.1441–1(e)(1)(i). However, if the required documentation was not received by the withholding agent before the time the payment was made or within the period specified in § 1.1441–1(f)(2)(i)(B)(*1*), then the District Director or the Assistant Commissioner (International) may require additional proof if it determines that the delays in obtaining the required documentation affect its reliability. The withholding agent will be liable for interest under section 6601 regardless of whether the underlying tax liability is due. In addition, the withholding agent may be subject to penalties.

(b) *Compensation for personal services of an individual*—(1) *Exemption from withholding.* * * *

* * * * *

(ii) Such compensation that would be subject to withholding under section 3402 but for the provisions of section 3401(a) (not including paragraph (a)(6) of that section) and the regulations under that section. This paragraph (b)(1)(ii) does not apply to payments to a nonresident alien individual from any trust described in section 401(a), any annuity plan described in section 403(a), or any annuity, custodial account, or retirement income account described in section 403(b). Thus, for example, payments to a nonresident alien individual from a trust described in section 401(a) are subject to withholding under section 1441 and not under section 3405 or 3406.

* * * * *

(vi) Compensation that is exempt from withholding under section 3402 by reason of section 3402(e), provided that the employee and his employer enter into an agreement under section 3402(p) to provide for the withholding of income tax upon payments of amounts described in § 31.3401(a)–3(b)(1) of this chapter. An employee who desires to enter into such an agreement should furnish his employer with Form W–4 (withholding exemption certificate) (or such other form as the Internal Revenue Service may prescribe). See section 3402(f) and the regulations thereunder and § 31.3402(p)–1 of this chapter.

(*2*) Manner of obtaining withholding exemption under tax treaty—(i) *In general.* * * * *The exemption from withholding becomes effective for payments made at least 20 days after a copy of the accepted statement is forwarded to the Assistant Commissioner (International).*

(ii) *Statement claiming withholding exemption.* The statement claiming an exemption from withholding shall be made on Form 8233 (or an acceptable substitute). Form 8233 shall be dated, signed by the beneficial owner under the penalties of perjury, and contain the following information:

(A) The individual's name, permanent residence address, taxpayer identifying number, and the U.S. visa number, if any;

(B) The individual's current immigration status and visa type;

(C) The individual's original date of entry into the United States;

* * * * *

(K) Any other information as the form may require.

* * * * *

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the Assistant Commissioner (International), within five days of his or her acceptance. The Assistant Commissioner (International) may review the forms so submitted. The withholding agent shall retain a copy of Form 8233.

(vi) *Electronic filing.* Under procedures published by the Internal Revenue Service, Forms 8233 may be filed electronically with the Internal Revenue Service.

* * * * *

(6) *Personal exemption*—(i) *In general.* To determine the tax to be withheld at source under § 1.1441–1 from remuneration paid for personal services performed within the United States by a nonresident alien individual and from scholarship and fellowship income described in paragraph (c) of this section, a withholding agent may take into account one personal exemption pursuant to sections 873(b)(3) and 151 regardless of whether the income is effectively connected. The exemption does not need to be prorated for purposes of withholding under section 1441.

(ii) *Multiple exemptions.* More than one personal exemption may be claimed in the case of a resident of a contiguous country or a national of the United States under section 873(b)(3). In addition, residents of a country with which the United States has an income tax treaty in effect may be eligible to claim more than one personal exemption if the treaty so provides. Claims for more than one personal exemption shall be made on the withholding certificate furnished to the withholding agent. The exemptions do not need to be prorated for purposes of withholding under section 1441.

(iii) *Special rule where both scholarship and compensation income is received.* The fact that both scholarship income and compensation income are received during the taxable year does not entitle the taxpayer to claim more than one personal exemption amount (or more than the additional amounts permitted under paragraph (b)(6)(ii) of this section). Thus, if a nonresident alien student receives taxable scholarship amounts from one payor and compensation income from another payor, no more than the total personal exemption amount permitted under the Internal Revenue Code or under an income tax treaty may be taken into account by both payors.

(c) *Special rules for scholarship and fellowship income*—(1) *In general.* Under section 871(c), certain amounts paid as a scholarship or fellowship for study, training, or research in the United States to a nonresident alien individual temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are treated as income effectively connected with the conduct of a trade or business within the United States. Such amounts (as described in the second sentence of section 1441(b)) are subject to withholding tax under section 1441, but at the lower rate of 14 percent. That rate may be reduced under the provisions of an income tax treaty. Claims of a reduced rate under an income tax treaty shall be made under the procedures described in § 1.1441–6(b)(1). Therefore, claims for amounts described in this paragraph (c)(1) may not be shown on

a Form 8233. However, if the payee is receiving both compensation for personal services and income described in this paragraph (c)(1) from the same withholding agent, claims for both types of income may be shown on Form 8233.

(2) *Alternate withholding election.* A withholding agent may elect to withhold on the amounts described in paragraph (c)(1) of this section at the rates applicable under section 3402, as if the income were wages. Such election shall be made by obtaining a Form W–4 (or an acceptable substitute or such other form as the Internal Revenue Service may prescribe) from the beneficial owner. Such Form W–4 shall also serve as notice to the beneficial owner that the income is being treated as wages for purposes of withholding tax under section 1441.

(d) *Annuities received under qualified plans.* Withholding is not required under section § 1.1441–1 in the case of any amount received as an annuity if the amount is exempt from tax under section 871(f) and the regulations under that section. A statement on the beneficial owner withholding certificate that the annuity is excluded from gross income by reason of section 871(f) and the basis for that exclusion satisfies the requirement of § 1.1441–1(e)(2)(ii) that the beneficial owner state the basis for the claim of reduced rate. A beneficial owner withholding certificate furnished for purposes of claiming the benefits of the exemption under this paragraph (d) is not valid unless it includes a taxpayer identifying number. See § 1.1441–1(f)(3)(ii) regarding applicable presumptions if the withholding agent does not hold the required documentation prior to payment.

(e) *Income of a foreign central bank of issue or the Bank for International Settlements.* Section 895 provides for the exclusion from gross income of certain income derived by a foreign central bank of issue, or by the Bank for International Settlements, from obligations of the United States or of any agency or instrumentality thereof or from bank deposits. Absent actual knowledge or reason to know that a foreign central bank of issue, or the Bank for International Settlements, is operating outside the scope of the exclusion granted by section 895, the withholding agent may rely on a claim of exemption if, prior to making the payment, the withholding agent complies with the requirements of § 1.1441–1(e)(1). The following statement on a beneficial owner withholding certificate satisfies the requirement in § 1.1441–1(e)(2)(ii) that the beneficial owner state the basis for the claim of reduced rate:

(1) The bank is a foreign central bank of issue, or the Bank for International Settlements; and

(2) The bank does not, and will not, hold the obligations or the bank deposits covered by the withholding agreement for, or use them in connection with, the conduct of a commercial banking function or other commercial activity.

(f) *Effective date*—(1) *General rule.* This section applies to payments of income made after December 31, 1997.

(2) *Transition rules.* A withholding agent that holds a valid Form 4224 on a date that is 60 days after the date these regulations are published as final regulations in the Federal Register may treat it as a valid withholding certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

§ 1.1441–4T [Removed]

Par. 10. Section 1.1441–4T is removed.

Par. 11. Section 1.1441–5 is revised to read as follows:

§ 1.1441–5 Withholding on payments to pass-through entities.

(a) *Domestic partnerships*—(1) *Exemption from withholding on payment to domestic partnerships.* A payment of income to a domestic partnership is not subject to withholding of tax under section 1441 even though it may have partners that are foreign persons. A payor (within the meaning of section 3406) may rely, in accordance with the procedures under § 1.1441–1(d), on a Form W–9 furnished by the partnership.

(2) *Withholding by a domestic partnership*—(i) *In general.* A domestic partnership is required to withhold tax under § 1.1441–1 as a withholding agent on the gross amount of items of income subject to withholding that are includible in the distributive share of income of a partner that is a foreign person. Pursuant to the authority provided under section 702(a), each partner shall take into account separately its distributive share of items of income subject to withholding, and thus the partnership, pursuant to section 703(a)(1), shall separately state these items of gross income when computing its taxable income. A partnership shall withhold when any distributions that include items of income subject to withholding are made. To the extent a foreign partner's distributive share of an item of income subject to withholding has not been actually distributed, the partnership is required to withhold on the partner's distributive share of that item of income on the earlier of the date that the statement required under section 6031(b) and § 1.6031–1(b) to be provided to that partner is mailed or otherwise furnished to the partner or the due date for furnishing that statement as provided under § 1.6031–1(b)(1). If a partnership withholds on a distributive share before the income is actually distributed to the partner, then withholding is not required when the income is subsequently distributed.

(ii) *Reliance on a partner's claim for reduced withholding.* Absent actual knowledge or reason to know otherwise, a domestic partnership may rely on a claim for reduced withholding by a partner, if prior to the time the partnership is required to withhold, the partnership complies with the requirements of § 1.1441–1(d) or (e)(1), whichever is applicable, with respect to the partner. See the presumptions described in § 1.1441–1(f)(4)(iii)(A) applicable to a domestic partnership in determining the U.S. or foreign status of its partners.

(b) *Foreign partnerships*—(1) *In general.* A withholding agent must treat a payment to a foreign partnership as a payment to its partners, except to the extent the partnership is treated as a payee under § 1.1441–1(c)(3)(ii). See § 1.1441–1(e)(5)(v) for payments to a foreign partnership that claims to be a qualified intermediary. If the partnership is not treated as a payee, a withholding agent may, absent actual knowledge or reason to know otherwise, rely on a claim for a reduced rate of withholding by a partner if, prior to the payment, the withholding agent holds an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) pertaining to the partner. The certificate will be considered to pertain to the partner if the appropriate withholding certificate for the partner is attached to the intermediary withholding certificate. The appropriate withholding certificate for the partner may be a beneficial owner withholding certificate described in § 1.1441–1(e)(2) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), the applicable certificates described in § 1.1441–1(d)(2) (for a partner claiming to be a U.S. payee), an intermediary withholding certificate described in § 1.1441–1(e)(3)(ii) or (iv) (for a partner that is a qualified intermediary or not otherwise acting for its own account), or an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) representing that the income to which the certificate relates is effectively connected with the conduct of a trade or business in the

United States. A claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of the partner. When making a claim for several partners, the partnership may present a single intermediary withholding certificate to which the partners' certificates are attached.

(2) *Special rules in the case of tiered partnerships.* If a foreign or domestic partnership is a partner of a foreign partnership, the rules of this paragraph (b)(2) shall apply.

(i) A withholding agent may treat any portion of a payment made to a foreign partnership that represents an item of income includible in the distributive share of a partner (at any level in the chain of tiers) that is a domestic partnership as a payment to a U.S. person if the domestic partnership complies with the procedures described in § 1.1441–1(d) (relating to the claim of U.S. status by a payee or beneficial owner).

(ii) A withholding agent may treat any portion of a payment made to a foreign partnership that represents an item of income includible in the distributive share of a partner (at any level in the chain of tiers) that is a foreign partnership as a payment to a foreign person if the withholding agent may treat the foreign partnership as the payee pursuant to the provisions in § 1.1441–1(c)(3)(ii).

(iii) Where the partner in the foreign partnership to whom the payment is made (second tier) is a foreign partnership (first tier), the appropriate withholding certificate for the partner is an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) issued by the second tier, and an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) issued by the first tier to which is attached an appropriate withholding certificate for each of the partners of the first tier. The rules of this paragraph (b)(2)(iii) shall apply to any number of tiers of foreign partnerships.

(3) *Presumptions.* A withholding agent may apply the presumption described in § 1.1441–1(f)(4)(ii) to any portion of a payment for which the withholding agent does not receive the required documentation (as defined in § 1.1441–1(f)(1)(ii)).

(4) *Example.* The rules of this paragraph (b) may be illustrated by the following example:

Example. (i) *Facts.* FP is a foreign partnership organized under the laws of Country X deriving interest that would qualify as portfolio interest described in section 871(h)(2)(B) if the statement described in section 871(h)(5) is furnished. FP has three partners, A, B, and C. FP furnishes to the withholding agent an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it attaches a Form W–9 for A and a beneficial owner withholding certificate for B. No documentation is attached for C.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, the withholding agent may rely on A's Form W–9 to treat A as a U.S. person and, therefore, does not withhold on A's share of the payment. The withholding agent must comply with any information reporting obligations under sections 6042 (i.e., issue a Form 1099) with respect to A. Absent actual knowledge or reason to know otherwise, the withholding agent may also rely on B's claim for portfolio interest treatment for its share of the payment. The withholding agent must report the payment to B on Forms 1042 and 1042–S. Because the withholding agent cannot associate the required documentation (as defined § 1.1441–1(f)(1)) for C's share of the interest income, the withholding agent may, for purposes of section 3406, treat that amount as a reportable payment made to a U.S. payee that is not an exempt recipient. See § 1.1441–1(f)(4)(ii).

(c) *Trusts and estates.* [Reserved]

(d) *Effective date*—(1) *General rule.* This section applies to payments of income made after December 31, 1997.

(2) *Transition rules.* A withholding agent that holds a valid withholding certificate on the date that is 60 days after the date these regulations are published as final regulations in the Federal Register may treat it as a valid withholding certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

Par. 12. Section 1.1441–6 is revised to read as follows:

§ 1.1441–6 Claim of a reduced rate of tax under an income tax treaty.

(a) *In general.* Under an income tax treaty in effect between the United States and a foreign country, the rate of tax to be withheld on a payment of income subject to withholding may be reduced if the beneficial owner of the income is a resident of the foreign country. Other requirements or conditions of the treaty, or revenue procedures issued thereunder, for claiming treaty benefits must also be satisfied, such as a limitation of benefits provision. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See also § 1.1441–4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) *Reliance on claim of treaty benefits*—(1) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent complies with the requirements of § 1.1441–1(e)(1). Except as otherwise provided in paragraph (b)(2) or (b)(3) of this section, for purposes of this paragraph (b)(1), a beneficial owner withholding certificate mentioned in § 1.1441–1(e)(1) means a beneficial owner withholding certificate described in § 1.1441–1(e)(2), that includes the beneficial owner's taxpayer identifying number and states that the taxpayer has complied with the advance ruling requirements described in paragraph (e) of this section (if applicable), and, if the beneficial owner is a person related to the withholding agent within the meaning of section 267(b) and 707(b), that the beneficial owner will file the statement required under § 1.6114–1(b) (if applicable). The requirement to file an information return under section 6114 for income subject to withholding applies only to amounts paid during the calendar year that, in the aggregate, exceed $500,000. See § 301.6114–1(b) of this chapter. See paragraph (d) of this section for circumstances under which the withholding agent may be notified by the Internal Revenue Service that the certificate cannot be relied upon to grant benefits under an income tax treaty. A beneficial owner's taxpayer identifying number on a withholding certificate is valid for purposes of establishing proof of residence in a treaty country only if the taxpayer identifying number is certified by the Internal Revenue Service. However, absent actual knowledge or reason to know otherwise, a withholding agent may rely on a taxpayer identifying number that appears correct on its face, without having to inquire as to whether the taxpayer identifying number is certified, if the permanent residence address on the certificate is in the country whose tax treaty with the United States is invoked. See the confirmation and notification procedures described in § 1.1441–1(e)(4) (iv) and (v).

(2) *Special rules for certain dividends.* In the case of dividends on stock traded on a U.S. established financial market, a withholding agent may rely on a beneficial owner withholding certificate described in § 1.1441–1(e)(2). For this purpose, a U.S. established financial market is a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78F), or an interdealer quotation system sponsored by a national securities association registered under

section 15A of the Securities Exchange Act of 1934. In the case of payments made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore account (as defined in § 1.6049–5(d)(3)), a withholding agent may also consider that it holds a withholding certificate if it holds a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section that the withholding agent has reviewed and maintains in its records. The withholding agent maintains the reviewed documents by retaining either the documents viewed or a photocopy thereof and noting in its records the date on which, and by whom, the documents were received and reviewed. This paragraph (b)(2) shall not apply to dividends that are exempt from withholding based on a claim that the dividends are effectively connected with the conduct of a trade or business in the United States.

(3) *Competent authorities agreement.* The procedures described in this section may be modified to the extent the U.S. competent authority may agree with the competent authority of a country with which the United States has an income tax treaty in effect.

(4) *Special rules for payments to certain foreign entities*—(i) *Determination of beneficial owner.* Under § 1.1441–1(c)(6)(ii)(B), the tax principles in effect under the laws of the country whose tax treaty with the United States is invoked apply in certain cases to determine the beneficial owner of income entitled to claim a reduced rate of withholding under that income tax treaty. Thus, if a beneficial owner, as determined under § 1.1441–1(c)(6)(ii)(B), is not a resident of the country whose law has been applied to determine beneficial owner status, then a payment to a foreign entity will not qualify for a reduced rate under that country's tax treaty with the United States even if the foreign entity receiving the payment is organized in that foreign country. Conversely, if a beneficial owner, as determined under § 1.1441–1(c)(6)(ii)(B), is a resident of the country whose law has been applied to determine beneficial owner status, then the beneficial owner's share of a payment to a foreign entity will qualify for a reduced rate under the applicable income tax treaty (provided other requirements for qualification are met) even if the foreign entity receiving the payment is not organized in, or is not a resident of, the foreign country in which the beneficial owner is resident.

(ii) *Withholding certificates.* The person claiming a reduced rate of tax under an income tax treaty shall apply the rules of § 1.1441–1(c)(6)(ii)(B) and paragraph (b)(4)(i) of this section to determine the beneficial owner of income and entitlement to a reduced rate under an income tax treaty. The beneficial owner so determined may provide, as appropriate, a beneficial owner withholding certificate described in paragraph (b)(1) or (b)(2) of this section. Thus, for example, if the beneficial owner, as determined under § 1.1441–1(c)(6)(ii)(B), is the interest holder rather than the entity, then the entity shall be treated as a foreign partnership for purposes of determining which withholding certificate is appropriate. If, conversely, the beneficial owner, as determined under § 1.1441–1(c)(6)(ii)(B), is the entity rather than the interest holders, then the entity shall be treated as a corporation for purposes of determining which withholding certificate is appropriate.

(iii) *Request for dual treatment.* As set forth in § 1.1441–1(c)(6)(ii)(B), a withholding agent may make payments to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf and a reduced rate on behalf of persons in their capacity as interest holders in that entity. In such a case, the withholding agent may, at its option, accept such dual claims based, as appropriate, on beneficial owner withholding certificates described in paragraph (b) (1) or (2) of this section or documentary evidence described in § 1.6049–5(c)(2)(ii) furnished by such persons with respect to their respective share of such payments, even though the withholding agent holds different withholding certificates that requires it to treat the entity inconsistently with respect to different payments or with respect to different portions of the same payment. See paragraph (b)(4)(v) *Example 2* of this section.

(iv) *Reciprocal application by treaty partners.* Paragraph (b)(4) of this section and the principles of § 1.1441–1(c)(6)(ii)(B) will not apply if the U.S. competent authority determines that a treaty partner is not reciprocally applying the principles of § 1.1441–1(c)(6)(ii)(B) to entities organized under the laws of the United States or to interest holders residing in the United States. In such case, the rules set forth in § 1.1441–1(c)(6) shall apply without regard to the rules in § 1.1441–1(c)(6)(ii)(B). This determination shall be effective upon publication of relevant guidance by the Service and shall apply prospectively only.

(v) *Examples.* This paragraph (b)(4) is illustrated by the following examples:

Example 1—(i) *Facts.* Entity A is a business organization formed under the laws of country Y that has an income tax treaty with the United States. Under the laws of country Y, A is subject to tax at the entity level and, therefore, is treated as the beneficial owner of income it receives and as a resident of country Y for purposes of the U.S.–Y tax treaty. A receives U.S. source royalties from withholding agent R and claims a reduced rate of withholding under the U.S.–Y tax treaty on its own behalf (rather than on behalf of its interest holders). A furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section claiming to be the beneficial owner of the royalties.

(ii) *Analysis.* For purposes of claiming treaty benefits under the U.S.–Y treaty, A is treated as the beneficial owner of the royalties under § 1.1441–1(c)(6)(ii)(B) since, under the tax law of country Y, A is required to include the royalties in income. R may treat A as the beneficial owner of the income for purposes of granting the benefit of a reduced rate under the U.S.–Y tax treaty.

Example 2—(i) *Facts.* The facts are the same as under Example 1, except that one of A's interest holders, T, is a corporation residing in country X. The U.S.–X tax treaty reduces the rate on royalties to zero whereas the rate on royalties under the U.S.–Y tax treaty is only reduced to 5 percent. Under the laws of country X, A is taxable on a flow-through basis and not at the entity level and T is required to include in income its distributive share of A's income. T claims to be the beneficial owner of its share of the royalty income paid to A and provides a beneficial owner certificate to A claiming the benefit of a zero rate under the U.S.–X tax treaty. A furnishes to R a beneficial owner withholding certificate for itself for the portion of the payment for which A alone claims to be the beneficial owner. In addition, it furnishes to R an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it attaches T's beneficial owner withholding certificate for the portion of the payment for which T claims to be the beneficial owner.

(ii) *Analysis.* For purposes of claiming treaty benefits under the U.S.–Y treaty, A is treated as the beneficial owner of all of the royalty income received from R under § 1.1441–1(c)(6)(ii)(B), since, under the tax law of country Y (i.e., under the laws of the country whose treaty benefits are claimed), A is subject to tax on that income. However, for purposes of claiming benefits under the U.S.–X treaty, T may also be treated as the beneficial owner of its share of the royalty income under § 1.1441–1(c)(6)(ii)(B), since, under the tax law of country X (i.e., the laws of the country whose treaty benefits are claimed), T is required to include in income its share of A's income. Therefore, R may treat the royalty payment to a single foreign entity (A) as beneficially owned by different persons as a result of claims presented under different treaties. R may, at its option, grant dual treatment, that is, a reduced rate of zero percent under the U.S.–X treaty on the portion of the royalty payment for which T claims to be the beneficial owner and a reduced rate of 5 percent under the U.S.–Y

treaty for the balance. However, under paragraph (b)(4)(iii) of this section, the withholding agent may, at its option, treat A as the sole beneficial owner of the royalty and grant benefits under the U.S.–Y treaty only.

Example 3. (i) Entity A is a business organization formed under the laws of country Y. A receives from withholding agent R U.S. source royalties and U.S. source interest income that is potentially eligible for the portfolio interest exemption under section 871(h) and 881(c) of the Internal Revenue Code. A's interest holders are S, an individual who resides in country Y, T, an individual who resides in country X, and U, an individual resident in the United States. The United States has a tax treaty with both country Y and country X. The U.S.–Y tax treaty reduces the rate on royalties to 5 percent, and the U.S.–X tax treaty reduces the rate to zero. A is classified as a partnership under U.S. tax principles. Under the tax laws of country Y, A is taxable on a flow-through basis, and S is required to include in income her distributive share of A's income. Under the tax laws of country X, A is taxable on a flow-through basis and T is required to include in income her distributive share of A's income. A furnishes R an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it attaches—

(A) A Form W–9 for U; and

(B) Beneficial owner withholding certificates for S and T that claim the portfolio interest exemption and a reduced rate of withholding under the U.S. treaties with Y and X, respectively.

(ii) *Analysis.* For purposes of claiming benefits under the U.S.–Y treaty, S is treated as the beneficial owner of his distributive share of royalty income received from R under § 1.1441–1(c)(6)(ii)(B) since, under the tax law of country Y (i.e., the laws of the country whose treaty benefits are claimed in the case of S), S is the person required to include in income her distributive share of the royalty. Therefore, R may withhold on S's proportionate share of the royalty income paid to A at the 5 percent rate under the U.S.–Y tax treaty. For purposes of claiming benefits under the U.S.–X tax treaty, T is treated as the beneficial owner of her distributive share of royalty income under § 1.1441–1(c)(6)(ii)(B), since, under the laws of country X (i.e., the laws of the country whose treaty benefits are claimed in the case of T), T is the person required to include in income her distributive share of the royalty. Therefore, R may withhold on T's proportionate share of the royalty income paid to A at the zero rate under the U.S.–X treaty, even though A is not organized in, or a resident of, country X. R may rely on U's Form W–9 to treat U as a U.S. person. Therefore, R does not withhold on U's share of the royalty payment. R also does not withhold on any portion of the interest paid to A because S and T have furnished beneficial owner certificates and U has furnished a Form W–9.

(c) *Proof of tax residence in a treaty country*—(1) *In general.* A beneficial owner establishes proof of its tax residence in a treaty country for purposes of its claim to the withholding agent that a reduced rate of tax applies under an income tax treaty by complying with the procedures described in this paragraph (c) or with such other procedures as the Internal Revenue Service may prescribe in published guidance. For purposes of this section, the residence of a beneficial owner must be determined in accordance with the provisions of the applicable U.S. income tax treaty as may be clarified by any applicable regulations thereunder or technical explanations thereof, and any procedures issued by the Internal Revenue Service on the determination or proper method of certifying residence under particular income tax treaties.

(2) *Certification of taxpayer identifying number*—(i) *In general.* A taxpayer may certify its taxpayer identifying number as required under paragraph (b)(1) of this section by having the taxpayer identifying number certified by the Internal Revenue Service either directly as provided under paragraph (c)(2)(ii) of this section or through a qualified intermediary as provided in paragraph (c)(2)(iii) of this section.

(ii) *IRS-certified TIN.* The Internal Revenue Service may certify a taxpayer identifying number based upon a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section. The certificate or documentary evidence must be furnished to the Internal Revenue Service by or on behalf of the beneficial owner upon application for the taxpayer identifying number or at any other time, as permitted under such procedures as the Internal Revenue Service may prescribe. If the tax residence of the beneficial owner changes, the beneficial owner shall promptly notify the Internal Revenue Service of that change. In addition, the Internal Revenue Service may exchange information for the purpose of confirming with the appropriate tax authority of the other country that the beneficial owner continues to be a tax resident of that country. The Internal Revenue Service may from time to time, in its discretion, request that the beneficial owner reconfirm its residence in the treaty country.

(iii) *Special rules for qualified intermediaries.* The Internal Revenue Service may certify a taxpayer identifying number based upon the certification of a qualified intermediary described in § 1.1441–1(e)(5)(ii) regarding the tax residence of any of its account holders, or persons owning an interest in the qualified intermediary, under procedures agreed upon with the Internal Revenue Service. If a new account or interest holder has a taxpayer identifying number at the time it opens an account or acquires an interest, the qualified intermediary may rely on a statement by the account or interest holder that appropriate proof of tax residence in the treaty jurisdiction was previously provided to the Internal Revenue Service. In such case, the qualified intermediary must notify the Internal Revenue Service each time the account or interest holder's address changes to another country or when the account or interest holder terminates its relationship with the qualified intermediary.

(3) *Certificate of residence.* A certificate of residence is generally a certificate issued by the competent authority (or another appropriate tax authority) of the treaty country of which the taxpayer claims to be a resident that certifies that the taxpayer has filed its most recent income tax return as a resident of that country. A certificate of residence is valid for a period of three years or such longer period as the Internal Revenue Service may prescribe. The competent authorities may agree to a different procedure for certifying residence, in which case such procedure shall govern for payments made to a person claiming to be a resident of the country with which such an agreement is in effect.

(4) *Documentary evidence establishing residence in the treaty country.* Generally, documentary evidence used to establish residence in a treaty country must include the name, address, and photograph of the person seeking to prove residence, must be an official document issued by an authorized governmental body (i.e., a government or agency thereof, or a municipality), and must have been issued no more than three years prior to presentation to the withholding agent. A document older than three years may be relied upon as proof of residence only if it is accompanied by additional evidence of the person's residence in the treaty country (i.e., a bank statement, utility or medical bills). Documentary evidence must be in the form of original documents or a certified copy thereof.

(d) *Joint owners.* In the case of a payment to joint owners, all owners must furnish a withholding certificate

or, if applicable, documentary evidence or a certificate of residence. The applicable rate of tax on a payment of income to joint owners shall be the highest applicable rate.

(e) *Related party dividends under certain treaties.* Income tax treaties between the United States and Austria, Denmark, Ireland, and Switzerland reduce the rate of tax on dividends between related corporations to 5 percent subject to the condition that the relationship between the domestic and foreign corporations was not arranged or maintained for the purpose of securing the reduced rate. A domestic corporation that makes a distribution to a resident of one of these countries may treat this condition as satisfied if, prior to the payment, a request has been made to the Internal Revenue Service for a private letter ruling determining that the relationship between the corporation and the shareholder was not arranged or maintained for such purpose and the Service has either issued a favorable ruling (and the ruling has not been revoked) or is considering the ruling request.

(f) *Effective date*—(1) *General rule.* This section applies to payments of income made after December 31, 1997.

(2) *Transition rules.* For purposes of this section, a withholding agent that holds a valid Form 1001 or 8233 on the date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid withholding certificate until its validity expires under applicable provisions as in effect on April 22, 1996. In addition, the documentation requirements for dividends on stock traded on a U.S. established financial market described in paragraph (b)(2) of this section shall apply only to accounts established after the date that is 60 days after these regulations are published as final regulations in the Federal Register. For accounts established on or before that date, the documentation requirements under this section shall apply to payments made after December 31, 1999.

Par. 13. Section 1.1441–7 is revised to read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) *Withholding agent defined.* For purposes of chapter 3 of the Internal Revenue Code, the term withholding agent means any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding. See § 1.1441–1(b) (dealing with general rules of withholding) and § 1.1441–1(f) (dealing with presumptions of U.S. or foreign status in the absence of required documentation) for determining whether a payment is considered made to a foreign person. Any person who meets the definition of a withholding agent is required to deposit any tax withheld under § 1.1461–1(a) and to make the returns prescribed by § 1.1461–1(b) and (c). When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and only one return (on Form 1042, as required under § 1.1461–1(b)), is required to be made.

(b) *Standards of knowledge*—(1) *In general.* If a withholding agent does not withhold the full amount even though it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of tax under section 1441 is incorrect, the withholding agent may be liable for tax, interest, and penalties under sections 1461 and 1463 and the regulations under those sections. A withholding agent that has received notification by the Internal Revenue Service that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with the presumptions set forth in § 1.1441–1(f) may be liable for tax, interest, and penalties. See § 1.1441–1(f)(5).

(2) *Reason to know*—(i) *In general.* A withholding agent will be considered to have reason to know if it has sufficient knowledge of the underlying facts such that a reasonably prudent person in the position of the withholding agent would question the claim made or if the withholding agent has actual knowledge of sufficient facts to put it on notice that the claim is false.

(ii) *Limits on duty to inquire in certain cases.* In the case of portfolio interest, interest on deposits described in section 871(i)(2)(A), and dividends described in § 1.1441–6(b)(2), a withholding agent's duty to inquire with respect to a beneficial owner withholding certificate is limited to the circumstances listed in this paragraph (b)(2)(ii). Where one or more of the circumstances described in this paragraph (b)(2)(ii) exist for a withholding certificate, the withholding agent may rely on the withholding certificate only after documentation is provided in support of the claim of foreign status, or reduced rate of tax under a tax treaty, and the certificate is corrected, if appropriate.

(A) The permanent residence address on the withholding certificate is an address in the United States.

(B) The payment is directed to a P.O. Box, an in-care-of address, a U.S. address, or an account with a financial institution in the United States.

(C) In the case of income for which benefits are claimed under an income tax treaty, the permanent residence address or mailing address is not in the corresponding treaty country.

(D) The beneficial owner notifies the withholding agent of an address for mailing purposes and that address is—

(*1*) Different from the permanent residence or mailing address stated on the withholding certificate provided to the withholding agent by or for the beneficial owner; and

(*2*) The address is one that is described in paragraph (b)(2)(ii)(A), (B), or (C) of this section.

(E) Such other circumstances as the Internal Revenue Service may prescribe in published guidance.

(3) *Universal accounts.* A withholding agent that is a financial institution dealing with the public and with which a customer may open an account shall apply the rules of this paragraph (b) on an account-by-account basis, except to the extent it uses a universal account system that uses a customer identifier that can be used to retrieve systemically any other accounts of the customer. See § 31.3406(c)–1(c)(3)(ii) and (c)(3)(iii)(C) of this chapter.

(c) *Authorized agent*—(1) *In general.* The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts of income subject to withholding, and the deposit of tax withheld) shall be imputed to the withholding agent on whose behalf it is acting. However, if the agent is a foreign person, a withholding agent that is a U.S. person may treat the acts of the foreign agent as its own for purposes of determining whether it has complied with the provisions of this section, but only if the agent is an authorized foreign agent, as defined in paragraph (c)(2) of this section.

(2) *Authorized foreign agent.* An agent is an authorized foreign agent only if—

(i) There is a written agreement between the withholding agent and the foreign person acting as agent;

(ii) The notification procedures described in paragraph (c)(3) of this section have been complied with;

(iii) Books and records and relevant personnel of the foreign agent are available for examination by the Internal Revenue Service in order to evaluate the withholding agent's compliance with the provisions of chapter 3, section 3406, and chapter 61 of the Internal Revenue Code, and the regulations under those provisions; for this purpose, the foreign agent's actual knowledge or

reason to know shall be imputed to the U.S. withholding agent; and

(iv) The U.S. withholding agent remains fully liable for the acts of its agent and does not assert any of the defenses that may otherwise be available under common law principles of agency in order to avoid tax liability under the Internal Revenue Code.

(3) *Notification.* A withholding agent that appoints an authorized agent to act on its behalf for purposes of § 1.871–14(c)(2), for the withholding provisions of chapter 3 of the Internal Revenue Code, or for the reporting provisions of chapter 61 of the Internal Revenue Code, is required to file notice of such appointment with the Office of the Assistant Commissioner (International). Such notice shall be filed before the first payment for which the authorized agent acts as such.

(4) *Liability of U.S. withholding agent.* A withholding agent acting through an authorized foreign agent is liable for any failure of the agent, such as failure to withhold an amount or make payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the U.S. withholding agent. Such liability shall exist irrespective of the fact that the authorized foreign agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of the regulations under sections 1441, 1442, or 1443. However, liability for tax, interest, and penalties shall not be collected more than once.

(5) *Filing of returns.* See § 1.1461–1(b)(2)(iii) and (c)(4)(iii) regarding returns required to be made where a U.S. withholding agent acts through an authorized foreign agent.

(d) *United States obligations.* If the United States is a withholding agent for an item of interest, including original issue discount, on obligations of the United States or of any agency or instrumentality thereof, the withholding obligation of the United States is assumed and discharged by—

(1) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt;

(2) The Treasurer of the United States, for interest paid by him or her, whether by check or otherwise;

(3) Each Federal Reserve Bank, for interest paid by it, whether by check or otherwise; or

(4) Such other person as may be designated by the Internal Revenue Service.

(e) *Assumed obligations.* If, in connection with the sale of a corporation's property, payment of the bonds or other obligations of the corporation is assumed by the assignee, the assignee, whether an individual, partnership, or corporation, shall be a withholding agent to the extent amounts subject to withholding tax are paid to a foreign person. Thus, the assignee shall deduct and withhold such taxes under § 1.1441–1 as would be required to be withheld by the assignor had no such sale or transfer been made.

(f) *Conduit financing arrangements.* [Reserved]

(g) *Effective date.* This section applies to payments of income made after December 31, 1997.

Par. 14. Section 1.1441–8T is amended as follows:

1. The section heading is revised.
2. Paragraph (b) is revised.
3. Paragraph (c) is added.

The revisions and additions read as follows:

§ 1.1441–8T Foreign government and international organization exemption from withholding (temporary).

* * * * *

(b) *Statement claiming exemption.* Absent actual knowledge or reason to know otherwise, the withholding agent may rely upon a claim of exemption made by the foreign government or international organization, if, prior to making the payment, the withholding agent satisfies the requirements of § 1.1441–1(e)(1). For purposes of this paragraph (b), a beneficial owner withholding certificate means a certificate described in § 1.1441–1(e)(2). A statement on the withholding certificate that the income is, or will be, exempt from taxation under section 892 and the regulations under that section will satisfy the requirement in § 1.1441–1(e)(2)(ii) that the beneficial owner state on the certificate the basis for the claim of reduced rate.

(c) *Effective date*—(1) *In general.* This section applies to payments of income made after December 31, 1997.

(2) *Transition rules.* For purposes of this section, a withholding agent that holds a valid Form 8709 on the date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid withholding certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

Par. 15. Section 1.1441–9 is added to read as follows:

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization and foreign private foundations.

(a) *Income not subject to tax under section 511.* No withholding of tax is required under § 1.1441–1 on income of a foreign organization described in section 501(c) of the Internal Revenue Code that is not subject to the tax imposed by section 511 of the Internal Revenue Code and is exempt from tax under section 501(a). See § 1.1443–1 for withholding rules applicable to foreign private foundations.

(b) *Statement claiming exemption.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely upon a claim of exemption by the foreign tax-exempt organization if, prior to making the payment, the withholding agent meets the requirements of § 1.1441–1(e)(1) (except that the certificate must contain a taxpayer identifying number). The requirement in § 1.1441–1(e)(2)(ii) that the beneficial owner state on the certificate the basis for the claim of reduced rate shall be satisfied by the beneficial owner certifying that the income is not, or will not be, subject to tax under section 511 and that the Internal Revenue Service has issued a determination letter (and the date thereof). If the organization cannot certify that it has been issued such a letter, it must provide an opinion of counsel that it is tax exempt under section 501(c).

(c) *Effective date*—(1) *In general.* This section applies to payments of income made after December 31, 1997.

(2) *Transition rules.* For purposes of this section, a withholding agent that holds a valid Form W–8, 1001 or 4224 on the date that is 60 days after the date these regulations are published as final regulations in the Federal Register may treat it as a valid withholding certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

Par. 16. Sections 1.1442–1 and 1.1442–2 are revised to read as follows:

§ 1.1442–1 Withholding of tax on foreign corporations.

For regulations concerning the withholding of tax at source under section 1442 in the case of foreign corporations, see §§ 1.1441–1 through 1.1441–7 and 1.1441–9.

§ 1.1442–2 Exemption under a tax treaty.

For regulations providing for a claim of reduced withholding tax under section 1442 by certain foreign corporations pursuant to the provisions of an income tax treaty, see § 1.1441–6.

Par. 17. Section 1.1442–3 is added to read as follows:

§ 1.1442–3 Tax exempt income of a foreign tax-exempt corporation.

For regulations providing for a claim of exemption for income exempt from tax under section 501(a) of a foreign tax-

exempt corporation, see § 1.1441–9. See § 1.1443–1 for withholding rules applicable to foreign foundations.

§ 1.1443–1 [Amended]

Par. 18. Section 1.1443–1 is amended by:

1. Amending the second sentence of paragraph (b)(4)(i) by removing the words ''an affidavit of the foreign organization or''.

2. Amending the third sentence in paragraph (b)(4)(i) by removing the words ''an affidavit or''.

Par. 19. Section 1.1461–1 is revised to read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) *Payment of withheld tax*—(1) *Deposits of tax.* Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code shall deposit such amount of tax with a Federal reserve bank or authorized financial institution as provided in § 1.6302–2(a). If for any reason the total amount of tax required to be returned for any calendar year pursuant to paragraph (b) of this section has not been deposited pursuant to § 1.6302–2, the withholding agent shall pay the balance of tax due for such year at such place as the Internal Revenue Service shall specify. The tax shall be paid when filing the return required under paragraph (b)(2) of this section for such year, unless the Internal Revenue Service specifies otherwise. See paragraph (b)(2) of this section when there are multiple withholding agents.

(2) *Penalties for failure to pay tax.* For penalties and additions to the tax for failure to timely pay the tax required to be withheld under chapter 3 of the Internal Revenue Code, see sections 6656, 6672, and 7202 and the regulations under those sections.

(b) *Income tax return*—(1) *General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the Internal Revenue Service may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042–S (or such other form as the Internal Revenue Service may prescribe) under paragraph (c)(1) of this section. See section 6011 and § 1.6011–1(c). The withholding agent must file the return on or before February 28 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042–S for the preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments and collection with respect to the items of income required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable statute of limitations. Adjustments to the total amount of tax withheld, as described in § 1.1461–2, shall be stated on the return as prescribed by the form and accompanying instructions.

(2) *Multiple withholding agents*—(i) *General rule.* Except as otherwise provided in paragraphs (b)(2) (ii) and (iii) of this section, no Form 1042 is required to be filed under paragraph (b)(1) of this section if a return is filed by another withholding agent reporting the same income in compliance with the provisions of this paragraph (b) and any remaining tax due is paid with the return as required under paragraph (a) of this section.

(ii) *Payment to a qualified intermediary.* A U.S. withholding agent making a payment to a qualified intermediary (as defined in § 1.1441–1(e)(5)(ii)) must file a return under paragraph (b)(1) of this section, regardless of whether the qualified intermediary assumes primary withholding responsibility for the payment, as described in § 1.1441–1(e)(5)(iv) and regardless of whether the qualified intermediary is also required to file a return under the terms of its agreement with the Internal Revenue Service. A qualified intermediary's agreement with the Internal Revenue Service shall specify the extent, if any, to which the intermediary is subject to filing requirements under this section.

(iii) *Payment to or through an authorized foreign agent.* Both the U.S. withholding agent making a payment to or through an authorized foreign agent (defined in § 1.1441–7(c)) and the authorized foreign agent are required to file a return under paragraph (b)(1) of this section.

(3) *Amended returns.* An amended return may be filed on a Form 1042X or such other form as the Internal Revenue Service may prescribe. An amended return must include such information as the form and accompanying instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(c) *Information returns*—(1) *Filing requirement*—(i) *In general.* A withholding agent must make an information return on Form 1042–S (or such other form as the Internal Revenue Service may prescribe) to report the items of income specified in paragraph (c)(2) of this section that were paid during the preceding calendar year. One Form 1042–S shall be prepared for each beneficial owner (except as otherwise provided in paragraph (c)(4) of this section regarding multiple withholding agents). The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the Internal Revenue Service on or before February 28 of the calendar year following the year in which the item of income was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042–S and the transmittal form. Withholding certificates or other statements or documentation provided to a withholding agent are not required to be attached to the information return. Another copy of the Form 1042–S shall be furnished to the payee on or before February 28 of the calendar year following the year in which the item of income was paid after the calendar year of payment. The withholding agent shall retain a copy of each Form 1042–S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042–S relates.

(ii) *Joint owners.* In the case of joint owners, a single Form 1042–S may be prepared. However, any one of the owners may request that it be furnished its own Form 1042–S. Where more than one Form 1042–S is issued with respect to a single payment to joint owners, the aggregate amount of income and tax withheld reported on the Forms 1042–S cannot exceed the amount of income to the joint owners and tax withheld thereon. If a single Form 1042–S is prepared, the form shall state the name of only one owner and that name shall be that of the person whose status the withholding agent relied upon to determine the applicable rate of withholding tax.

(2) *Income subject to reporting*—(i) *In general.* Subject to the exceptions in paragraph (c)(2)(ii) of this section, the items of income required to be reported on a Form 1042–S are income subject to withholding (as defined in § 1.1441–2(a)), income on a notional principal contract described in § 1.1441–4(a)(3), and amounts described in sections 6041

through 6050P that are paid to a foreign person and are not exempt from reporting under sections 6041 through 6050P or the regulations under those sections.

(ii) *Exceptions to reporting.* The items of income listed in this paragraph (c)(2)(ii) are not required to be reported on a Form 1042–S.

(A) Any item of income paid by a partnership, trust or estate to the extent the item of income is required to be reported by the partnership, trust or estate under section 6031 or 6034.

(B) Any item required to be reported on a Form W–2, including an item required to be shown on Form W–2 solely by reason of § 1.6041–2 (relating to return of information as to payments to employees) or § 1.6052–1 (relating to information regarding payment of wages in the form of group-term life insurance).

(C) Any item of income required to be reported on Form 1099, and such other forms prescribed under sections 6041 through 6050P and the regulations under these sections.

(D) Any item of income paid to foreign governments, international organizations, and foreign central banks of issue that are exempt from tax under section 892 or section 895.

(E) Income required to be reported on Form 8288 (U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests) or Form 8804 (Annual Return for Partnership Withholding Tax (Section 1446)).

(F) Income on deposits described in section 871(i)(2)(A), unless actually subject to withholding or specifically subject to reporting under section 6049 and the regulations under that section.

(G) Interest on a foreign-targeted registered obligation described in § 1.871–14(e), except as otherwise provided in § 1.871–14(e)(4)(ii)(A).

(3) *Required information.* Form 1042–S shall include such information as is required by the form and accompanying instructions. The information shall be based upon the information provided by or on behalf of the beneficial owner (e.g., a beneficial owner withholding certificate or documentary evidence), as corrected and supplemented based on the agent's actual knowledge or reason to know. In particular, the Form 1042–S must include the information described in this paragraph (c)(3), if applicable.

(i) The name, address, and taxpayer identifying number of the withholding agent.

(ii) A description of each category of income paid (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars.

(iii) The rate of withholding applied and, if applicable, the basis for withholding at a reduced rate.

(iv) The name, permanent residence address, and taxpayer identifying number (if required under § 1.1441–1(e)(4)(vii) to be shown on a beneficial owner withholding certificate or actually known to the withholding agent making the return) of the beneficial owner.

(4) *Multiple withholding agents*—(i) *In general.* Except as otherwise provided in paragraph (c)(4) (ii), (iii), and (v) of this section, no information return is required to be filed under paragraph (c)(1)(i) of this section if a return is filed by another withholding agent reporting the same income in compliance with the provisions of this paragraph (c).

(ii) *Payment to a qualified intermediary.* A withholding agent making a payment to a qualified intermediary (defined in § 1.1441–1(e)(5)(ii)) must report the payment but may do so on a single Form 1042–S.

(iii) *Payment to an authorized foreign agent*—(A) *Filing obligation of foreign authorized agent.* An authorized foreign agent (as described in § 1.1441–7(c)(2)) is subject to the filing requirements described in paragraph (c)(1)(i) of this section because it is a withholding agent. Therefore, to the extent the U.S. withholding agent for which it is acting is not reporting the information required under this paragraph (c), it must report the information required to be reported under paragraph (c)(3) or (c)(4)(vi) of this section.

(B) *Filing obligations of the U.S. withholding agent.* A U.S. withholding agent making a payment to an authorized foreign agent is exempted from the requirement under paragraph (c)(4)(iv) of this section to make a return on Form 1042–S for each beneficial owner and may, instead, make a single Form 1042–S to report the payment made to the authorized foreign agent. The exemption in this paragraph (c)(4)(iii)(B) shall apply only to the extent the authorized foreign agent complies with the filing requirements under paragraph (c)(4)(iii)(A) of this section.

(iv) *Payment to other foreign person not acting for its own account.* Payment of an item of income to an agent, nominee or representative for the benefit of other persons in respect of whom Forms 1042–S are required may not be shown on a single Form 1042–S but must be identified on separate Forms 1042–S for each beneficial owner if such agent, nominee, or representative is a foreign person and is not a qualified intermediary or an authorized foreign agent.

(v) *Payment to a foreign partnership.* Payment of an item of income to a foreign partnership that is not a qualified intermediary and acts for its own account may not be shown on a single Form 1042–S but must be identified on separate Forms 1042–S for each beneficial owner (or partner that is a qualified intermediary or authorized foreign agent).

(vi) *Required information.* An information return on a Form 1042–S by a withholding agent reporting payments to an intermediary or to a foreign partnership described in paragraph (c)(4)(v) of this section must contain the information contained in this paragraph (c)(4)(vi). The information on the Form 1042–S must be based upon the withholding certificates furnished by the payee, as corrected and supplemented by the withholding agent's actual knowledge or reason to know.

(A) The name, address, and taxpayer identifying number of the withholding agent.

(B) A description of each category of income paid (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars.

(C) The rate of withholding applied.

(D) The basis for not withholding or withholding at a reduced rate.

(E) The name, address, and taxpayer identifying number of the payee.

(F) In the case of a payment to a partnership acting for its own account, the name, address, and taxpayer identifying number (if required under § 1.1441–1(e)(4)(vii) to be stated on the withholding certificates or actually known to the withholding agent) of the person for whom a Form 1042–S is required to be prepared pursuant to the provisions of paragraph (c)(4)(v) of this section.

(5) *Magnetic media reporting.* A withholding agent that makes 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See § 301.6011–2 of this chapter for requirements applicable to a withholding agent that files Forms 1042–S on magnetic media and publications of the Internal Revenue Service relating to magnetic media filing.

(d) *Report of taxpayer identifying numbers.* When so required or permitted under procedures issued by the Internal Revenue Service, a withholding agent may attach to the Form 1042 a list of all the taxpayer identifying numbers that have been

furnished to the withholding agent and upon which the withholding agent has relied to grant a reduced rate of withholding and that are not otherwise required to be reported on a Form 1042–S under the provisions of this section.

(e) *Indemnification of withholding agent.* A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 3 of the Internal Revenue Code and the regulations under that chapter. A withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 3 of the Internal Revenue Code is treated for purposes of section 1461 and this paragraph (e) as having withheld tax in accordance with the provisions of chapter 3 of the Internal Revenue Code and the regulations under that chapter. In addition, a withholding agent is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the grace period provisions set forth in § 1.1441–1(f)(2)(ii)(A). This paragraph (e) does not apply to relieve a withholding agent from tax liability under chapter 3 of the Internal Revenue Code.

(f) *Amounts paid not constituting gross income.* Any amount withheld in accordance with §§ 1.1441–3(b)(1) and 1.1441–3(d) shall be returned and paid in accordance with this section, even though the item or amount paid to the beneficial owner may not constitute gross income in whole or in part. For this purpose, a reference in this section to an item or amount of income shall, where appropriate, be deemed to refer to the amount subject to withholding under §§ 1.1441–3(b)(1) and 1.1441–3(d).

(g) *Extensions of time for requests made for calendar year beginning after the date of publication of these regulations as final regulations in the* Federal Register—(1) *Extension of time to file Form 1042.* The Internal Revenue Service may grant an extension of time in which to file a Form 1042. Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns, or such other form as the Internal Revenue Service may prescribe, must be used to request an extension of time. The request must contain a statement of the reasons for requesting the extension. The request must be mailed or delivered not later than February 28 of the year following the end of the calendar year for which the return will be filed.

(2) *Extension of time to file Form 1042–S.* The Internal Revenue Service may grant an extension of time in which to file Form 1042–S. Form 8809, Request for Extension of Time to File Information Returns, or such other form as the Internal Revenue Service may prescribe, must be used to request an extension of time. The request must contain a statement of the reasons for requesting the extension. The request must be mailed or delivered not later than February 28 of the year following the calendar year for which the return will be filed.

(3) *Extension of time to furnish Forms 1042–S.* The Internal Revenue Service may grant an extension of time in which to furnish Forms 1042–S to beneficial owners or intermediaries. Form 8809, request for Extension of Time to File Information Returns, or such other form as the Internal Revenue Service may prescribe, must be used to request an extension of time. The request must contain the withholding agent's name and address, the withholding agent's taxpayer identifying number, the type of statement and a statement of the reasons for requesting the extension. The request must be signed by the withholding agent or a person who is duly authorized to sign a return, statement, or other document. The request must be mailed or delivered not later than February 28 of the year following the end of the calendar year for which the statement will be furnished.

(h) *Penalties.* For penalties and additions to the tax for failure to file returns in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections.

(i) *Effective date.* This section shall apply to returns required for payments made after December 31, 1997.

Par. 20. Section 1.1461–2 is revised to read as follows:

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* A withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code and made a deposit of that tax as provided in § 1.6302–2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a)(2) or (3) of this section. After such time, an adjustment to the amount overwithheld can only be claimed by the beneficial owner with the Internal Revenue Service pursuant to the procedures described in chapter 65 of the Internal Revenue Code. For purposes of this section, the term *overwithholding* means any amount actually withheld (determined before application of the adjustment procedures under this section) from an item of income pursuant to chapter 3 of the Internal Revenue Code in excess of the actual tax liability due, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

(2) *Reimbursement of tax*—(i) *General rule.* Under the reimbursement procedure, the withholding agent may repay the beneficial owner for the amount overwithheld by reducing, by the amount of tax actually repaid, the amount of any deposit of tax made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The withholding agent states, on a timely filed (not including extensions) Form 1042–S for the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayment; and

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1.

(ii) *Record maintenance.* If the beneficial owner is repaid an amount of withholding tax under the provisions of this paragraph (a)(2), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment and the withholding agent must provide a copy or such receipt to the beneficial owner. For this purpose, a canceled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(3) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Internal Revenue Code to be withheld from income paid by the withholding agent to such person before the earlier of the due date for filing the Form 1042–S for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the Internal Revenue Service.

For purposes of making a return on Form 1042 or 1042–S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Internal Revenue Code.

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 1997, a domestic corporation C pays a dividend of $100 to N, at which time C Corporation withholds $30 and remits the balance of $70 to N. On February 10, 1998, prior to the time that C files its Form 1042, N advises C Corporation that, pursuant to the income tax convention with the United Kingdom, only $15 tax should have been withheld from the $100 dividend and requests reimbursement of the $15 that was erroneously withheld. Although C Corporation has already deposited the $30 that was withheld, as required by § 1.6302–2(a)(1)(iv), such corporation repays N in the amount of $15.

(ii) During 1997, C Corporation makes no other payments upon which tax is required to be withheld under chapter 3 of the Internal Revenue Code; accordingly, its return on Form 1042 for such year, which is filed on February 28, 1998, shows total tax withheld of $30, an adjusted total tax withheld of $15, and $30 previously paid for such year. Pursuant to § 1.6414–1(b), C Corporation claims credit for the overpayment of $15 shown on the Form 1042 for 1997. Accordingly, it is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the calendar year 1998. The Form 1042–S required to be filed by C Corporation with respect to the dividend of $100 paid to N in 1997 is required to show tax withheld of $30 and tax released of $15.

(iii) During 1998, C Corporation is required to withhold $200 under chapter 3 of the Internal Revenue Code, all of which is withheld in June of that year. Pursuant to § 1.6302–2(a)(1)(iii), C Corporation deposits the amount of $185 on July 15, 1998, that is, $200 less the $15 for which credit is claimed on the Form 1042 for 1997. On February 28, 1999, C Corporation files its return on Form 1042 for calendar year 1998, which shows total tax withheld of $200, $185 previously deposited by C Corporation, and $15 allowable credit.

Example 2. The facts are the same as in *Example 1* except that paragraph (iii) of *Example 1* does not apply and C Corporation is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Internal Revenue Code. C Corporation withholds tax of $100 between February 8 and February 15, 1998, and complies with the quarter-monthly deposit requirement of § 1.6302–2(a)(1)(ii) by depositing $75 [($100×90 percent) less $15] of the withheld tax within 3 banking days after February 15, 1998, and by depositing $10 [($100 − $15) less $75] within 3 banking days after March 15, 1998.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold the tax that should have been withheld from previous payments from future payments made to a beneficial owner. Such additional withholding of tax may only be made from payments made before the date that the Form 1042 is required to be filed (not including extensions). See § 1.6302–2 for making deposits of tax or § 1.1461–1(a) for making payment of the balance of tax due for a calendar year.

(c) *Definition.* For purposes of this section, the term *payment period* means the period for which the withholding agent is required by § 1.6302–2(a)(1) to make a deposit of tax withheld under chapter 3 of the Internal Revenue Code.

(d) *Effective date.* This section applies to payments of income made after December 31, 1997.

§§ 1.1461–3 and 1.1461–4 [Removed]

Par. 21. Sections 1.1461–3 and 1.1461–4 are removed.

Par. 22. Section 1.1462–1 is amended by:

1. Revising paragraph (a).
2. Adding paragraph (c).
3. Removing the OMB parenthetical and the authority citation at the end of the section.

The revision and addition read as follows:

§ 1.1462–1 Withheld tax as credit to recipient of income.

(a) *Creditable tax.* The entire amount of the income from which the tax is required to be withheld (including amounts calculated under the gross-up formula in § 1.1441–3(e)(3)) shall be included in gross income in the return required to be made by the beneficial owner of the income, without deduction for the amount required to be withheld, but the tax so withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

* * * * *

(c) *Effective date.* This section applies to payments of income made after December 31, 1997.

Par. 23. Section 1.1463–1 is revised to read as follows:

§ 1.1463–1 Tax paid by recipient of income.

(a) *Tax paid.* If the tax required to be withheld under chapter 3 of the Internal Revenue Code is paid by the beneficial owner of the income or by the withholding agent, it shall not be re-collected from the other, regardless of the original liability therefor. However, this section does not relieve the person that did not withhold tax from liability for interest or any penalties or additions to tax otherwise applicable.

(b) *Effective date.* This section applies to failures to withhold occurring after December 31, 1989.

Par. 24. In § 1.6041–1, the amendments to paragraph (a)(1) as proposed in project number INTL–52–86 published on February 29, 1988, at 53 FR 5993, are withdrawn.

Par. 25. Section 1.6041–1 is amended by:

1. Removing paragraph (a)(1)(iii).
2. Redesignating paragraphs (a)(1) introductory text and (a)(1)(i) as paragraphs (a)(1)(i) introductory text and (a)(1)(i)(A).
3. Adding a heading for paragraph (a)(1).
4. Amending newly designated paragraph (a)(1)(i)(A) by adding the word ''or'' at the end of the paragraph.
5. Redesignating paragraph (a)(1)(ii) as paragraph (a)(1)(i)(B) and removing the language ''; or'' at the end of the paragraph and adding a period in its place.
6. Designating the concluding text immediately following newly designated paragraph (a)(1)(i)(B) as paragraph (a)(1)(ii).
7. Removing the first sentence of newly designated paragraph (a)(1)(ii) and adding two new sentences in its place.
8. Adding paragraph (d)(5).

The revisions and additions read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more

(a) *General rule*—(1) *Information returns required*—(i) * * *

(ii) The payments described in paragraphs (a)(1)(i)(A) and (B) of this section shall not include any payments with respect to which a statement is required by, or may be required under authority of section 6042(a) (relating to dividends); section 6043(a)(2) (relating to distributions in liquidation); section 6044(a) (relating to patronage dividends); section 6045 (relating to brokers' transactions with customers); section 6049(a)(1) and (a)(2) (relating to interest); section 6050N(a) (relating to royalties); or section 6050P(a) or (b) (relating to cancellation of indebtedness). In addition, the payments described in paragraphs (a)(1)(i)(A) and (B) of this section shall not include amounts excepted from the definition of dividends under section 6042(b)(2) and § 1.6042–3(b)(1), amounts described in section 6044(b), amounts excepted from reporting under

§ 1.6045–1(g)(1), amounts excepted from the definition of interest under section 6049(b)(2)(C) or (D), § 1.6049–4(c)), or § 1.6049–5(b)(6) through (14). * * *

* * * * *

(d) * * *

(5) Amounts paid after December 31, 1997, with respect to notional principal contracts referred to in § 1.1441–4(a)(3) that the payor or middleman may treat as paid to a beneficial owner that is a foreign person and that are not described in § 1.6041–4(a)(2) or (4) shall be reported on a Form 1042 and 1042–S in accordance with § 1.1461–1 (b) and (c), whether or not effectively connected with the conduct of a trade or business in the United States. Although reportable, amounts described in this paragraph (d)(5) are not subject to backup withholding under section 3406 if paid outside the United States. See 31.3406(g)–(1)(e) of this chapter.

* * * * *

Par. 26. In § 1.6041–3, paragraph (q), as proposed to be added in project number LR–3–87 on June 9, 1988, at 53 FR 21694, is withdrawn.

Par. 27. Section 1.6041–3 is amended by:

1. Revising the introductory text of the section.
2. Revising paragraph (a).
3. Adding paragraph (q).

The addition and revisions read as follows:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

Returns of information are not required under section 6041 and §§ 1.6041–1 and 1.6041–2 for payments described in paragraphs (a) through (q) of this section. See § 1.6041–4 for reporting exemptions regarding foreign-related items.

(a) Payments of income required to be reported on Forms 1120–S, 941, W–2, and W–3, (however, see § 1.6041–2 with respect to Forms W–2 and W–3);

* * * * *

(q) Payments to individuals as scholarships or fellowship grants, as defined in § 1.117–6(c)(3). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services, as defined in § 1.117–6(d)(2). See § 1.1461–1(c) for applicable reporting requirements with respect to amounts paid to foreign persons.

Par. 28. Section 1.6041–4 is revised to read as follows:

§ 1.6041–4 Foreign-related items.

(a) *Exempted foreign-related items.* Returns of information are not required under section 6041 and §§ 1.6041–1 and 1.6041–2 for payments of the items described in paragraphs (a) (1) through (4) of this section.

(1) Returns of information are not required for payments that a payor or middleman, as defined in paragraph (b)(1) of this section, may treat as made to a beneficial owner that is a foreign person pursuant to § 1.1441–1(e)(1) and from which the payor or middleman is either required to withhold tax under section 1441 or the regulations under that section or would be so required but for exceptions in the regulations under section 1441 (such as, for example, under § 1.1441–4 (dealing with effectively connected income) or § 1.1441–6 (dealing with a reduction of rate of tax under an income tax treaty)). See § 1.1441–1(e)(4)(i) in the case of payments to joint owners.

(2) Returns of information are not required for payments of amounts from sources outside the United States made by a non-U.S. payor or non-U.S. middleman (as defined in paragraph (b)(2) of this section) outside the United States. See § 1.6049–5(e) for circumstances in which a payment is considered to be made outside the United States.

(3) Returns of information are not required for payments of amounts from sources outside the United States that a payor or middleman may treat as paid to a beneficial owner that is a foreign person (because such person has furnished a certificate described in § 1.6049–5(c)(1)). For purposes of this paragraph (a)(3), the provisions in § 1.6049–5 (c)(3) through (c)(6) (regarding operating rules related to the certificate of foreign status) shall apply.

(4) Returns of information are not required for the period that the amounts paid represent assets blocked as described in § 1.1441–2(e)(3). The exemption in this paragraph (a)(4) shall terminate when payment is deemed to occur in accordance with the provisions of § 1.1441–2(e)(3).

(b) *Definitions*—(1) *Payor and middleman.* For purposes of this section, the term *payor* means any person who is required to make an information return with respect to any reportable payment, as described in section 3406(b), including any middleman. The term *middleman* means any person whose legal relationship to the payor or payee (including any other middleman) is of a kind described in § 1.6049–4(f)(4) (as proposed in project number INTL–52–86 published in 1988–1 C.B. 892).

(2) *Non-U.S. payor and non-U.S. middleman.* For purposes of this section, the term *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than—

(i) A person described in section 7701(a)(30);

(ii) The government of the United States, the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(iii) A controlled foreign corporation within the meaning of section 957(a); or

(iv) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States.

(c) *Applicable presumptions.* The presumptions of § 1.1441–1(f) shall apply for determining the payee's status where the required documentation is lacking, incorrect, or unreliable.

(d) *Joint owners.* In the case of amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (d), a payor or middleman must receive from each joint owner the required certification or documentation. Where any one of the joint owners has not furnished such certification or documentation, the payment is not exempt from reporting under this section.

(e) *Payee.* For determination of payee, see § 1.1441–1(c)(3).

(f) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see § 1.6049–4(d)(3)(i).

(g) *Effective date*—(1) *General rule.* The provisions of this section apply to payments made after December 31, 1997.

(2) *Transition rules.* A payor that holds a valid Form W–8 on the date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

Par. 29. Section 1.6041A–1 as proposed to be added in project number LR–214–82, published on January 7, 1986, at 51 FR 626, is amended by adding a new paragraph (d)(3), to read as follows:

§ 1.6041A–1 Returns regarding payments of remuneration for services and certain direct sales.

* * * * *

(d) *Exceptions to return requirement.* * * *

* * * * *

(3) *Foreign transactions*—(i) *In general.* No return shall be required under paragraph (a) of this section with respect to payments described in this paragraph (d)(3).

(A) Returns of information are not required for payments of remuneration for services that a payor or middleman, as defined in paragraph (d)(3)(ii)(A) of this section, may treat as made to a beneficial owner that is a foreign person pursuant to § 1.1441–1(e)(1) and from which the payor or middleman is either required to withhold tax under section 1441 or the regulations under that section or would be so required but for exceptions in the regulations under section 1441 (such as, for example, under § 1.1441–4 (dealing with effectively connected income) or § 1.1441–6 (dealing with a reduction of rate of tax under an income tax treaty)). See § 1.1441–1(e)(4)(i) in the case of payments to joint owners.

(B) Returns of information are not required for payments of remuneration for services and certain direct sales from sources outside the United States made outside the United States by a non-U.S. payor or non-U.S. middleman (as defined in paragraph (d)(3)(ii)(B) of this section). See § 1.6049–5(e) for circumstances in which a payment is considered to be made outside the United States.

(C) Payments of services and certain direct sales from sources outside the United States that a payor or middleman may treat as paid to a beneficial owner that is a foreign person (because such person has furnished a certificate described in § 1.6049–5(c)(1)). For purposes of this paragraph (d)(3)(i)(C), the provisions in § 1.6049–5 (c)(3) through (c)(6) (regarding operating rules related to the certificate of foreign status) shall apply. See § 1.6041–1(d)(5) for reportable payments made to foreign persons.

(D) Amounts paid for services and certain direct sales for the period that they represent assets blocked as described in § 1.1441–2(e)(3). The exemption in this paragraph (d)(3)(i)(D) shall terminate when payment is deemed to occur in accordance with the provisions of § 1.1441–2(e)(3).

(ii) *Definitions*—(A) *Payor and middleman.* For purposes of this section, the term *payor* means any person who is required to make an information return with respect to any reportable payment, as described in section 3406(b), including any *middleman* and the term middleman means any person whose legal relationship to the payor or payee (including any other middleman) is of a kind described in § 1.6049–4(f)(4) (as proposed in project number INTL–52–86 published in 1988–1 C.B. 892).

(B) *Non-U.S. payor and non-U.S. middleman.* For purposes of this section, the term *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than—

(*1*) A person described in section 7701(a)(30);

(*2*) The government of the United States, the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(*3*) A controlled foreign corporation within the meaning of section 957(a); or

(*4*) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States.

(C) *Applicable presumptions.* The presumptions of § 1.1441–1(f) shall apply for determining the payee's status where the required documentation is lacking, incorrect, or unreliable.

(D) *Joint owners.* In the case of amounts paid to joint owners for which a certificate of documentation is required as a condition for being exempt from reporting under this paragraph (d)(3), the payor or middleman must receive from each joint owner the certification described in paragraph (d)(3)(i) (A) or (C) of this section. Where any one of the joint owners has not furnished such certification, the payment is not exempt from reporting under this section unless described in paragraph (d)(3)(i) (B) or (D) of this section.

(E) *Payee.* For determination of payee, see § 1.1441–1(c)(3).

(iii) *Effective date*—(A) *General rule.* The provisions of this paragraph (d)(3) apply to payments made after December 31, 1997.

(B) *Transition rules.* A payor that holds a valid Form W–8 on a date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

* * * * *

Par. 30. In § 1.6042–3, paragraph (b), as proposed to be revised in project number INTL–52–86, published on February 29, 1988 (53 FR 5995) is amended by:

1. Removing paragraphs (b)(1) and (b)(2).

2. Redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(1)(vii) and (b)(1)(viii), respectively.

Par. 31. Section 1.6042–3 is amended by:

1. Revising paragraph (a) introductory text.

2. Removing paragraph (b) introductory text.

3. Adding paragraph (b)(1) heading.

4. Revising paragraph (b)(1) introductory text.

5. Adding paragraphs (b)(1)(i) through (b)(1)(vi).

6. Revising paragraphs (b)(2) through (b)(4).

7. Adding paragraphs (b)(5) through (b)(7).

The additions and revisions read as follows:

§ 1.6042–3 Dividends subject to reporting.

(a) *In general.* Except as provided in paragraph (b) of this section, the term *dividend* for purposes of this section and §§ 1.6042–2 and 1.6042–4 means the amounts described in paragraphs (a)(1) and (2) of this section.

* * * * *

(b) *Exceptions*—(1) *In general.* Returns of information are not required under section 6042 and §§ 1.6042–2 and 1.6042–4 for amounts described in paragraphs (b)(1) (i) through (viii) of this section.

(i) Amounts paid by an insurance company to a policyholder, other than a dividend upon its capital stock.

(ii) Payments (however denominated) by a mutual savings bank, savings and loan association, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares. See, however, section 6049 and the regulations under that section for provisions requiring reporting of these payments.

(iii) Distributions or payments from sources within the United States that a payor or middleman (as defined in paragraph (b)(2) of this section) may treat as made to a beneficial owner that is a foreign person pursuant to § 1.1441–1(e)(1) or, in the case of dividends paid on stock traded on a U.S. established financial market (as defined in § 1.1441–6(b) (2)), pursuant to § 1.1441–6(b)(2) or (3), or § 1.6049–5(c).

(iv) Distributions or payments from sources outside the United States paid outside the United States by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (b)(2)(ii) of this section). See § 1.6049–5(e) for circumstances in which a payment is considered to be made outside the United States.

(v) Distributions or payments from sources outside the United States that a payor or middleman may treat as paid to a beneficial owner that is a foreign person (because such person has furnished a certificate or documentary evidence as required under § 1.6049–5(c) (1) or (2)). For purposes of this paragraph (b)(1)(v), the provisions in § 1.6049–5 (c)(3) through (c)(6) (regarding operating rules related to the certificate of foreign status) shall apply.

(vi) Distributions or payments for the period that the amounts represent assets blocked as described in § 1.1441–2(e)(3). The exemption in this paragraph (b)(1)(vi) shall terminate when payment is deemed to occur in accordance with the rules of § 1.1441–2(e)(3).

* * * * *

(2) *Definitions*—(i) *Payor and middleman.* For purposes of this section, the term *payor* means any person who is required to make an information return with respect to any reportable payment, as described in section 3406(b) (including any middleman), and the term *middleman* means any person whose legal relationship to the payor or payee (including any other middleman) is of a kind described in § 1.6049–4(f)(4) (as proposed in project number INTL–52–86 published in 1988–1 C.B. 892).

(ii) *Non-U.S. payor and non-U.S. middleman.* For purposes of this section, the term *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than—

(A) A person described in section 7701(a)(30);

(B) The government of the United States, the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(C) A controlled foreign corporation within the meaning of section 957(a); or

(D) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States.

(3) *Applicable presumptions.* The presumptions of § 1.1441–1(f) shall apply for determining the payee's status under § 1.6042–3 where the required documentation is lacking, incomplete, incorrect, or unreliable.

(4) *Joint owners.* In the case of amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b), the payor or middleman must receive from each joint owner the required certification or documentation. Where any one of the joint owners has not furnished the required certification or documentation, the payment is not exempt from reporting under this section.

(5) *Payee.* For determination of payee, see § 1.1441–1(c)(3).

(6) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see § 1.6049–4(d)(3)(i).

(7) *Effective date*—(i) *General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 1997.

(ii) *Transition rules.* A payor that holds a valid Form W–8 on the date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

Par. 32. Section 1.6045–1 as proposed to be amended in project number INTL–52–86, published on February 29, 1988, at 53 FR 5996, is amended by:

1. Removing paragraph (a)(1).

2. Removing paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii) heading, (g)(1)(iii)(A), (g)(2), (g)(3), and (g)(4).

3. Redesignating paragraph (g)(1)(iii)(B) as follows:

Paragraph	Redesignated as paragraph
(g)(1)(iii)(B)	(g)(1)(ii)
(g)(1)(iii)(B)(*1*) introductory text.	(g)(1)(ii)(A) introductory text
(g)(1)(iii)(B)(*1*)(*i*)	(g)(1)(ii)(A)(*1*)
(g)(1)(iii)(B)(*1*)(*ii*)	(g)(1)(ii)(A)(*2*)
(g)(1)(iii)(B)(*2*) introductory text.	(g)(1)(ii)(B) introductory text
(g)(1)(iii)(B)(*2*)(*i*)	(g)(1)(ii)(B)(*1*)
(g)(1)(iii)(B)(*2*)(*ii*)	(g)(1)(ii)(B)(*2*)
(g)(1)(iii)(B)(*2*)(*iii*)	(g)(1)(ii)(B)(*3*)
(g)(1)(iii)(B)(*2*)(*iv*)	(g)(1)(ii)(B)(*4*)
(g)(1)(iii)(B)(*2*)(*v*)	(g)(1)(ii)(B)(*5*)

4. Removing in newly designated paragraph (g)(1)(ii)(A) introductory text the language ''subdivision 2 of this paragraph (g)(1)(iii)(B)'' and adding ''paragraph (g)(1)(ii)(B) introductory text of this section'' in its place.

5. Removing in newly designated paragraph (g)(1)(ii)(B) introductory text the language ''subdivision (1) of this paragraph (g)(1)(iii)(B)'' and adding ''paragraph (g)(1)(ii)(A)'' in its place.

6. Removing in newly designated paragraph (g)(1)(ii)(B)(*3*) the language ''§ 1.6049–5(j)(4)'' and adding ''§ 1.6049–5(e)'' in its place.

Par. 33. Section 1.6045–1(d)(6)(iii) as proposed to be added in project number INTL–0015–91, published on March 17, 1992, at 57 FR 9224, is withdrawn.

Par. 34. Section 1.6045–1 is amended by:

1. Revising the heading of paragraph (a) and republishing paragraph (a) introductory text.

2. Revising paragraph (a)(1).

3. Revising paragraph (d)(6).

4. Revising paragraph (g)(1) heading; removing paragraph (g)(i) introductory text; and revising paragraphs (g)(1)(i) and (g)(2) through (g)(4).

The revisions read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A *broker* includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a *broker* includes only a person described as a U.S. payor or U.S. middleman in § 1.6049–5(d)(1). In addition, a *broker* does not include an international organization described in § 1.6049–4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

* * * * *

(d) * * *

(6) *Conversion into United States dollars of proceeds paid in foreign currency*—(i) *Conversion rules.* When the amount subject to reporting is paid in a currency other than the U.S. dollar, the amount subject to reporting under this section shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under § 1.988–5 (a), (b), or (c) where the taxpayer effects a sale and a hedge through the same broker*—(A) *In general.* In lieu of the amount reportable under paragraph (d)(6)(i) of this section,

the amount subject to reporting shall be the integrated amount computed under § 1.988–5 (a), (b) or (c) if—

(*1*) A taxpayer effects through a broker a sale in exchange for nonfunctional currency (as defined in § 1.988–1(c)) and hedges all or a part of such sale as provided in § 1.988–5 (a), (b) or (c) with the same broker; and

(*2*) The taxpayer complies with the requirements of § 1.988–5 (a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(B) *Effective date.* The provisions of this paragraph (d)(6)(ii) apply to transactions entered into on or after the date that is 60 days after these regulations are published as final regulations in the Federal Register.

* * * * *

(g) *Exempt foreign persons*—(1) *Brokers*—(i) *In general.* No return of information is required by a broker with respect to a customer who is considered to be an exempt foreign person under this paragraph (g)(1)(i). Unless it has actual knowledge or reason to know otherwise, a broker may treat a customer as an exempt foreign person under the circumstances described in paragraph (g)(1)(i) (A) through (D) of this section. See § 1.6045–1(c)(2)(ii) for reportable proceeds paid to foreign persons.

(A) With respect to a sale effected at an office of a broker inside the United States, the broker may treat the customer as an exempt foreign person if the broker complies with the procedures described in paragraph (g)(3) of this section.

(B) With respect to a sale effected at an office of a broker outside the United States, the broker may treat the customer as an exempt foreign person if the broker complies with the procedures described in paragraph (g)(3) of this section or § 1.6049–5(c)(2).

(C) With respect to a redemption or retirement of stock or an obligation (the interest or original issue discount on which is described in § 1.6049–5(b) (6), (7), (10), or (11)) or the dividends on which are described in § 1.6042–3(b)(1)(iv)) that is effected at an office of a broker outside the United States by the issuer (or its paying or transfer agent), the broker may treat the customer as an exempt foreign person if the broker is not also acting in its capacity as a custodian, nominee, or other agent of the payee.

(D) With respect to a sale effected by a broker at an office of the broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person for the period that those proceeds are assets blocked as described in § 1.1441–2(e)(3). For purposes of this paragraph (g)(1)(i)(D) and section 3406, a payment is deemed to occur in accordance with § 1.1441–2(e)(3).

* * * * *

(2) *Barter exchange.* No return of information is required by a barter exchange with respect to a client or a member that the barter exchange may treat as a foreign person pursuant to the procedures described in paragraph (g)(3) of this section.

(3) *Certificate of foreign status*—(i) *In general.* For purposes of this paragraph (g), a broker may treat a customer as an exempt foreign person if the broker complies with the requirements of § 1.1441–1(e)(1) (dealing with reliance by a withholding agent on a beneficial owner's claim of foreign status). For purposes of this paragraph (g)(3)(i), the broker may rely on a beneficial owner withholding certificate described in § 1.1441–1(e)(2). For purposes of this paragraph (g)(3)(i), in the case of an individual beneficial owner, the certificate shall include a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during the calendar year.

(ii) *Applicable presumptions.* Absent actual knowledge or reason to know otherwise, the presumptions under § 1.1441–1(f) shall apply in determining the payee's status where the required documentation is lacking, incorrect, or unreliable.

(iii) *Joint owners.* In the case of amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (g)(1)(i) of this section, a broker or barter exchange must receive from each joint owner the required certification or documentation. Where any one of the joint owners has not furnished the required certification or documentation, the transaction is not exempt from reporting under paragraph (g)(1)(i) of this section.

(iv) *Payee.* For a determination of payee, see § 1.1441–1(c)(3).

(v) *Operating rules.* For purposes of this paragraph (g), the provisions in § 1.6049–5(c) (3) through (6) (regarding operating rules related to the certificate of foreign status) shall apply.

(4) *Effective date*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 1997.

(ii) *Transition rules.* A payor that holds a valid Form W–8 on a date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

* * * * *

Par. 35. In § 1.6049–4, paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(G), as proposed in project number INTL–52–86, published on February 29, 1988, at 53 FR 6000, are revised to read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(c) * * * (1)* * *

(ii) * * *

(A) *Corporation.* A corporation, as defined in section 7701(a)(3), whether domestic or foreign, is an exempt recipient. In addition, for purposes of this paragraph (c)(1), the term *corporation* includes a partnership all of whose members are corporations described in this paragraph (c)(1)(ii)(A), but only if the partnership files with the payor a certificate meeting the certification requirements set out below. Absent actual knowledge or reason to know otherwise, a payor may treat a payee as a corporation (and, therefore, as an exempt recipient) if one of the requirements of paragraph (c)(1)(ii)(A) (*1*), (*2*), (*3*), (*4*), (*5*), or (*6*) of this section are met before a payment is made.

(*1*) For payments other than interest, dividends, or broker proceeds, the name of the payee contains an unambiguous expression of corporate status that is ''Incorporated,'' ''Inc.,'' ''Corporation,'' ''Corp.,'' ''P.C.,'' (but not ''Company'' or ''Co.'') or contains the term *indemnity company, reinsurance company,* or *assurance company.*

(*2*) For payments of interest, dividends or broker proceeds that are paid to a person with whom the payor does not have an account relationship, the payor may rely on the test of paragraph (c)(1)(ii)(A)(*1*) of this section if the payor also has a mailing address of the payee in the United States.

(*3*) The payor has on file a corporate resolution or similar document clearly indicating corporate status.

(*4*) The payor receives a Form W–9 which includes an EIN and a statement from the payee that it is a domestic corporation.

(*5*) The payor receives a withholding certificate described in § 1.1441–1(e)(2), that includes an employer identification number and a statement from the payee that it is a foreign corporation.

(*6*) The payor maintains an account for an entity claiming to be a

corporation and the account was established on or before a date that is 60 days after these regulations are published as final regulations in the Federal Register and the name of the payee contains an unambiguous expression of corporate status that is ''Incorporated,'' ''Inc.,'' ''Corporation,'' ''Corp.,'' or ''P.C.'' (but not Company or Co.), or contains the term *insurance company, indemnity company, reinsurance company,* or *assurance company.*

* * * * *

(G) *International organization.* An international organization and any wholly owned agency or instrumentality thereof are exempt recipients. The term *international organization* shall have the meaning ascribed to it in section 7701(a)(18). Without requiring a certificate, a payor may treat a payee as an international organization if the payee is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)).

* * * * *

Par. 36. Section 1.6049–4 is amended by revising paragraph (d)(3) to read as follows:

* * * * *

(d) * * *

(3) *Conversion into United States dollars of amounts paid in foreign currency*—(i) *Conversion rules.* When the amount subject to reporting is paid in a currency other than the U.S. dollar, the amount subject to reporting under this section shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or delegate.

(ii) *Special rule for § 1.988–5(a) transactions where the payor on both components of a qualified hedging transaction is the same person*—(A) *In general.* Interest or original issue discount on a qualified debt instrument that is part of a qualified hedging transaction under § 1.988–5(a) shall be computed for section 6049 reporting purposes under the rules described in § 1.988–5(a)(9)(ii) if—

(*1*) The payor on the qualified debt instrument and the counterparty to the § 1.988–5(a) hedge are the same person; and

(*2*) The payee complies with the requirements of § 1.988–5(a) and so notifies its payor prior to the date required for filing Form 1099 as required by this section.

(B) *Effective date.* The provisions of this paragraph (d)(3)(ii) apply to transactions entered into on or after December 31, 1997.

* * * * *

Par. 37. Section 1.6049–5, as proposed to be amended in project number INTL–52–86, published on February 29, 1988, at 53 FR 6003, is amended as follows:

1. Revising paragraphs (b) introductory text and (b)(6) through (b)(8).
2. Adding paragraphs (b)(10) through (b)(14).
3. Revising paragraphs (c) and (d).
4. Removing paragraph (e) and redesignating paragraph (j) as new paragraph (e).
5. Removing and reserving paragraph (f).
6. Revising paragraph (g).
7. Removing paragraphs (h) and (i).
8. Redesignating paragraph (k) as paragraph (f) and removing the last sentence.
9. Removing paragraph (l).

The revisions and additions read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) *Interest excluded from reporting requirement.* The term *interest* or *original issue discount* (OID) does not include—

* * * * *

(6) Amounts from sources outside the United States paid outside the United States by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (d)(2) of this section).

(7) Portfolio interest, as defined in § 1.871–14(b)(1), paid with respect to bearer obligations described in section 871(h)(2)(A) or 881(c)(2)(A) or with respect to a foreign- targeted registered obligation defined in § 1.6049–5(j)(4) (as proposed in project number INTL–52–86 (1988–1 C.B. 892)) (other than by a U.S. middleman (as defined in paragraph (d)(1) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest, as defined in § 1.871–14(c)(1), paid with respect to registered obligations described in section 871(h)(2)(B) or 881(c)(2)(B).

* * * * *

(10) Amounts paid outside the United States (other than by a U.S. middleman (as defined in paragraph (d)(1) of this section) that, as a custodian or nominee or other agent of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: has a face amount or principal amount of not less than $500,000; has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) (as if it were a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect)—''By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).'' If the obligation is in registered form, it must be registered in the name of an exempt recipient described in § 1.6049–4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B) (i) and (ii)(I) and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10).

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in paragraph (b)(11) (i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid outside the United States (other than by a U.S. middleman (as defined in paragraph (d)(1) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B) and issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public

offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B) if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II) and the regulations under that section.

(ii) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than $500,000; satisfies the requirements of sections 163(f)(2)(B) (i) and (ii)(I) (as if it were a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D); has on its face, and on any detachable coupons, the following statement (or a similar statement having the same effect)—''By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).'' If the obligation is in registered form, it must be registered in the name of an exempt recipient described in § 1.6049–4(c)(1)(ii). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(B) (i) and (ii)(I) and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in this paragraph (b)(11)(ii).

(12) Amounts that the payor may treat as paid to a beneficial owner that is a foreign person pursuant to § 1.1441–1(e)(1) and from which the payor or middleman is either required to withhold tax under section 1441 or the regulations under that section or would be so required but for exceptions in the regulations under section 1441 (such as, for example, under § 1.1441–4 (dealing with effectively connected income) or § 1.1441–6 (dealing with a reduction of rate of tax under an income tax treaty)).

(13) Amounts for the period that they represent an asset blocked as described in § 1.1441–2(e)(3)). Payment of such amounts, including interest that is past due and OID on obligations that mature on or before the date that the assets are no longer blocked, is deemed to occur in accordance with the rules of § 1.1441–2(e)(3).

(14) Amounts that are from sources outside the United States or original issue discount on any obligation payable less than 6 months from the date of original issue described in section 871(g)(1)(B)(i) and that a payor or middleman may treat as paid to a beneficial owner that is a foreign person (because such person has furnished a certificate or documentary evidence as required under paragraph (c) of this section).

(c) *Treatment of payee as a foreign person*—(1) *On-shore accounts or payments inside the U.S.* A payor or middleman making a payment with respect to an on-shore account, as defined in paragraph (d)(3) of this section, or making a payment inside the United States, as defined in paragraph (e) of this section, may treat the payment as made to a beneficial owner that is a foreign person if it complies with the requirements under § 1.1441–1(e)(1) (dealing with reliance by a withholding agent on a beneficial owner's claim of foreign status). For purposes of this section, beneficial owner shall be as defined in § 1.1441–1(c)(6)(ii)(A).

(2) *Payments made outside the United States with respect to off-shore accounts*—(i) *In general.* In the case of a payment made outside the United States with respect to an offshore account, as defined in paragraph (d)(3) of this section, a payor or middleman may treat a payment as made to a beneficial owner (as described in § 1.1441–1(b)(6)) that is a foreign person if it complies with the procedures described in paragraph (c)(1) of this section or complies with the documentary evidence procedures described in paragraph (c)(2)(ii) of this section.

(ii) *Documentary evidence.* A payor or middleman complies with the documentary evidence procedures if, prior to the payment, the payor or middleman has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the beneficial owner and the status of that person as a foreign person; and the payor or middleman obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor or middleman maintains the documents reviewed by retaining the original, certified copy, or a photocopy of the documents reviewed and noting in its records the date on which and by whom the document was received and reviewed.

(3) *Presumptions.* The presumptions of § 1.1441–1(f) shall apply for determining the payee's status where the required documentation is lacking, incorrect, or unreliable.

(4) *Validity of certificates and documentary evidence.* For rules regarding the period of validity of a withholding certificate, see § 1.1441–1(e)(4)(ii). Documentary evidence or a certificate that does not include a taxpayer identifying number shall be valid for a period of three years from the date received by the payor or middleman. The three-year validity period shall start from the date that the certificate is signed (or the documentation is received) until the last day of the third succeeding calendar year. For example, a withholding certificate signed on September 10, 1998, remains valid through December 31, 2001. A beneficial owner that becomes a U.S. person must, however, inform a payor or middleman within 30 days of change of status.

(5) *Retention of withholding certificate.* A payor or middleman must retain each withholding certificate, any applicable documentary evidence, and any information obtained in lieu of the withholding certificate as long as it may be relevant to the determination of the payor's or middleman's liability under the reporting provisions of this chapter and related provisions.

(6) *Standard of knowledge.* A payor or middleman may not rely on a certificate or documentary evidence described in paragraph (c)(1) or (c)(2)(ii) of this section if it has actual knowledge that the representations made therein or on the basis thereof are incorrect or if any of the required information or certifications described in § 1.1441–1(f)(1)(ii) are lacking from the certificate or documentary evidence.

(7) *Joint owners.* In the case of amounts paid to joint owners and for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (c), a payor or middleman must receive from each joint owner the required certification or documentation. Where any one of the joint owners has not furnished the required certification or documentation, the payment is not exempt from reporting under this paragraph (c).

(8) *Payee.* For determination of payee, see § 1.1441–1(c)(3).

(d) *Definitions*—(1) *Payor or middleman and U.S. payor or U.S. middleman.* For purposes of this section, the term *payor* means any person who is required to make an information return with respect to any reportable payment, as described in section 3406(b) (including any middleman). For purposes of this section, the term *middleman* means any person whose legal relationship to the payor or payee (including any other

middleman) is of a kind described in § 1.6049–4(f)(4) (as proposed in project number INTL–52–86 published in 1988–1 C.B. 892). Thus, a person who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States is also a middleman for purposes of this section (but the transfer, although subject to information reporting under this section, does not make the payment subject to backup withholding under section 3406). For purposes of this section, the term *U.S. payor* or *U.S. middleman* means a payor or middleman that is—

(i) A person described in section 7701(a)(30);

(ii) The government of the United States, the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(iii) A controlled foreign corporation within the meaning of section 957(a); or

(iv) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States.

(2) *Non-U.S. payor or non-U.S. middleman.* A *non-U.S. payor* or a *non-U.S. middleman* is a payor or middleman that is not a U.S. payor or a U.S. middleman.

(3) *On-shore and off-shore accounts.* An *on-shore account* means an account maintained at an office or branch of a payor or middleman in the United States. An *offshore account* means an account that is not an on-shore account.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (b)(14), (c), (d), and (e) of this section apply to payments made after December 31, 1997.

(2) *Transition rules.* A payor that holds a valid Form W–8 on a date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

Par. 38. Section 1.6050N–1 is amended by:

1. Revising the section heading.

2. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

3. Adding a new paragraph (c).

4. Revising newly designated paragraph (e).

The addition and revisions read as follows:

§ 1.6050N–1 Statement to recipients of royalties paid after December 31, 1986.

* * * * *

(c) *Exempted foreign-related items*—(1) *In general.* No return shall be required under paragraph (a) of this section for payments of the items described in paragraphs (c)(1) (i) through (iii) of this section.

(i) Returns of information are not required for payments of royalties that a payor or middleman, as defined in paragraph (c)(2)(i) of this section, may treat as made to a beneficial owner that is a foreign person pursuant to § 1.1441–1(e)(1) and from which the payor or middleman is either required to withhold tax under section 1441 or the regulations under that section or would be so required but for exceptions in the regulations under section 1441 (such as, for example, under § 1.1441–4 (dealing with effectively connected income) or § 1.1441–6 (dealing with a reduction of rate of tax under an income tax treaty)). See § 1.1441–1(e)(4)(i) in the case of payments to joint owners.

(ii) Returns of information are not required for payments of royalties from sources outside the United States made outside the United States by a non-U.S. payor or non-U.S. middleman (as defined in paragraph (c)(2)(ii) of this section). See § 1.6049–5(e) for circumstances in which a payment is considered to be made outside the United States.

(iii) Returns of information are not required for payments of royalties from sources outside the United States that a payor or middleman may treat as paid to a beneficial owner that is a foreign person (because such person has furnished a certificate described in § 1.6049–5(c)(1)). For purposes of this paragraph (c)(1)(iii), the presumptions in § 1.6049–5(c) (3) through (6) (regarding operating rules related to the certificate of foreign status) shall apply.

(2) *Definitions*—(i) *Payor and middleman.* For purposes of this section, the term *payor* means any person who is required to make an information return with respect to any reportable payment, as described in section 3406(b), including any middleman. For purposes of this section, the term *middleman* means any person whose legal relationship to the payor or payee (including any other middleman) is of a kind described in § 1.6049–4(f)(4) (as proposed in project number INTL–52–86 published in 1988–1 C.B. 892).

(ii) *Non-U.S. payor and non-U.S. middleman.* The term *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than—

(A) A person described in section 7701(a)(30);

(B) The government of the United States, the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(C) A controlled foreign corporation within the meaning of section 957(a); or

(D) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States.

(iii) *Applicable presumptions.* The presumptions of § 1.1441–1(f) shall apply for determining the payee's status where the required documentation is lacking, incorrect, or unreliable.

(iv) *Joint owners.* In the case of amounts paid to joint owners and requiring a certificate or documentation as a condition for being exempt from reporting under this paragraph (c), the payor or middleman must receive from each joint owner the required certification. Where any one of the joint owners has not furnished the required certification, the payment is not exempt from reporting under this section.

(v) *Payee.* For determination of payee, see § 1.1441–1(c)(3).

* * * * *

(e) *Effective date*—(1) *General rule.* The provisions of paragraph (c) of this section apply to payments made after December 31, 1997.

(2) *Transition rules.* A payor that holds a valid Form W–8 on a date that is 60 days after these regulations are published as final regulations in the Federal Register may treat it as a valid certificate until its validity expires under applicable provisions as in effect on April 22, 1996.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 39. The authority for part 31 continues to read in part as follows:

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

Par. 40. Section 31.3401(a)(6)–1 is amended by:

1. Revising the section heading.

2. Revising the heading and first sentence of paragraph (e).

3. Adding paragraph (f).

4. Removing the authority citation at the end of the section.

The addition and revisions read as follows:

§ 31.3401(a)(6)–1 Remuneration for services of nonresident alien individuals.

* * * * *

(e) *Exemption from income tax for remuneration paid for services performed before January 1, 1998.* Remuneration paid for services performed within the United States by a nonresident alien individual before January 1, 1998 is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. * * *

(f) *Exemption from income tax for remuneration paid for services performed after December 31, 1997.* Remuneration paid for services performed within the United States by a nonresident alien individual after December 31, 1997 is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from the income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. An employer may rely on a claim that the employee is entitled to an exemption from tax if it complies with the requirements of § 1.1441–1(e)(1) of this chapter (for a claim based on a provision of the Internal Revenue Code) or § 1.1441–4(b)(2) of this chapter (for a claim based on an income tax convention).

Par. 41. In § 31.3406(d)–3, paragraph (c) is revised to read as follows:

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

* * * * *

(c) *Application to foreign payees.* The rules of paragraphs (a) and (b) of this section also apply to a payee from whom the payor is required to obtain a Form W–8 (or an acceptable substitute) or is to obtain other evidence of foreign status (pursuant to relevant regulations under an applicable Internal Revenue Code section), provided the payee represents orally or otherwise, before or at the time of the acquisition or sale of the instrument or the establishment of the account, that the payee is not a United States citizen or resident. In the case of a payment made after December 31, 1997, to a person with respect to whom indicia of foreign ownership exists, as described in § 1.1441–1(f)(2)(ii)(A) of this chapter, at any time before expiration of the 30-day grace period described in this paragraph (c), the procedures described in that section shall apply, including the special grace period. The 30-day and 90-day grace periods shall run concurrently. Therefore, for example, if indicia of foreign ownership were provided on the 28th day after a payment is credited to an account, the 30-day grace period would convert to a 90-day grace period under § 1.1441–1(f)(2)(ii)(A) of this chapter, of which 28 days would have already elapsed.

Par. 42. In § 31.3406(g)–1, paragraph (e) is added to read as follows:

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* A payor of a reportable payment or transfer is not required to backup withholding under section 3406 if such reportable payment or transfer is of a kind that is exempt from reporting if documentary evidence described in § 1.6049–5(2)(ii) of this chapter is provided to the payor, unless the payor has actual knowledge that the payee is a United States person. In addition, amounts paid with respect to notional principal contracts described in § 1.6041–1(d)(5) of this chapter are not subject to backup withholding if they are paid outside the United States, unless the payor has actual knowledge that the payee is a United States person.

Par. 43. Section 31.3406(h)–2 is amended by:

1. Removing the heading of paragraph (e)(1).

2. Removing the paragraph designation (e)(1).

3. Removing paragraph (e)(2).

4. Revising paragraph (a)(3)(i) to read as follows:

§ 31.3406(h)–2 Special rules.

(a) * * *

(3) *Joint foreign payees*—(i) *In general.* If the relevant payee listed on an account or instrument provides the penalties of perjury statement regarding its foreign status, withholding under section 3406 applies unless—

(A) Every joint payee provides the statement regarding foreign status (under the provisions of chapter 3 and chapter 61 of the Internal Revenue Code and the regulations under those provisions); or

(B) Any one of the joint owners who has not established foreign status provides a taxpayer identifying number to the payor in the manner required in § 31.3406(d)–1.

* * * * *

Par. 44. Section 31.6413(a)–3 is amended as follows:

1. In paragraph (a)(1)(iii), the language ''(including the certification relating to foreign status described in § 1.6049–5(b)(2)(iv) of this chapter or § 1.6045–1(g)(1) of this chapter)'' is removed and ''(including the documentation required under §§ 1.1441–1(e)(1), 1.6045–1(g)(3), and 1.6049–5(c) of this chapter)'' is added in its place.

2. Paragraph (a)(1)(ii) is amended by removing ''or'' at the end of the paragraph and paragraph (a)(1)(iii) is amended by removing the period at the end of the paragraph and adding ''; or'' in its place.

3. Paragraph (a)(1)(iv) is added.

4. Paragraphs (a)(2) and (b)(2) are revised. The addition and revisions read as follows:

§ 31.6413(a)–3 Repayment by payor of tax erroneously collected from payee.

(a) * * * (1) * * *

(iv) The amount is withheld because a payor imposed backup withholding on a payment made to a person because the payee failed to furnish the required documentation described in §§ 1.1441–1(e)(1), 1.6045–1(g)(3), and 1.6049–5(c) of this chapter and the payee subsequently furnishes, completes, or corrects the required documentation. The required documentation must be furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred.

(2) For purposes of paragraph (a)(1) of this section (other than erroneous withholding occurring under the circumstances described in paragraph (a)(1)(iv) of this section), if a payor or broker withholds because the payor or broker has not received a taxpayer identifying number or required certification and the payee subsequently provides a taxpayer identifying number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) * * *

(2) *Adjustment after the deposit of the tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, if the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Internal Revenue Code that the payor or broker is required to

make in the amount of the tax that has been refunded to the payee.

(ii) *Erroneous withholding from a payee that is a foreign person.* Where a payor withholds in error from a payee that is a nonresident alien or foreign person, as described in paragraph (b)(1) of this section, the payor may refund some or all of the amount subject to backup withholding under section 3406. A refund may be paid in accordance with the requirements of this paragraph (b)(2)(ii) where the required documentation is furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred. The amount of the refund will be the amount erroneously withheld less the amount of tax required to be withheld, if any, under chapter 3 of the Internal Revenue Code. With respect to the amount of the payment to the foreign person and the amount of tax required to be withheld under chapter 3 of the Internal Revenue Code, returns must be made in accordance with the requirements of § 1.1461–1 (b) and (c) of this chapter.

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 45. The authority for part 35a is amended by removing the entries for § 35a.9999–3, § 35a.9999–3A and § 35a.9999–4T to read in part as follows:

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

§§ 35a.9999–1 through 35a.9999–3A, and 35a.9999–4T [Removed]

Par. 46. Sections 35a.9999–1 through 35a.9999–3A, and 35a.9999–4T are removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 47. The authority citation for part 301 continues to read in part as follows:

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

Par. 48. Section 301.6109–1 as proposed to be amended in project number INTL–0024–94, published on June 8, 1995, at 60 FR 30214, is amended as follows:

1. Paragraph (b)(2)(iii) is amended by removing ''and'' at the end of the paragraph.

2. Paragraph (b)(2)(iv) is revised.

3. Paragraph (b)(2)(v) is added.

4. Paragraph (c) is revised.

The revisions and additions read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(iv) A foreign person that makes a return of tax under this title (including income, estate, and gift tax returns) but excluding information returns, statements, or documents;

(v) A foreign person that furnishes a withholding certificate described in § 1.1441–1 (e)(2) or (e)(3) of this chapter to the extent required under § 1.1441–1(e)(4)(vii) of this chapter.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2) (i), (ii), (iii), or (v) of this section as required by the forms and the accompanying instructions. The taxpayer identifying number of any person furnishing a withholding certificate referred to in paragraph (b)(2)(v) of this section shall also be furnished if it is actually known to the person making a return, statement, or other document described in this paragraph (c). If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2) (i), (ii), (iii), or (v) of this section, such person must request the other person's number. The request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

* * * * *

Par. 49. Section 301.6114–1 is amended by:

1. Revising paragraph (a)(1)(ii).

2. Revising paragraph (b)(4)(ii) introductory text, and adding paragraphs (b)(4)(ii)(C) and (b)(4)(ii)(D)

3. Revising paragraphs (c)(1) and (d)(4)(v): The revisions read as follows:

§ 301.6114–1 Treaty-based return positions.

(a) * * * (1) * * *

(ii) If a return of tax would not otherwise be required to be filed, a return must nevertheless be filed for purposes of making the disclosure required by this section. For this purpose, such return need include only the taxpayer's name, address, taxpayer identifying number, and be signed under the penalties of perjury (as well as the subject disclosure). Also, the taxpayer's taxable year shall be deemed to be the calendar year (unless the taxpayer has previously established, or timely chooses for this purpose to establish, a different taxable year). In the case of a disclosable return position relating solely to income subject to withholding (as defined in § 1.1441–2(a) of this chapter), however, the statement required to be filed in paragraph (d) of this section must instead be filed at times and in accordance with procedures to be published by the Internal Revenue Service.

* * * * *

(b) * * *

(4) * * *

(ii) A treaty exempts from tax, or reduces the rate of tax on, fixed or determinable annual or periodical income subject to withholding under sections 1441 or 1442 that a foreign person receives from a U.S. person, but only if described in paragraphs (b)(4)(ii) (A) and (B) of this section, or paragraph (b)(4)(ii) (C) or (D) of this section.

* * * * *

(C) For payments made after December 31, 1997, with respect to a treaty that contains a limitation on benefits article, that—

(*1*) The treaty exempts from tax, or reduces the rate of tax on income subject to withholding (as defined in § 1.1441–2(a) of this chapter) that is paid to a foreign person (other than a State, including a political subdivision or local authority) that is the beneficial owner of the income and the beneficial owner is related to the person obligated to pay the income within the meaning of sections 267(b) and 707(b), and the income exceeds $500,000; and

(*2*) A foreign person (other than an individual or a State, including a political subdivision or local authority) meets the requirements of the limitation on benefits article of the treaty; or

(D) For payments made after December 31, 1997, with respect to a treaty that imposes any other conditions for the entitlement of treaty benefits, for example as a part of the interest, dividends, or royalty article, that such conditions are met;

* * * * *

(c) *Reporting requirement waived.* * * *

(1) Notwithstanding paragraph (b)(4) or (5) of this section, that a treaty has

reduced the rate of withholding tax otherwise applicable to a particular type of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442, such as dividends, interest, rents, or royalties to the extent such income is beneficially owned by an individual or a State (including a political subdivision or local authority);

* * * * *

(d) * * *

(4) * * *

(v) The provision(s) of the limitation on benefits article (if any) in the treaty that the taxpayer relies upon to meet the requirements of that article and a statement of the relevant facts in support of the taxpayer's claim.

* * * * *

Par. 50. Section 301.6402–3 is amended as follows:

1. Paragraph (e) is revised as set forth below.

2. Removing the OMB parenthetical and the authority citation at the end of the section.

§ 301.6402–3 Special rules applicable to income tax.

* * * * *

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapter 3 of the Internal Revenue Code. Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Internal Revenue Code, a copy of the Form 1042–S required to be provided to the beneficial owner pursuant to § 1.1461–1(c)(1)(i) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042–S must include the taxpayer identifying number of the beneficial owner even if not otherwise required. No claim of refund or credit under chapter 65 may be made by the taxpayer for any amount that the withholding agent has repaid to the taxpayer pursuant to § 1.1461–2(a)(2) of this chapter or that was subject to a set-off pursuant to § 1.1461–2(a)(3) of this chapter. Upon request, a taxpayer must also submit such documentation as the Commissioner (or delegate), the District Director, or the Assistant Commissioner (International), may require establishing that the taxpayer is the beneficial owner of the income for which a claim of refund or credit is being made.

PART 502—[REMOVED]

Par. 51. Part 502 is removed.

PART 503—[REMOVED]

Par. 52. Part 503 is removed.

PART 509—[AMENDED]

Par. 53. The authority citation for part 509 is revised and the authority citation for ''Subpart—General Income Tax'' is removed, to read as follows:

Authority: 26 U.S.C. 62, 3791 and 7805.

Par. 54. Part 509 is amended as follows:

1. Subpart—Withholding of Tax consisting of §§ 509.1 through 509.10 is removed.

2. In § 509.103, paragraph (e) is removed and reserved.

3. In § 509.117, paragraph (a) is removed and reserved.

4. Sections 509.119 and 509.122 are removed.

PART 513—[AMENDED]

Par. 55. The authority citation for part 513 is revised to read as follows:

Authority: 26 U.S.C. 62.

Par. 56. Part 513 is amended as follows:

1. Section 513.1 is removed.

2. Section 513.2 is amended as follows:

a. Paragraphs (a)(1) and (a)(2) are removed and reserved.

b. Paragraph (a)(4) is removed.

c. Paragraph (b) is removed and reserved.

d. Paragraphs (c) and (d) are removed.

3. Section 513.3 is amended as follows:

a. Paragraph (a)(1) is removed and reserved.

b. Paragraphs (b) and (c) are removed.

4. Section 513.4 is amended as follows:

a. Paragraph (a) is removed and reserved.

b. Paragraphs (c) and (d) are removed.

5. Section 513.5 is amended as follows:

a. Paragraph (a) is removed and reserved.

b. Paragraphs (c) and (d) are removed.

PART 514—[AMENDED]

Par. 57. The authority citation for part 514 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Par. 58. Part 514 is amended as follows:

1. The undesignated centerheading preceding § 514.1 and §§ 514.1 through 514.10 are removed.

2. Sections 514.20 through 514.21 are removed.

3. In § 514.22, paragraph (c) is removed.

4. Sections 514.23 through 514.32 are removed.

5. Sections 514.101 through 514.117 are removed.

PART 516—[REMOVED]

Par. 59. Part 516 is removed.

PART 517—[REMOVED]

Par. 60. Part 517 is removed.

PART 520—[REMOVED]

Par. 61. Part 520 is removed.

PART 521—[AMENDED]

Par. 62. The authority citation for part 521 is revised to read as follows:

Authority: 26 U.S.C. 62, 143, 144, 211, and 231.

Par. 63. Part 521 is amended as follows:

1. Subpart—Withholding of Tax consisting of §§ 521.1 through 521.8 is removed.

2. In § 521.103, paragraph (d) is removed and reserved.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–8936 Filed 4–15–96; 10:14 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 74

[Order No. 2017–96]

Redress Provisions for Persons of Japanese Ancestry

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice hereby proposes a change to the regulations governing redress provisions for persons of Japanese ancestry. This change will amend the standards of the Civil Liberties Act of 1988 to make eligible for payments of $20,000 those persons who were born after their parents ''voluntarily'' evacuated from the prohibited military zones of the West Coast of the United States as a result of military proclamations issued pursuant to Executive Order 9066. This change will also make eligible for redress those persons who were born outside the prohibited military zones in the United States after their parents were released from internment camps during the defined war period and

whose parents had resided in the prohibited military zones on the West Coast immediately prior to their internment. In practice, this amendment will make potentially eligible those persons who were born after their parents were evacuated, relocated, or interned by the United States Government, and who could not legally return to their parents' original place of residence within the prohibited military zones on the West Coast.

DATES: Comments must be submitted on or before June 6, 1996.

ADDRESSES: Comments may be mailed to the Office of Redress Administration, P.O. Box 66260, Washington, DC 20035–6260.

FOR FURTHER INFORMATION CONTACT: Tink D. Cooper or Emlei M. Kuboyama, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, P.O. Box 66260, Washington, DC 20035–6260; (202) 219–6900 (voice) or (202) 219–4710 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Liberties Act of 1988, Pub. L. No. 100–383 (codified at 50 U.S.C. app. 1989 *et. seq.*, as amended) (''the Act''), enacted into law the recommendations of the Commission on Wartime Relocation and Internment of Civilians established by Congress in 1980. *See* Commission on Wartime Relocation and Internment of Civilians Act, Pub. L. No. 96–317 (1980). This bipartisan commission was established: (1) To review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942, and the impact of that Executive order on American citizens and permanent resident aliens of Japanese ancestry; (2) to review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of these American citizens and permanent resident aliens; and (3) to recommend appropriate remedies. The Commission submitted to Congress in February 1983 a unanimous report, *Personal Justice Denied*, which extensively reviewed the history and circumstances of the decisions to exclude, remove, and then to detain Japanese-Americans and Japanese resident aliens from the West Coast, as well as the treatment of Aleuts during World War II. The final part of the Commission's report, *Personal Justice Denied Part 2: Recommendations*, concluded that these events were influenced by racial prejudice, war hysteria, and a failure of political leadership, and recommended remedial action to be taken by Congress and the President.

On August 10, 1988, President Ronald Reagan signed the Civil Liberties Act of 1988 into law. The purposes of the Act were to acknowledge and apologize for the fundamental injustice of the evacuation, relocation, and internment of Japanese-Americans and permanent resident aliens of Japanese ancestry, to make restitution, and to fund a public education program to prevent the recurrence of any similar event in the future.

Section 105 of the Act makes the Attorney General responsible for identifying, locating, and authorizing payment of redress to eligible individuals. 50 U.S.C. app. 1989b–4. The Attorney General delegated these responsibilities and duties assigned to her to the Assistant Attorney General for Civil Rights, who, in keeping with precedent, has designated the Office of Redress Administration (''ORA'') in the Civil Rights Division to carry out the responsibilities and duties mandated by the Act.

The ORA is charged with identifying and locating persons eligible under the Act. To date, restitution has been paid to a total of 79,832 Japanese-Americans and permanent resident aliens of Japanese ancestry.

In the preamble of the final regulation, the Civil Rights Division stated that ''while children born in assembly centers, relocations [sic] camps and internment camps are included as eligible for compensation, the regulations do not include as eligible children born after their parents had voluntarily relocated from prohibited military zones or from assembly centers, relocation camps, or internment camps.'' 54 Fed. Reg. 34160 (1989). A number of these persons asserted claims for redress based on their parents' evacuation or internment by the United States Government prior to their birth and their subsequent inability to legally return to their parents' original place of residence in the prohibited military zones on the West Coast. However, based on section 108 of the Act and 28 CFR 74.4, ORA found these persons ineligible for redress. In all, approximately 900 persons who were born after their parents ''voluntarily'' evacuated from the prohibited military zones or after their parents were released from internment camps claimed compensation under the Act. Most of these claimants were born prior to midnight on January 2, 1945, the effective date of Proclamation No. 21, which rescinded the prohibited military zones on the West Coast and lifted the general exclusion restrictions on persons of Japanese ancestry. ORA's denial of redress to these claimants was upheld during the administrative appeal process set forth in 28 CFR 74.17 and in some decisions of the U.S. Court of Federal Claims. *See Ishida* v. *United States*, 31 Fed. Cl. 280 (1994); *Tanihara* v. *United States*, 32 Fed. Cl. 805 (1995). However, the United States Court of Appeals for the Federal Circuit recently determined that ORA's policy of denying such claims was inconsistent with the terms of the Act. *Ishida* v. *United States*, 59 F.3d 1224 (Fed. Cir. 1995); *Consolo* v. *U.S.*, No. 94–5150 (Fed. Cir., July 10, 1995) (unpubl.).

II. Revised Interpretation

In order to conform to these recent decisions, the Civil Rights Division proposes to revise its interpretation regarding the eligibility for redress of persons who either were born after their parents ''voluntarily'' evacuated from the prohibited military zones on the West Coast or who were born after a parent had been evacuated from the prohibited military zones on the West Coast and interned. Specifically, the regulation would reverse the Civil Rights Division's current policy of denying redress to such persons who were prevented by law from returning to a parent's original place of residence in the prohibited military zones on the West Coast, and who are otherwise eligible under these regulations.

The appellant in *Ishida* was born on November 23, 1942, in Ohio, after his parents had voluntarily evacuated from California in March 1942. His claim of deprivation was based on his inability to return to California during World War II. The Department's determination of ineligibility was affirmed by the U.S. Court of Federal Claims. However, as mentioned above, on July 6, 1995, the U.S. Court of Appeals for the Federal Circuit reversed, holding that persons such as Ishida, who were excluded by law ''from the parents' original place of residence or the family home'' in a prohibited military zone were deprived of liberty as a result of the laws and orders specified in the Act and were eligible to receive compensation under the Act. In the companion case, *Consolo*, the court affirmed the trial court, holding that for the reasons set forth in *Ishida*, the appellee, who was born in Utah on April 11, 1943, after her parents had voluntarily evacuated from California in March 1942, was also eligible to receive redress under the Act.

The Civil Rights Division proposes that it be guided by certain principles in applying the modified standard discussed above. First, the Civil Rights

Division proposes to apply the standard not only to persons similarly situated to the plaintiffs in *Ishida* and *Consolo,* who were born after their parents ''voluntarily'' evacuated the prohibited military zones on the West Coast pursuant to military proclamations, but also to persons who were born after their parents had been evacuated from the prohibited military zones on the West Coast and interned. These latter persons, who were born outside of the prohibited military zones after their parents were released from internment camps, also could not return to their parents' original places of residence in the prohibited military zones on the West Coast. Because, consistent with the Federal Circuit's reasoning, persons in this category can also be deemed to have been deprived of liberty, based solely on their Japanese ancestry, as a result of certain Federal Government actions, the Civil Rights Division proposes to make redress available to them. Accordingly, redress will be made available to persons born outside of the prohibited military zones after their parents were interned where at least one parent's original place of residence immediately prior to his or her internment was in the prohibited military zones of the West Coast. However, this change will not affect those persons born outside of the prohibited military zones after their parents were released from internment camps during the defined war period where such parents had resided outside of the prohibited military zones on the West Coast immediately prior to their internment.

Second, the Civil Rights Division proposes to limit eligibility under this policy to claimants born prior to January 3, 1945, the effective date of Proclamation No. 21 (midnight on January 2, 1945). Proclamation No. 21 lifted the general restrictions that had prevented persons of Japanese ancestry from returning to their original places of residence in the prohibited military zones on the West Coast. Accordingly, persons born on or after January 3, 1945, could legally return to their parents' original residence on the West Coast.

Historical evidence indicates that persons of Japanese ancestry were, in fact, allowed to return to the West Coast without any restrictions as early as December 17, 1944, the date on which Proclamation No. 21 was issued and the War Department publicly announced the lifting of the general exclusion orders. In addition, on December 18, 1944, the Secretary of the Interior issued a press release stating that the blanket exclusion orders for persons of Japanese ancestry on the Pacific Coast were revoked. Moreover, War Relocation Authority (''WRA'') records indicate that 26 people of Japanese ancestry left WRA internment camps and returned to California between December 17, 1944 and January 3, 1945. However, because the proclamation might not have been fully implemented or fully publicized at the time of its issuance, ORA will not use the earlier date of issuance but will use the effective date of Proclamation No. 21.

Third, the West Coast is defined as those geographic areas in the State of California, the western portions of Washington and Oregon, and the southern portion of Arizona, where persons of Japanese ancestry were initially required to reside and later barred from entering, pursuant to several proclamations. Proclamation No. 4 prohibited persons of Japanese ancestry from leaving parts of the West Coast while the United States Government was preparing to forcibly evacuate them. Subsequent proclamations were issued to exclude those of Japanese ancestry from these defined West Coast areas. For example, persons of Japanese ancestry were excluded from Military Area No. 1 pursuant to Proclamation No. 7, dated June 8, 1942, and excluded from the California portion of Military Area No. 2 pursuant to Proclamation No. 11, dated August 18, 1942.

III. Regulatory Impact Analysis

The Attorney General has determined that this proposed rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this proposed rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 74

Administrative practice and procedure, Aliens, Archives and records, Citizenship and naturalization, Civil rights, Indemnity payments, Minority groups, Nationality, War claims.

For the reasons set forth in the preamble and by the authority vested in me, including 28 U.S.C. 509 and 510, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by revising part 74 to read as follows:

PART 74—CIVIL LIBERTIES ACT REDRESS PROVISION

1. The authority citation for Part 74 continues to read as follows:

Authority: 50 U.S.C. app. 1989b.

2. In Subpart B, section 74.3 is amended by adding paragraph (b)(9) to read as follows:

Subpart B—Standards of Eligibility

§ 74.3 Eligibility determinations.

(a) * * *

(b) * * *

(9) Individuals born after a parent had been evacuated, relocated, or interned pursuant to paragraph (a)(4) of this section, and whose parent's or parents' original place of residence was in the prohibited military zones on the West Coast on or after March 2, 1942, and who could not legally return to their parent's or parents' original place of residence in the prohibited military zones on the West Coast prior to January 3, 1945. This also includes those individuals who were born after a parent had ''voluntarily'' evacuated pursuant to paragraph (b)(3), and whose parent's or parents' original place of residence was in the prohibited military zones on the West Coast immediately prior to their evacuation, and who could not legally return to their parent's or parents' original place of residence in the prohibited military zones on the West Coast prior to January 3, 1945.

* * * * *

Dated: April 9, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–9505 Filed 4–19–96; 8:45 am]

BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH96–1; FRL–5462–1]

Proposed Approval and Promulgation of Revisions to the New Source Review State Implementation Plan; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to conditionally approve a requested State Implementation Plan (SIP) revision submitted by the State of Ohio for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This proposed conditional approval is based upon the State's agreeing with two USEPA interpretations of the Ohio rules and a commitment by the State to remedy the omission of a definition for

''Pollution Control Project'' in its NSR rules.

DATES: Comments on this proposed action must be received in writing by June 21, 1996.

ADDRESSES: Comments on this proposed rule should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Anyone wishing to come to the Region 5 offices should first contact Ms. Nearmyer at (312) 353–4761. Reference file OH96.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the CAA. The USEPA has issued a ''General Preamble'' describing its preliminary views on how USEPA 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 USEPA 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 proposal and the supporting rationale regarding the approvability of the submittals. Prior to USEPA's approval of a State's NSR SIP submittal, 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, USEPA 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 apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3 memorandum also addressed the situation where States did not submit the part D NSR SIP requirements or revisions by the applicable statutory deadline. For permit applications found 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, USEPA will consider the source to be in compliance with the CAA only where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the CAA. USEPA believes this guidance continues to apply to permitting pending final action on NSR SIP submittals.

In this rulemaking action on the Ohio nonattainment NSR SIP revisions, USEPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, USEPA will consider any timely submitted comments before taking final action on this proposed rule.

II. Review of the Ohio Submittal

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals [see 57 FR 13565–66 (April 16, 1992)].

A. Analysis of State Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the CAA 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 USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action. [See section 110(k)(1) and 57 FR 13565 (April 16, 1992).] The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The USEPA attempts to make completeness determinations within 60 days of receiving a submittal. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) of the CAA if a completeness determination is not made by USEPA within 6 months after receipt of the submission.

It should be noted that Ohio's initial NSR SIP submittal was submitted in response to the part D requirements in 1977 Amendments to the CAA. USEPA approved these provisions on October 31, 1980 (45 FR 72119). The State SIP submittal that is the subject of this proposed rule concerns amendments to the earlier rules to satisfy the requirements of the 1990 Amendments to the CAA. Ohio's previous attempt at satisfying these additional with a submittal to USEPA on August 20, 1993 ended in final disapproval by USEPA on September 21, 1994 (59 FR 48392). This final rule initiated the sanctions process as discussed below.

The State of Ohio submitted draft NSR rules to USEPA for parallel processing on March 1, 1996. Parallel processing is a mechanism developed to expedite USEPA action and a State SIP revision request. Under parallel processing, the State submits its rules to USEPA when their substance has been finalized but before they become finally adopted by the State. The USEPA then initiates its analysis and rule adoption process on the draft State rules. Although final action on the requested SIP revision cannot occur until the rules are adopted and effective, the time between final adoption by the State and approval by USEPA is shortened because USEPA begins its review and approval process before the State completes its rule adoption process.

The State of Ohio held a public hearing on January 6, 1996, to provide the public an opportunity to present oral comments on the NSR implementation plan revisions. After the public hearing the rules were filed with the legislative rules committee. They were adopted by the State and became effective on April 12, 1996, and submitted to USEPA on April 12, 1996 as a requested revision to the SIP. Although the requested SIP revision includes both NSR rules and attainment area rules intended to provide for Prevention of Significant Deterioration (PSD), at this time USEPA is only rulemaking on the Ohio NSR rules. The PSD rules will be the subject of a separate action.

[1] Section 172(c)(7) of the CAA provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2) of the CAA.

2. General Nonattainment NSR Requirements

The statutory requirements for nonattainment new source review SIPs and permitting are found at sections 172 and 173 of the CAA. Part D of title I of the CAA requires States to address a number of nonattainment NSR provisions in a SIP revision submittal. These statutory requirements have been supplemented with more detailed regulations which have been codified at section 51.165 of title 40 of the Code of Federal Regulations (40 CFR 51.165). What follows is a summary of how the Ohio submittal addresses and satisfies each of the requirements for an approvable NSR plan. A more detailed presentation is provided in this proposed rule only in those areas where the Ohio submittal has not clearly satisfied the requirements for approval. USEPA's complete evaluation of the Ohio NSR Plan is contained in a technical support document which is available at the Region 5 office listed in the address section of this proposed rule.

a. Ohio has established provisions in response to section 173(a)(1) of the CAA to assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of Reasonable Further Progress (RFP). These provisions satisfy USEPA's requirements for approval.

b. Ohio has established provisions in response to section 173(c)(1) of the CAA to allow offsets to be obtained in another nonattainment area if the area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a NAAQS violation in the area in which the source would construct. These provisions satisfy USEPA's requirements for approval.

c. Ohio has established provisions in response to section 173(c)(1) of the CAA which 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. These provisions satisfy USEPA's requirements for approval.

d. Ohio has established provisions in response to section 173(c)(1) of the CAA to assure that emissions increases from new or modified sources are offset by real reductions in actual emissions. These provisions satisfy USEPA's requirements for approval.

e. Section 173(c)(2) of the CAA prevents emission offsets from being taken from reductions that are otherwise required by the CAA. Such prohibitions are not expressly identified in Ohio Rule 3745–31–22(A)(3) Emission Offsets. However, in the general provisions covering all installation permits, Rule 3745–31–05(A)(2), a permit must not violate any applicable laws. The term ''applicable laws'' is defined in Rule 3745–31–01(f) as including provisions of the CAA. The USEPA views this provision as effectively preventing the State from using emission offsets from reductions otherwise required by the CAA. Ohio has confirmed that USEPA's interpretation of the term ''applicable laws'', is the same interpretation that the State uses in a April 12, 1996 letter; therefore, USEPA believes that this provision of the State rule satisfies the approval requirements of section 173(c)(2) of the CAA.

f. Ohio has established provisions in response to sections 172(c)(4) and 173(a)(1)(B) of the CAA that reflect changes in growth allowances; specifically, (1) the elimination of existing growth allowances in any nonattainment area that received a notice prior to the amended CAA that the SIP was substantially inadequate or receives such a notice in the future; and (2) the restriction of growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic development. These provisions satisfy USEPA's requirements for approval.

g. Ohio has provided for the supplying of information from nonattainment new source review permits to USEPA's Reasonably Available Control Technology, Best Available Control Technology, Lowest Achievable Emissions Reduction (RACT/BACT/LAER) clearinghouse in response to the requirement in section 173(d) of the CAA. This provision which is contained in the State's workplan of its NSR grant satisfies USEPA's requirement for approval.

h. Ohio has established provisions in response to section 819 of the CAA that effectively exempt activities related to stripper wells from the new additional NSR requirements of subparts 2, 3, and 4 for Particulate Matter of 10 microns or less (PM–10), Ozone, or Carbon Monoxide (CO) nonattainment areas classified as serious or less and having a population of less than 350,000. Although Ohio does not intend to issue permits to stripper wells, Ohio's rules are consistent with the requirements of the CAA and satisfy USEPA's requirements for approval.

i. Ohio has established a definition of ''stationary source'' which includes internal combustion engines other than the newly defined category of ''nonroad engines''. This provision is consistent with the requirements in sections 302(z) and 111(a)(3) of the CAA and, therefore, approvable.

j. Ohio has established provisions in response to section 173(a)(3) of the CAA to assure that owners or operators of each proposed new or modified major stationary source demonstrate, as a condition of permit issuance, the compliance of all other major stationary sources under the same ownership in the State. These provisions satisfy USEPA's requirements for approval.

k. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(A) to ensure that emissions offset credit will be allowed only for control below an emission limitation under an applicable SIP that allows greater emissions than the potential to emit of a source. These provisions satisfy USEPA's requirements for approval.

l. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(B) for existing fuel combustion sources which assure that emissions credit is based on the allowable emissions under the applicable SIP for the type of fuel being burned at the time the application to construct is being filed. The provisions require that should a source commit to switching to a cleaner fuel in the future, the permit must be conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel. Adequate supplies of the new fuel must also be available. These provisions satisfy USEPA's requirements for approval.

m. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(C) that detail the criteria which must be met in order for a source to receive credit for emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels. These provisions satisfy USEPA's requirements for approval.

n. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(D) that assure that no emissions credit may be allowed for replacing one hydrocarbon compound with another with lesser reactivity. These provisions satisfy USEPA requirements for approval.

o. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(F) for procedures relating to the permissible location of offsetting emissions. These provisions satisfy USEPA requirements for approval.

p. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(G) to assure that credit for an emission

reduction can be claimed to the extent that the State has not relied on it in issuing a permit, preparing an attainment demonstration, or demonstration of further reasonable progress.

q. Ohio has established provisions in response to 40 CFR 51.165(a)(4) which allow that fugitive emissions may be excluded from the calculation of the potential of a stationary source or modification to emit if the source does not belong to any of the source categories listed in 40 CFR 51.165(a)(4). These provisions satisfy USEPA's requirements for approval.

r. Ohio has established provisions in response to 40 CFR 51.165(a)(5)(i) to assure that being granted an approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and under any other requirements under local, State or Federal law. These provisions satisfy USEPA's requirements for approval.

s. Ohio has established provisions in response to 40 CFR 51.165(a)(5)(ii) to assure that a source or modification that becomes a major stationary source or major modification by virtue of a relaxation in any enforceable limitation would be required to apply the applicable State rules to the source or modification as though construction had not yet commenced. These provisions satisfy USEPA's requirements for approval.

t. Ohio has established provisions in response to 40 CFR 51.165(b) to assure that the Ohio nonattainment rules would apply to any new major stationary source or major modification locating in areas designated as attainment or unclassifiable when it would cause or contribute to a violation of any national ambient air quality standard. The new source or modification could alternatively choose to obtain sufficient emission reductions to compensate for its adverse impact on ambient air quality. These provisions satisfy USEPA's requirements for approval.

u. Ohio has made some changes to the existing and previously approved Rule 3745–3103 (Permit to Install Exemptions). This rule addresses the cases in which exemptions from the requirement to obtain a permit to install would be considered by Ohio. These changes are in four sections: permanent exemptions, federal based exemptions, discretionary exemptions, and permit-by-rule exemptions. USEPA's analysis of these provisions is as follows.

A. The introductory paragraph to the permanent exemption section states that the exemptions ''do not apply to a combination of common emissions units that are a major stationary source or major modification.'' USEPA interprets this language to mean that no sources or modifications that are major under the federal rules would be excused from the obligation to obtain a permit to install by this section of the rule.

B. The federal based exemptions section excludes cleanup activities associated with the Comprehensive Environmental Response, Compensation, and Liability Act from the requirement to obtain a permit to install. USEPA considers this approvable.

C. The discretionary exemptions section has been approved in a previous rulemaking (45 FR 72119).

D. The permit-by-rule exemption section currently applies to one exemption, emergency electrical generators or emergency fire fighting water pumps. The equipment size constraints and recordkeeping conditions of this exemption are consistent with the September 6, 1995 memo from John Seitz to Air Division Directors regarding calculating potential to emit for emergency generators, and is therefore approvable.

3. Ozone

According to section 172(c)(5) of the CAA, SIPs must require permits for the construction and operation of new or modified major stationary sources. The statutory permit requirements in ozone nonattainment areas are generally contained in section 173, and in subpart 2 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For all classifications of ozone nonattainment areas and for ozone transport regions, States must adopt the appropriate major source thresholds and offset ratios, and must adopt provisions to ensure that any new or modified major stationary source of Oxides of Nitrogen (NO_X) satisfies the requirements applicable to any major source of Volatile Organic Compounds (VOC), unless a special NO_X exemption is granted by the Administrator under the provision of section 182(f) of the CAA. For serious and severe ozone nonattainment areas, State plans must implement sections 182(c)(6), (7) and (8) of the CAA with regard to modifications.

For emissions of VOC and NO_X in ozone nonattainment areas, Ohio has established the following major source thresholds in Rule 3745–31–01 (Definitions) under the definition of ''Major Stationary Source'' and offset ratios in Rule 3745–31–26 (Offset Ratio Requirements) as follows:

Area classification	Major source threshold	Offset ratios	NO_X provisions [2]
Marginal	100 tpy ...	1.1:1	1.1:1
Moderate.	100 tpy ...	1.15:1	1.15:1

[2] It should be noted that Rule 3745–31–26(B) provides that NOx emissions from stationary sources shall be treated as a nonattainment air pollutant in each county that is designated nonattainment for ozone. The offset requirements for ozone apply to NO_X as well except in areas that have been granted a waiver under section 182(f) of the CAA. It should be noted that Ohio petitioned for and was granted a NO_X control waiver pursuant to the provisions of section 182(f)(1)(B) of the CAA because additional NO_X reductions would not produce net ozone air quality benefits. See 60 FR 36051 (July 13, 1995). Since the ozone nonattainment areas have been granted a NOx waiver under section 182(f), no NO_X offsets will be required as long as this waiver remains in effect.

Ohio does not have any serious, severe, or extreme ozone nonattainment areas. Butler, Warren, Hamilton, and Clermont are all designated as moderate ozone nonattainment areas.

Rule 3745–31–01 (Definitions) details that a net emissions increase for VOC and NO_X is significant under the definition of ''significant'' when the increase is greater than 40 tons per year. In order to establish whether an increase in emissions is significant, the net emissions increase must be calculated by comparing the average of the most recent actual emissions of two consecutive years within the past five year period that is representative of actual emissions unit operation to the potential emissions of the modification. These provisions satisfy USEPA's requirements for approval.

4. Carbon Monoxide Nonattainment NSR Requirements

The statutory permit requirements for carbon monoxide (CO) nonattainment areas are generally contained in section 173, and in subpart 3 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. States must also adopt the appropriate major source threshold and offset ratio.

Rule 3745–31–01 (Definitions) under the definition of ''significant'' adopts a significance level of 100 tpy for CO. Rule 3745–31–01 (Definitions), under the definition of ''Major Stationary Source'', adopts a major source threshold level of 100 tpy in a nonattainment area. The offset requirement of an amount equal to the amount of emissions increase for CO nonattainment areas would fall under Rule 3745–31–26. Ohio does not currently have any CO nonattainment areas. Even though these provisions

were not required they satisfy USEPA's approval requirements.

5. Particulate Matter Nonattainment NSR Requirements

The statutory permit requirements for PM–10 nonattainment areas are generally contained in section 173, and in subpart 4 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For both the moderate and severe classifications of PM–10 nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, significance level for modifications, and provisions for PM–10 precursors.

Ohio has established major source thresholds, offset ratios, modification significance levels, and PM–10 precursor provisions as follows:

A. In Rule 3745–31–01 (Definitions), under the definition of ''Major Stationary Source'', a major source threshold level of 100 tpy in areas classified as nonattainment has been established.

B. A general offset requirement of an amount equal to the amount of emissions increase is established in Rule 3745–31–26.

C. Rule 3745–31–01 (Definitions) adopts a significance level of 15 tpy for PM–10 under the definition of ''significant''.

D. In accordance with the requirements of section 189 of the CAA, Rule 3745–31–21 states that major stationary sources of PM–10 precursors shall be subject to the applicable control requirements except where the Director determines that such sources do not contribute significantly to the PM–10 levels that exceed the standard in the area. It should be noted that on May 27, 1994 (59 FR 27464), USEPA made a finding that PM–10 precursors do not contribute significantly to PM–10 levels that exceed the standard.

PM precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates. Cuyahoga and a portion of Jefferson County are designated as a moderate nonattainment area for particulate matter. No area has been designated as a severe nonattainment area for particulate matter. These provisions are consistent with USEPA approval requirements.

6. Sulfur Dioxide Nonattainment NSR Requirements

The statutory permit requirements for sulfur dioxide (SO_2) nonattainment areas are generally contained in section 173, and in subpart 5 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For SO_2 nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

The State of Ohio has established a major source threshold level of 100 tpy in Rule 3745–31–01 (Definitions), under the definition of Major Stationary Source. A general offset requirement of an amount equal to the amount of emissions increase is established in Rule 3745–31–26. Rule 3745–31–01 (Definitions) under the definition of ''significant'' adopts a significance level of 40 tpy for SO_2. Currently, portions of Coshocton, Cuyahoga, Gallia, Jefferson, Lake, Lorain, and Lucas Counties are designated as nonattainment for SO_2. Summit County has no designation pending USEPA action on a remand. These provisions are sufficient for USEPA approval.

7. Lead Nonattainment NSR Requirements

The statutory permit requirements for lead nonattainment areas are generally contained in section 173 and in subpart 5 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For lead nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Ohio established a major source threshold level for stationary sources which emit or have the potential to emit 100 tpy of any pollutant for which the area is designated as nonattainment in Rule 3745–31–01 under the definition of ''Major Stationary Source''. The offset requirement of an amount equal to the amount of emission increases would fall under the general definition of Rule 3745–31–26 and is acceptable to USEPA. Under the definition of Significant, Rule 3745–31–01 includes a significance level of 0.6 tpy for lead. There are no areas of Ohio currently designated as not attaining the lead standard.

8. Nitrogen Dioxide Nonattainment NSR Requirements

The statutory permit requirements for nitrogen dioxide (NO_2) nonattainment areas are generally contained in section 173, and in subpart 5 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For nonattainment areas, States must adopt the appropriate major source threshold, offset ratio and significance level for modifications. Although Ohio has no NO_2 nonattainment areas it has complied with these requirements.

The State of Ohio has established a major source threshold level of 100 tpy in Rule 3745–31–01 (Definitions), under the definition of ''Major Stationary Source'' for nonattainment areas. Rule 3745–31–01 (Definitions), under the definition of ''significant'', adopts a significance level of 40 tpy for nitrogen oxide (NO_X). The NO_X offset requirement established in Rule 3745–31–26 states that the offset requirements for ozone shall also apply to NO_X unless a NO_X waiver is granted under section 182(f) of the CAA. NO_2 is considered a NO_X so these provisions are also applicable to NO_2. As discussed in footnote 2, a NO_X waiver has been granted for all Ohio ozone nonattainment areas and the waiver effectively suspends enforcement of these requirements as long as the waiver remains in effect. These provisions satisfy USEPA's approval requirements.

9. Miscellaneous Definition Changes

Any definitional changes under Rule 3745–31–01 as compared to the definitions under 40 CFR 51.165 not specifically mentioned in this proposed rule are not significant.

The definition of ''Building, Structure, Facility, or Installation'' and ''Stationary Source'' in 40 CFR 51.165 have been combined under the definition of ''Stationary Source'' under Rule 3745–31–01. This combination of definitions satisfies USEPA's requirements for approval.

The definition of ''Major Modification'' under Rule 3745–31–01 does not provide for the exemptions allowed under 51.165 (a)(1)(v)(C) (8) and (9) pertaining to pollution control projects and clean coal technology demonstration projects. USEPA considers the absence of these exemptions to be more stringent than the Federal definition and is, therefore, approvable.

Ohio has chosen to omit the definition of ''electric utility steam generating unit'' and the related definition of ''Representative Actual Annual Emissions'' from 40 CFR 51.165 (a)(1) (xx) and (xxi) since those terms are not used within the Ohio NSR rules. Electric utility steam generating units under the Federal definition would be required by Ohio rules to follow the same permitting process and applicable baseline calculations as other source categories. In other words, Ohio has not given electric utility steam generating units the additional flexibility that the Federal rules would otherwise allow. On this point the State rule is more

stringent than the Federal requirement and, therefore, approvable.

Under the definition of ''Actual Emissions'' in Rule 3745–31–01, Ohio has not provided for a separate interpretation of actual emissions for electric steam generating units provided for in 40 CFR 51.165(a)(1)(xii)(E). This omission is acceptable to USEPA and approvable.

The definitions of ''Temporary Clean Coal Technology Demonstration Project'' and ''Clean Coal Technology Demonstration Project'' are contained in Rule 3745–31–21 as opposed to Ohio's Rule which holds the definitions (3745–31–01). The placement of these definitions is acceptable to USEPA and approvable.

The definition of ''Pollution Control Project'' from 40 CFR 51.165 (a)(1)(xxv) has been omitted from the Ohio rules although the term is utilized in the definitions of ''modify'' and ''modification''. Inclusion of the Federal definition of this term is a mandatory requirement for Federal approval of the Ohio NSR requested SIP revision unless the State demonstrates that the definition used in the State rule is more or equally stringent as the Federal definition. Because Ohio has not used this term in its NSR rule, it has not satisfied this requirement. In an April 12, 1996 transmittal letter of Ohio's finally adopted NSR rules to USEPA, Ohio has committed to modify its NSR rules to incorporate the definition of ''Pollution Control Project'' not later than September 21, 1997. Based on this commitment, USEPA proposes approval of the Ohio NSR rules.

Each time Ohio used the term regulated pollutant in their rules, such as the definitions of ''Major Stationary Source'' and ''Significant,'' the term is qualified with the statement ''including lead compounds but excluding other air pollutants regulated due to being listed under section 112 of the CAA''.

This statement is consistent with section 112(b)(6) of the CAA and is, therefore, approvable.

III. Proposed Rulemaking Action

As stated above, the Ohio NSR submittal contains one deficiency which is sufficient to serve as a basis for USEPA disapproval of the State's requested SIP revision. Furthermore, two interpretations listed in e. and u. of II(A)(1) could be a disapproval item in the absence of State concurrence with USEPA's interpretation. Because, however, the State has committed to remedy the deficiency identified not later than September 21, 1997 and agreed that USEPA's interpretations of the State rules are consistent with the State's own interpretations, USEPA proposes to conditionally approve the requested SIP revision. Conditional approval would allow the State one year from final rulemaking to remedy the deficiencies identified above. If the State remedies the deficiencies prior to the one year deadline, USEPA will rulemake to convert the conditional approval to an approval. If the State does not remedy the deficiencies within the allowed one year period, the conditional approval will become a disapproval.

The rules proposed for conditional approval in this rulemaking action are OAC 3745–31–01(A)(B)(C)(D)(E)(F)(G)(H)(I)(J)(K)(L)(M)(N)(O)(Q)(R)(S)(V)(W)(X)(Y)(Z)(AA)(BB)(CC)(DD)(EE)(FF)(GG)(HH)(II)(JJ)(KK)(LL)(MM)(NN)(OO)(PP)(SS)(TT)(WW)(XX)(YY)(ZZ)(BBB)(DDD), 3745–31–02(A)(2)(C)(D), 3745–31–03(A)(1)(2)(a)(3)(4), 3745–31–05(A)(2)(d)(f)(D)(F), 3745–31–09, 3745–31–10, 3745–31–21, 3745–31–22, 3745–31–23, 3745–31–24, 3745–31–25, 3745–31–26, 3745–31–27.

IV. Impact on Sanctions

In a final rule published on September 21, 1994 (59 FR 48392), USEPA disapproved Ohio's August 20, 1993 submittal of a requested SIP revision for NSR. That final rule initiated USEPA's sanction process as discussed in USEPA's August 4, 1994 (59 FR 39832) Final Rule and Notice on CAA Sanctions. This August 4, 1994 final rule finalized USEPA's selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the CAA. *See* 59 FR 39832. This rulemaking states that the section 179(b)(2) of the CAA offset sanction applies in an area 18 months from the date when the USEPA makes a finding under section 179(a) of the CAA with regard to that area. Furthermore, the section 179(b)(1) of the CAA highway funding restrictions apply in an area 6 months following application of the offset sanction. Because the effective date of USEPA's disapproval of Ohio's earlier NSR SIP revision request is October 21, 1994, the requirement for-two-for one offsets of sources receiving permits for major new sources or modifications located in Ohio nonattainment areas is scheduled to begin April 21, 1996. Similarly the start date for imposing highway funding sanctions is October 21, 1996. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance.

Because USEPA is proposing to conditionally approve Ohio's requested NSR SIP submittal, in the rules section of this Federal Register the USEPA is issuing an interim final determination that the Ohio has corrected the deficiency created when the USEPA disapproved the Ohio requested SIP revision for NSR. This interim determination is intended to defer the application of the two-for-one offset and highway funding sanctions until USEPA makes a final determination on the Ohio's NSR submittal.

V. Request for Public Comments

The USEPA is requesting comments on all aspects of the requested SIP revision and USEPA's proposed rulemaking action. Comments received by the date indicated above will be considered in the development of USEPA's final rulemaking action.

VI. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

VII. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the

Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIP's 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).

VIII. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA 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 a State, local and/or tribal government(s) in the aggregate. The USEPA must also develop a plan with regard to small governments that would be significantly or uniquely affected by the rule.

Because this proposed rule if finally adopted is estimated to result in the expenditure by State, local and tribal governments or the private sector of less than $100 million in any one year, USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost effective, or least burdensome alternative and because small governments will not be significantly or uniquely affected by this rule, USEPA is not required to develop a plan for small governments. Further, this proposed rule if finally adopted only approves existing State regulations; it imposes no new requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Lead, Carbon monoxide, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 15, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–9914 Filed 4–19–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 157–0007; FRL–5460–7]

Clean Air Act Approval and Promulgation of New Source Review and Prevention of Significant Deterioration Implementation Plan for Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve with a contingency, and disapprove in the alternative Monterey Bay Unified Air Pollution Control District (District) Rules 207 and 215 for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). Rules 207 (Review of New and Modified Sources) and 215 (Banking of Emission Reductions) were submitted by the State of California on behalf of the District as a requested State Implementation Plan (SIP) revision to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This submittal also satisfies the requirements for a Prevention of Significant Deterioration (PSD) program. This proposed approval is contingent upon the District correcting existing deficiencies in its NSR and PSD submittal before EPA promulgates a final rulemaking on this submittal. Should the District fail to correct all deficiencies in this submittal, then this notice will serve as a proposed disapproval of the submittal.

DATES: Comments on this proposed action must be received in writing by May 22, 1996.

ADDRESSES: To submit comments or receive further information, please contact Steve Ringer, Environmental Engineer, New Source Section, Air & Toxics Division (A–5–1), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; (2) Air Resources Board, 2020 L Street, Sacramento, CA 95814; (3) Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey CA 93940.

FOR FURTHER INFORMATION CONTACT: Steve Ringer (415) 744–1260.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. 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 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.

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) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

The District held a public hearing on May 17, 1995 to entertain public comment on rules 207 and 215. On May 17, 1995, the rules were adopted by the District Board of Directors and submitted to the State. On August 10, 1995 the rules were submitted to EPA as a proposed revision to the California SIP.

EPA deemed the submittal complete on October 4, 1995. The submittal has since been reviewed and found to be complete but lacking certain requirements that would make it fully approvable. The District has, however, committed to correct the deficiencies described below and submit a rule with these changes for inclusion into the SIP. Therefore, contingent on the submittal of a fully approvable SIP revision, as described below, EPA proposes to approve the District's nonattainment NSR and attainment PSD SIP submittal. If the District fails to correct the deficiencies in this submittal, then EPA's final action will be a disapproval.

Summary of Rule Contents

The Monterey Bay Unified Air Pollution Control District submitted to EPA for adoption into the applicable NSR SIP Rules 207 (Review of New or Modified Sources) and 215 (Banking of Emissions Reductions). Rule 207 is intended to replace existing NSR SIP Rule 207 (Review of New or Modified Source); and Rule 215 is a new addition to the existing SIP.

These submitted rules constitute the District's new source permitting

regulations. Rule 207 consists of definitions, requirements, including applicability, major source definitions, offsets, increment analysis, and Lowest Achievable Emission Rate/Best Available Control Technology. Rule 215 establishes procedures for the creation, banking, and use of emission reduction credits. This last rule has indirect bearing on new source review, as these credits can be obtained by new sources and used as offsets.

Within the District, Monterey County, San Benito County, and Santa Cruz County are currently designated as Moderate nonattainment for Ozone. All other areas within the District are designated as attainment or unclassifiable with respect to the NAAQS. District nonattainment rules must therefore apply to all major new or modified stationary sources proposing to emit VOC or NOx in the nonattainment areas noted above. The nonattainment provisions must also apply to any source which would contribute to a violation of the NAAQS. The PSD provisions submitted by the District apply to major new or modified stationary sources proposing to emit attainment pollutants.

The Clean Air Act requirements are found at sections 172 and 173 for nonattainment NSR permitting and at section 165 for PSD permitting. With certain exceptions, described below, the District's submittal satisfies these requirements. For a detailed description of how the submitted rule meets the applicable requirements, please refer to EPA's technical support document.

Rule Deficiencies That Must Be Corrected

Rule 207

Section 4.2.9: Currently this section states that ''all emission reductions must be in effect and enforceable by the time the new or modified source commences operation''. However, section 173(a) of the Clean Air Act requires that any emission reduction required as a precondition of the issuance of a permit shall be made federally enforceable prior to permit issuance. Therefore, the District must change this language to meet the above Clean Air Act requirement.

Section 4.3.3.2: This section allows a source to obtain offsets from a different air basin if the applicant provides them at the stated ratios or at a ratio and distance approved by the District as long as the source demonstrates a net air quality benefit. However, Section 173(c) of the Clean Air Act requires that emission reductions obtained from another nonattainment area may be used only if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located, and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Thus, the rule should have language which explicitly requires the two conditions above.

Proposed Action

EPA is proposing to approve, with disapproval in the alternative, the plan revisions submitted by the California Resources Board on behalf of Monterey Bay Unified Air Pollution Control District on August 10, 1995. Full approval as a final action on these rules is contingent upon the District making the required changes listed above.

If the specified changes are not made before EPA's final action on this submittal, then EPA's final action will be a disapproval. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see 57 FR 13566–67). As provided under section 179(a) of the Act, the District would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose sanctions. If the District does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to section 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

EPA is requesting comments on all aspects of the requested SIP revision and EPA's proposed rulemaking action. Comments received by the date indicated above will be considered in the development of EPA's final rule.

Administrative Review

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the 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). The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule 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. EPA has determined that the approval proposed in this document does not include such a federal mandate, as this proposed federal action would approve pre-existing requirements under state or local law, and would impose no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, hydrocarbons, intergovernmental relations, new source review, nitrogen dioxide, particulate matter, reporting and record-keeping requirements, sulfur dioxide, and volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 10, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–9848 Filed 4–19–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–805–P]

RIN 0938–AG68

Medicare and Medicaid Programs; New Payment Methodology for Routine Extended Care Services Provided in a Swing-Bed Hospital

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would revise the regulations governing the methodology for payment of routine extended care services furnished in a swing-bed hospital. Medicare payment for these services is determined based on the average rate per patient day paid by Medicare for these same services provided in freestanding skilled nursing facilities (SNFs) in the region in which the hospital is located. The reasonable cost for these services is the higher of the reasonable cost rates in effect for the current calendar year or for the previous calendar year. In addition, this proposed rule would revise the regulations concerning the method used to allocate hospital general routine inpatient service costs for purposes of determining payments to swing-bed hospitals. These changes are necessary to conform the regulations to section 1883 of the Social Security Act (the Act), and section 4008(j) of the Omnibus Budget Reconciliation Act of 1990.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 21, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–805–P, P.O. Box 7517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–805–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Katie Walker (410) 786–7278.

SUPPLEMENTARY INFORMATION:

I. Background

Frequently, hospitals participating in Medicare and Medicaid, particularly those located in rural areas, have provided both inpatient acute and long-term care in the same facility. However, Medicaid regulations at 42 CFR 440.40 require that long-term care be provided in a separately identifiable ''distinct-part'' unit.

Before the enactment of the Omnibus Budget Reconciliation Act of 1980 (Public Law 96–499), small rural hospitals had difficulty in establishing separately identifiable units for Medicare and Medicaid long-term care because of limitations in their physical plant and accounting capabilities. These hospitals often had an excess of hospital beds, while their communities had a scarcity of long-term care beds in Medicare and Medicaid participating facilities. To alleviate this problem, Congress enacted section 904 of Public Law 96–499, known as the ''swing-bed provision,'' which authorized a cost-efficient means of providing nursing home care in rural communities. This provision added sections 1883 and 1913 of the Social Security Act (the Act), under which certain rural hospitals with fewer than 50 beds could use their inpatient facilities to furnish long-term care services to Medicare and Medicaid patients. These hospitals are thus permitted to vary the level of care they provide in response to changing patient needs by using the same bed to furnish hospital services at one time and SNF services at another.

Hospitals with approved swing-bed programs that furnished long-term care services were paid at rates that were deemed appropriate for those services and were generally lower than hospital rates. Medicare payment for routine SNF services was made at the average Statewide Medicaid rate for the previous calendar year. Payment for ancillary services was made based on reasonable cost.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Public Law 100–203) was enacted. Section 4005(b) of OBRA 1987 amended section 1883(b)(1) of the Act to provide for an expansion of the existing Medicare swing-bed program to include rural hospitals with more than 49 but fewer than 100 beds, effective for swing-bed agreements entered into after March 31, 1988. Although rural hospitals having more than 49 beds but fewer than 100 beds can be swing-bed hospitals, they are subject to additional payment limitations that do not apply to the smaller swing-bed hospitals.

Specifically, section 1883(d) of the Act states that Medicare payment for SNF services furnished by hospitals with more than 49 beds but fewer than 100 beds may not be made either for: (1) extended care services that are furnished to a swing-bed hospital SNF patient more than 5 days (excluding weekends and holidays) after a bed in a SNF becomes available in the geographic region, unless the patient's physician certifies within the 5-day period that the transfer of the patient is not medically appropriate; or (2) days of SNF care in a cost reporting period once Medicare covered days of SNF care exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital during that period. Payment will, however, continue to be made for patients who are receiving SNF care at the time the limit is reached.

Also, sections 4201(a)(3), 4204, 4211(h)(9), and 4214 of OBRA 1987 provide that effective with services furnished on or after October 1, 1990, the terms ''skilled nursing facilities'' (SNFs) and ''intermediate care facilities'' (ICFs) would no longer be used for the purpose of certifying a facility for the Medicaid program. Instead, they would be replaced by the term ''nursing facility'' (NF). Before that date, under the Medicaid program, a swing-bed hospital could furnish SNF-type, as well as ICF-type, services to non-Medicare patients. Now, the NF level of care encompasses services that were previously known as SNF-type and ICF-type services. Thus, for purposes of the Medicaid program, facilities are no longer certified as ICFs but instead are certified only as NFs, and can provide services as defined in section 1919(a)(1) of the Act. Effective October 1, 1990, these long-term care services furnished by swing-bed hospitals to Medicaid and

to other non-Medicare patients have been referred to as NF-type services.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Public Law 101–508) was enacted. Section 4008(j) of OBRA 1990 amended section 1883(a)(2)(B)(ii)(II) of the Act to provide for a new methodology to pay for routine SNF services provided in a swing-bed hospital. Effective for services furnished on or after October 1, 1990, Medicare payment for routine SNF services in a swing-bed hospital is based on the average rate per patient day paid by Medicare for routine services provided in freestanding SNFs in the region in which the hospital is located. The rates are calculated using the regions as defined in section 1886(d)(2)(D) of the Act.

Section 4008(j)(2) of OBRA 1990 also provides for a ''hold harmless'' provision. Under this provision, if the reasonable cost of routine SNF services furnished by a hospital during a calendar year is less than the reasonable cost of these services determined for the prior calendar year, payment is to be based on the reasonable cost determination for the prior calendar year.

II. Provisions of This Proposed Rule

A. New Payment Rate Methodology

In accordance with section 1883 of the Act, as amended by section 4008(j) of OBRA 1990, this proposed rule would implement in regulations a revised methodology for Medicare payment of routine SNF services provided in a swing-bed hospital. Presently, under § 413.114(c)(1), the reasonable cost of routine SNF services is based on the average Statewide rate per patient day paid under the State Medicaid plan for routine services furnished by SNFs in that State during the previous calendar year. Under this proposed rule, Medicare payment to a swing-bed hospital for routine services would be based on the average rate per patient day paid by Medicare for routine SNF services provided in a freestanding SNF in the region in which the hospital is located. These rates would be determined prospectively based on the most current SNF settled cost reporting data available (increased in a compounded manner, using the increase applicable to the SNF routine cost limits, up to and including the calendar year for which the rates are in effect). Rates would be calculated using the regions as defined in section 1886(d)(2)(D) of the Act (that is, one of the nine census divisions established by the Bureau of the Census). Payment for ancillary services furnished as SNF services in swing-bed hospitals would continue to be paid on a reasonable cost basis.

The rates applicable to calendar years 1990 through 1994, listed below, have been published in section 2231 of the Provider Reimbursement Manual (HCFA Pub. 15–1). We will continue to publish annual updates in that manual.

Section B below describes the methodology for calculating the Medicare swing-bed rates. Tables A through E provide the Medicare swing-bed rates for services furnished on or after October 1, 1990, and before December 31, 1990, as well as for services furnished in calendar years 1991, 1992, 1993, 1994, and 1995. (These rates were applied beginning October 1, 1990. Implementation of the rates was accomplished by means of HCFA administrative issuances, as addressed above.) If there are additional changes in the methodology, these revisions would be published through notice and comment rulemaking in the Federal Register.

In accordance with section 4008(j)(2) of OBRA 1990, this proposed rule also includes a hold harmless provision for Medicare swing-bed payments. As noted above, this provision would allow for payment of the higher of the payment rate in effect for the current calendar year or the payment rate received by the swing-bed hospital for the prior calendar year.

B. Development of Medicare Swing-Bed Rates Effective for Services Furnished on or after October 1, 1990 and before January 1, 1995

1. *Data*—In developing the Medicare payment rates for swing-bed care, we use the actual freestanding SNF inpatient routine service payments obtained from settled Medicare cost reports. For fiscal years 1990–1993, cost reports used were for periods ending on or after June 30, 1989 and through May 31, 1990; for 1994, cost reports used were for periods ending on or after September 30, 1990 through August 31, 1991; and for 1995, cost reports used were for periods ending on or after October 31, 1992 through September 30, 1993. The data consist of routine service payments that were adjusted for utilization review, primary payor amounts, and application of lower of cost or charges. For proprietary providers, the return on equity portion of the swing-bed rate was adjusted to include only the routine portion (that is, the return on equity component related to ancillary services costs was removed).

HCFA adjusts these data, using the SNF market basket index (the annual percent increase in SNF expenditures, considering inflation plus an allowance for new technology) to inflate costs from the cost reporting periods in the data base to the midpoint of the applicable year to which the rates apply.

2. *Group Means*—HCFA calculated the means of adjusted routine service payments and the routine portion of return on equity for each census region as shown in Tables A through D.

(We note that effective October 1, 1993, section 13503(c) of the Omnibus Budget Reconciliation Act of 1993 amended sections 1861(v)(1)(B) and 1878(f)(2) of the Act to eliminate return on equity capital for SNF services furnished in a proprietary hospital. The return on equity capital component was not added to the routine payment rate for the months of October, November, and December of 1993 (Table D) nor for any subsequent years.)

TABLE A.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER OCTOBER 1, 1990 AND BEFORE DECEMBER 31, 1990

Region	Routine payment	Return on equity [1]
1. New England (CT, ME, MA, NH, RI, VT)	$86.51	$1.42
2. Middle Atlantic (PA, NJ, NY)	86.39	1.27
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	75.28	1.48
4. East North Central (IL, IN, MI, OH, WI)	75.03	1.18
5. East South Central (AL, KY, MS, TN)	65.79	1.21
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	74.09	$1.34
7. West South Central (AR, LA, OK, TX)	67.85	1.87
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	81.32	1.47

TABLE A.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER OCTOBER 1, 1990 AND BEFORE DECEMBER 31, 1990—Continued

Region	Routine payment	Return on equity [1]
9. Pacific (AK, CA, HI, OR, WA)	86.73	1.07

[1] The return of equity component is included only in the rate paid to proprietary hospitals.

TABLE B.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1991 AND BEFORE DECEMBER 31, 1991

Region	Routine payment	Return on equity [2]
1. New England (CT, ME, MA, NH, RI, VT)	$90.92	$1.42
2. Middle Atlantic (PA, NJ, NY)	90.73	1.27
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	79.03	1.28
4. East North Central (IL, IN, MI, OH, WI)	78.78	1.18
5. East South Central (AL, KY, MS, TN)	69.14	1.21
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	77.83	1.34
7. West South Central (AR, LA, OK, TX)	71.22	1.87
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	85.34	1.47
9. Pacific (AK, CA, HI, OR, WA)	91.10	1.07

[2] The return on equity component is included only in the rate paid to proprietary hospitals.

TABLE C.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1992 AND BEFORE DECEMBER 31, 1992

Region	Routine payment	Return on equity [3]
1. New England (CT, ME, MA, NH, RI, VT)	$95.10	$1.42
2. Middle Atlantic (PA, NJ, NY)	94.91	1.27
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	82.67	1.48
4. East North Central (IL, IN, MI, OH, WI)	82.40	1.18
5. East South Central (AL, KY, MS, TN)	72.32	1.21
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	81.41	1.34
7. West South Central (AR, LA, OK, TX)	74.50	1.87
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	89.27	1.47
9. Pacific (AK, CA, HI, OR, WA)	95.29	1.07

[3] The return on equity component is included only in the rate paid to proprietary hospitals.

TABLE D.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1993 AND BEFORE DECEMBER 31, 1993

Region	Routine payment	Return on equity [4]
1. New England (CT, ME, MA, NH, RI, VT)	$100.05	$1.42
2. Middle Atlantic (PA, NJ, NY)	99.84	1.27
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	86.97	1.48
4. East North Central (IL, IN, MI, OH, WI)	86.69	1.18
5. East South Central (AL, KY, MS, TN)	76.08	1.21
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	85.64	1.34
7. West South Central (AR, LA, OK, TX)	78.37	1.87
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	93.91	1.47
9. Pacific (AK, CA, HI, OR, WA)	100.24	1.07

[4] The return on equity component should be included in the rate paid to proprietary hospitals only for the months of January through September of this calendar year.

TABLE E.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1994 AND BEFORE DECEMBER 31, 1994

Region	Routine payment
1. New England (CT, ME, MA, NH, RI, VT)	$108.48
2. Middle Atlantic (PA, NJ, NY)	104.33
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	89.47
4. East North Central (IL, IN, MI, OH, WI)	88.76
5. East South Central (AL, KY, MS, TN)	79.44

TABLE E.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1994 AND BEFORE DECEMBER 31, 1994—Continued

Region	Routine payment
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	83.84
7. West South Central (AR, LA, OK, TX)	84.97
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	100.11
9. Pacific (AK, CA, HI, OR, WA)	104.58

TABLE F.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1995 AND BEFORE DECEMBER 31, 1995

Region	Routine payment
1. New England (CT, ME, MA, NH, RI, VT)	$121.71
2. Middle Atlantic (PA, NJ, NY)	117.28
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	105.22
4. East North Central (IL, IN, MI, OH, WI)	105.73
5. East South Central (AL, KY, MS, TN)	94.61
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	99.75
7. West South Central (AR, LA, OK, TX)	99.63
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	117.21
9. Pacific (AK, CA, HI, OR, WA)	125.80

C. The Carve Out Method

In a swing-bed hospital, acute care services and long-term care services are furnished interchangeably. To determine payment for inpatient hospital services in a swing-bed hospital, section 1883(e) of the Act provides that the costs attributable to routine long-term care (SNF-type and ICF-type) services for all classes of patients are to be subtracted (''carved out'') from the total allowable inpatient cost for general inpatient routine services. The resulting amount represents the general inpatient routine costs applicable to hospital routine care. Once amounts attributable to SNF-type and ICF-type services have been carved out, the average per diem cost of general routine hospital services for swing-bed hospitals not subject to the prospective payment system is then determined by dividing the remaining amount by the total number of inpatient general routine hospital days (excluding SNF days and ICF days). This method was chosen to avoid imposing a burdensome cost finding process to allocate general routine service costs between hospital and long-term care.

Swing-bed hospitals subject to the prospective payment system (PPS) are paid for SNF-type services in the same manner as any other swing-bed hospital. The carve out method would be used primarily to determine proper payment of pass-through costs. The prospective payment rates based on diagnosis related groups (DRGs) for inpatient hospital services under PPS are unaffected by the carve out method.

As stated above, with the enactment of OBRA 1987, effective October 1, 1990, the distinction between SNFs and ICFs was eliminated under the Medicaid program and the two types of facility were combined under the term ''nursing facility'' (NF). This presented a problem in attempting to determine the amount of the carve out. Since Medicaid payment is now determined based on a NF rate, the carve out method could not be used as previously defined.

This proposed rule would revise § 413.53(a)(2) to set forth our current policy regarding the carve out method (presently explained in section 2230.5B of the Provider Reimbursement Manual) for SNF and NF services furnished on or after October 1, 1990. Under the revised carve out method, the reasonable cost of hospital routine services would be determined by subtracting the reasonable costs attributable to routine SNF-type and NF-type services from total inpatient routine service costs. For swing-bed SNF days covered by Medicare, the amount subtracted, or carved out, would be based on the regional Medicare swing-bed SNF rate. If, under the hold harmless provision explained above, a swing-bed hospital is paid based on the swing-bed SNF rate that was in effect during the prior calendar year, that higher rate would also be used for purposes of calculating the reasonable cost of routine Medicare SNF days, to be subtracted from total routine costs under the carve out method. For all non-Medicare swing-bed days, the amount subtracted would be based on the average statewide rate paid for routine services in NFs under the State Medicaid plan during the prior calendar year, adjusted to approximate the average NF rate for the current calendar year. (The NF rate would be used for non-Medicare covered swing-bed days because such services may encompass services that were formerly known as ICF and SNF-type services.)

D. Definitions

As discussed above, effective for services furnished on or after October 1, 1990, the terms SNFs and ICFs were no longer to be used for the purpose of certifying a facility for the Medicaid program, in accordance with the provisions of OBRA 1987. Instead, they were replaced by the term ''nursing facility'' (NF). Effective October 1, 1990, extended care services furnished by swing-bed hospitals to Medicaid and to other non-Medicare patients have been referred to as NF-type services.

To reflect the above provisions, we are making changes to the definitions in § 413.53(b) by (1) revising the definition of ''average cost per diem for general routine services''; (2) removing the definition of ''ICF-type services;'' (3) adding a definition of ''nursing facility (NF)-type services;'' and (4) revising the definition of ''SNF-type services.''

III. Impact Statement

For proposed rules such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of a RFA, States and individuals are not considered small entities. However,

providers are considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory flexibility analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban ares, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

In accordance with the provisions of section 1883 of the Act, as amended by section 4008(j) of OBRA 1990, this proposed rule would revise the regulations to incorporate a new methodology for payment of routine extended care services provided in a swing-bed hospital. As the statute specifies, we are proposing that Medicare payment for these services be determined based on the average rate per patient day paid by Medicare for these same services provided in freestanding skilled nursing facilities (SNFs) in the region in which the hospital is located, during the most recent year for which cost reporting data are available. This proposed rule would also provide that the reasonable cost for these services is the higher of the reasonable cost rates in effect for the current calendar year or for the previous calendar year.

In addition to the changes mandated by section 4008(j) of OBRA 1990 regarding payment for routine extended care services, we are proposing a change to the carve out method of determining routine inpatient hospital costs of swing-bed hospitals. As discussed above, with the enactment of OBRA 1987, the distinction between SNFs and ICFs was eliminated under the Medicaid program. Thus, the carve out method as described in § 413.53(a)(2) for computing costs associated with routine SNF and ICF-type services cannot be used. This proposed rule would codify in regulations existing policy concerning the carve out method as set forth in section 2230.5B of the Provider Reimbursement Manual.

As noted above, the major provisions of this proposed rule are required by section 1883 of the Act, as amended by section 4008(j) of OBRA 1990. Thus, a majority of the costs associated with these proposed regulations are the result of legislation, and this rule, in and of itself, has little or no independent effect or burden. Although we are unable to provide a quantifiable estimate of impact, we note that the only discretionary aspect of this rule is to set forth in regulations our current policy concerning the carve out method. Codifying this existing policy would have no economic impact.

Thus, we have determined, and we certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart D—Apportionment

2. Section 413.53 is amended by revising paragraph (a)(1)(ii)(C) and (a)(2); under paragraph (b), definition of ''average cost per diem for general routine services'', paragraph (2) is revised; the definition of ''ICF-type services'' is removed; a new definition of ''nursing facility (NF) type services'' is added; and the definition of ''SNF-type services'' is revised, to read as follows:

§ 413.53 Determination of cost of services to beneficiaries.

(a) *Principle.* * * *

(1) *Departmental method* * * *

(ii) *Exception: Indirect cost of private rooms.* * * *

(C) Effective October 1, 1990, do not include private rooms furnished for SNF-type and NF-type services under the swing-bed provision in the number of days in paragraphs (a)(1)(ii)(A) and (B) of this section.

(2) *Carve out method*—(i) The carve out method is used to allocate hospital inpatient general routine service costs in a participating swing-bed hospital, as defined in § 413.114(b). Under this method, effective for services furnished on or after October 1, 1990, the reasonable costs attributable to the inpatient routine SNF-type and NF-type services furnished to all classes of patients are subtracted from total inpatient routine service costs before computing the average cost per diem for inpatient routine hospital care.

(ii) The cost per diem attributable to the routine SNF-type services covered by Medicare is based on the regional Medicare swing-bed SNF rate in effect for a given calendar year, as described in § 413.114(c). The Medicare SNF rate applies only to days covered and paid as Medicare days. When Medicare coverage runs out, the Medicare rate no longer applies.

(iii) The cost per diem attributable to all non-Medicare swing-bed days is based on the average statewide Medicaid NF rate for the prior calendar year, adjusted to approximate the average NF rate for the current calendar year.

(iv) The sum of total Medicare SNF-type days multiplied by the cost per diem attributable to Medicare SNF-type services and the total NF-type days multiplied by the cost per diem attributable to all non-Medicare days is subtracted from total inpatient general routine service costs. The cost per diem for inpatient routine hospital care is computed based on the remaining inpatient routine service costs.

* * * * *

(b) *Definitions.* * * *

Average cost per diem for general routine services * * *

(2) For swing-bed hospitals, the amount computed by—(i) Subtracting the routine costs associated with Medicare SNF-type days and non-Medicare NF-type days from the total

allowable inpatient cost for routine services (excluding the cost of services provided in intensive care units, coronary care units, and other intensive care type inpatient hospital units and nursery costs); and

(ii) Dividing the remainder (excluding the total private room cost differential) by the total number of inpatient hospital days of care (excluding Medicare SNF-type days and non-Medicare NF-type days of care; days of care in intensive care units, coronary care units, and other intensive care type inpatient hospital units; and newborn days; but including total private room days).

* * * * *

Nursing facility (NF)-type services, formerly known as ICF and SNF-type services, are routine services furnished by a swing-bed hospital to Medicaid and other non-Medicare patients. Under the Medicaid program, effective October 1, 1990, facilities are no longer certified as SNFs or ICFs but instead are certified only as NFs and can provide services as defined in section 1919(a)(1) of the Act.

* * * * *

Skilled nursing facility (SNF)-type services are routine services furnished by a swing-bed hospital that would constitute extended care services if furnished by an SNF. SNF-type services include routine SNF services furnished in the distinct part SNF of a hospital complex that is combined with the hospital general routine service area cost center under § 413.24(d)(5). Effective October 1, 1990, only Medicare covered services are included in the definition of SNF-type services.

* * * * *

Subpart F—Specific Categories of Costs

3. In § 413.114, paragraphs (c)(1) and (2) are removed, paragraph (c)(3) is redesignated as paragraph (c)(2), and a new paragraph (c)(1) is added to read as follows:

§ 413.114 Payment for posthospital SNF care furnished by a swing-bed hospital.

* * * * *

(c) *Principle.* * * *

(1) The reasonable cost of routine SNF services is based on the average Medicare rate per patient day for routine services provided in freestanding SNFs in the region where the swing-bed hospital is located. The rates are calculated using the regions as defined in section 1886(d)(2)(D) of the Social Security Act. The rates are based on the most recent year for which settled cost reporting period data are available, increased in a compounded manner, using the increase applicable to the SNF routine cost limits, up to and including the calendar year for which the rates are in effect. If the current Medicare swing-bed rate for routine extended care services furnished by a swing-bed hospital during a calendar year is less than the rate for the prior calendar year, payment is made based on the prior calendar year's rate.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance;) Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Note: This document received at the Office of the Federal Register on April 11, 1996.

Dated: September 29, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–9347 Filed 4–19–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1313

[STB Ex Parte No. 541]

Railroad Contracts

AGENCY: Surface Transportation Board.

ACTION: Advance notice of proposed rulemaking; extension of comment due date.

SUMMARY: The original comment due date in this proceeding of April 25, 1996, is extended to May 28, 1996, at the request of the National Grain and Feed Association (NGFA), the Association of American Railroads (AAR), and the National Industrial Transportation League (NITL). This proceeding solicited suggestions from the transportation community for appropriate regulations to implement the new rail contract provisions.

DATES: Comments are due on May 28, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 541 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On March 26, 1996, an advance notice of proposed rulemaking (ANPR) was served and published in the Federal Register, at 61 FR 13147–13148, soliciting suggestions from the transportation community for appropriate regulations to implement the new rail contract provisions of 49 U.S.C. 10709. On April 15, 1996, a joint request was filed by NGFA, AAR, and NITL, requesting an extension of the comment due date until May 28, 1996, to give shipper and carrier organizations the opportunity to reach negotiated agreements regarding issues relevant to the proceeding.

In the ANPR, the various sectors of the transportation community were encouraged to discuss the issues and present a proposal for consideration. The jointly filed extension request is in keeping with that encouragement. Accordingly, the due date for comments will be extended to May 28, 1996.

Decided: April 16, 1996.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams,

Secretary.

[FR Doc. 96–9790 Filed 4–19–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 960412110–6110–01; I.D. 030596E]

RIN 0648–AI93

Summer Flounder Fishery; Proposed 1996 Recreational Fishery Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to amend the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule proposes a possession limit of eight fish per person and a minimum fish size of 14 inches (35.6 cm) for the 1996 summer flounder recreational fishery. The intent of this action is to comply with implementing regulations for the fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of the resource.

DATES: Public comments on this proposed rule must be received on or before May 17, 1996.

ADDRESSES: Comments should be sent to: Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

Copies of the environmental assessment prepared for the 1996 summer flounder specifications and supporting documents used by the Summer Flounder Monitoring Committee (Committee) are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (508)281–9221.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

Section 625.20 outlines the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder fishery. The Committee, made up of representatives from the ASMFC, the Council, the New England Fishery Management Council, and NMFS is required to review, on an annual basis, scientific and other relevant information and to recommend a quota and other restrictions necessary to achieve a fishing mortality rate of 0.53 in 1993 through 1995, 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 do not exceed 18.518 million lb (8.4 million kg), unless such levels have an associated F of 0.23. This schedule is mandated by the FMP to prevent overfishing and to rebuild the summer flounder resource. The Committee reviews the following information annually to determine the allowable levels of fishing and other restrictions necessary to achieve a given fishing mortality rate goal: (1) Commercial and recreational catch data; (2) current estimates of fishing mortality; (3) stock status; (4) recent estimates of recruitment; (5) virtual population analysis, a method for analyzing fish stock abundance; (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) impact of gear, other than otter trawls, on the mortality of summer flounder; and (9) other relevant information. Pursuant to § 625.20, after this review, the Committee recommends management measures to ensure achievement of the appropriate fishing mortality rate.

The 1996 final specifications, which were implemented on December 31, 1995 (61 FR 291, January 4, 1996), are: (1) A minimum commercial fish size of 13 inches (33 cm), (2) a minimum mesh size restriction of 5.5–inch (14.0–cm) diamond or 6.0–inch (15.2–cm) square, (3) a coastwide harvest limit of 18,518,830 lb (8.40 million kg); (4) a coastwide commercial quota of 11,111,298 lb (5.04 million kg), and (5) a coastwide recreational harvest limit of 7,407,532 lb (3.36 million kg).

The recreational season, possession limit, and minimum size were not established as part of the final specifications, because recreational catch data for 1995 were not available for the Committee's use in evaluating the effectiveness of the 1995 measures. Shortly after preliminary data became available in October 1995, the Committee met to review the 1995 data and to recommend measures for 1996. The Committee recommended to continue the elimination of the closed season, an individual possession limit of eight fish per person, and a minimum fish size of 14 inches (35.6 cm). These recommendations, adopted by the Council on January 26, 1996, are proposed in this action.

An apparent discrepancy exists between the harvest limit decrease from 1995 to 1996 (7.76 million lb [3.52 million kg]) to 7.41 million lb [3.36 million kg]) and the possession limit increase (from six fish to eight fish). This increase in the possession limit is consistent with the relaxation of the mortality reduction schedule recently approved in Amendment 7 to the FMP (60 FR 57955, November 24, 1995). Further, the Council believes that this increase is warranted because, while the recreational harvest limit decreased from 1995 to 1996, estimated 1995 landings are below both the 1995 and 1996 harvest limits. This landings shortage occurred despite the fact that most states implemented an eight fish per person possession limit in 1995, as allowed under the ASMFC plan. The Council believes that the increase to eight fish per person in the exclusive economic zone (EEZ) in 1996 will provide recreational harvesters with the opportunity to reach the harvest limit.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, such as the charter boats and head boats that serve the recreational fishery. Despite the increase in the possession limit that this action would implement, it is anticipated that few recreational fishermen will actually attain the maximum possession limit under this rulemaking. Specifically, this action will not affect a substantial number of small entities because it will not trigger the following criteria: (1) The regulations are not likely to result in a change in annual gross revenues by more than 5 percent; (2) annual compliance costs will not increase by more than 5 percent; and (3) the regulations will not force small entities to cease business operations. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 16, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. In § 625.25, in paragraph (a) the first sentence is revised to read as follows:

§ 625.25 Possession limit.

(a) No person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a moratorium permit under § 625.4. * * *

* * * * *

[FR Doc. 96–9771 Filed 4–17–96; 11:50 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 78
Monday, April 22, 1996

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 COMMERCE

International Trade Administration

Determination Not to Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on February 2, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–351–603
Brazil
Brass Sheet & Strip
Objection Date: February 20, 1996
Objector: Copper & Brass Fabricators Council, Inc.
Contact: Tom Killiam at (202) 482–2704

A–122–605
Canada
Color Picture Tubes
Objection Date: February 29, 1996
Objector: AFL–CIO et al
Contact: Valerie Turoscy at (202) 482–0145

A–588–609
Japan
Color Picture Tubes
Objection Date: February 29, 1996
Objector: AFL–CIO, et al
Contact: Charles Riggle at (202) 482–0650

A–559–601
Singapore
Color Picture Tubes
Objection Date: February 29, 1996
Objector: AFL–CIO et al
Contact: Michael Heaney at (202) 482–4475

A–791–502
South Africa
Brazing Copper Wire & Rod
Objection Date: February 20, 1996
Objector: Copper & Brass Fabricators Council, Inc.
Contact: Valerie Turoscy at (202) 482–0145

A–580–603
South Korea
Brass Sheet & Strip
Objection Date: February 20, 1996
Objector: Copper & Brass Fabricators Council, Inc.
Contact: Tom Killiam at (202) 482–2704

A–580–605
South Korea
Color Picture Tubes
Objection Date: February 29, 1996
Objector: AFL–CIO et al
Contact: Tom Prosser at (202) 482–1130

A–583–603
Taiwan
Stainless Steel Cooking Ware
Objection Date: February 27, 1996
Objector: Revere Ware Corporation
Contact: Valerie Turoscy at (202) 482–0145

A–122–701
Canada
Potassium Chloride
Objection Date: March 1, 1996
Objector: New Mexico Potash Corporation et al
Contact: James Rice at (202) 482–1374.

Dated: April 9, 1996.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.

[FR Doc. 96–9754 Filed 4–19–96; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or

terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on March 1, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–602–039
Australia
Canned Bartlett Pears
Objection Date: March 19, 1996
Objector: Pacific Coast Canned Pear Service, Inc.
Contact: Mathew Rosenbaum at (202) 482–0198

A–337–602
Chile
Standard Carnations
Objection Date: March 29, 1996
Objector: Floral Trade Council
Contact: Lyn Johnson at (202) 482–5287

A–427–602
France
Brass Sheet & Strip
Objection Date: March 7, 1996
Objector: Copper & Brass Fabricators Council
Contact: Thomas Killiam at (202) 482–2704

A–508–602
Israel
Oil Country Tubular Goods
Objection Date: March 22, 1996
Objector: North Star Steel Ohio
Contact: Michael Heaney at (202) 482–4475

A–475–401
Italy
Certain Valves and Connections of Brass, for Use in Fire Protection Equipment
Objection Date: March 29, 1996
Objector: Badger Fire Protection Systems; Figgie Fire Protection Systems
Contact: Leon McNeill at (202) 482–4236

A–588–015
Japan
Televisions
Objection Date: March 26, 1996
Objector: AFL–CIO, et al
Contact: Sheila Forbes at (202) 482–5253

A–583–803
Taiwan
Light-Walled Welded Rectangular Carbon Steel Tubing
Objection Date: March 29, 1996
Objector: Hannibal Industries, Inc.
Contact: Thomas O. Barlow at (202) 482–0410

A–570–002
The People's Republic of China
Chloropicrin
Objection Date: March 25, 1996
Objector: Niklor Chemical Co., et al
Contact: Andrea Chu at (202) 482–4794

Dated: April 11, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–9755 Filed 4–19–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Initiation of Administrative Review and Request for Revocation in Part of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of administrative review and request for revocation in part of the antidumping duty order.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. Requests for revocation from the antidumping order were also received from specific exporters/growers. In accordance with the Department's regulations, we are initiating this administrative review for the period March 1, 1995 through February 29, 1996, for those named exporters/growers for whom a request for review was received. The Department is also noting those exporters/growers who have requested revocation from the antidumping duty order.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests in accordance with § 353.22 (a)(1), (a)(2), and (a)(3) of the Department's regulations for an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia (19 CFR 353.22(a) (1), (2), and (3)). The Department has also received requests for revocation from the exporters/growers noted.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Initiation of Review

In accordance with 19 CFR 353.22(c)(1), we are initiating an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. We intend to issue the final results of this review no later than March 31, 1997.

We received requests for review of the following specifically-named exporters/growers who shipped subject merchandise during the period:

Abaco Tulipanex de Colombia
Achalay
Aga Group
  Agricola la Celestina
  Agricola la Maria
  Agricola Benilda Ltda.
Agrex de Oriente
Agricola Acevedo Ltda.
Agricola Altiplano
Agricola Arenales Ltda.
Agricola Benilda Ltda.
Agricola Bonanza Ltda.
Agricola Circasia Ltda.
Agricola de Occident
Agricola del Monte
Agricola el Cactus S.A.
Agricola el Redil Ltda.
Agricola Guali S.A.

Agricola la Corsaria Ltda.
Agricola la Montana
Agricola la Siberia
Agricola Las Cuadras Group
  Agricola las Cuadras Ltda.
  Flores de Hacaritama
Agricola Megaflor Ltda.
Agricola Yuldama
Agrocaribu Ltda.
Agro de Narino
Agrodex Group
  Agricola el Retiro Ltda.
  Agricola los Gaques Ltda.
  Agrodex Ltda.
  Degaflores Ltda.
  Flores Camino Real Ltda.
  Flores de la Comuna Ltda.
  Flores de la Mercedes Ltda.
  Flores de Los Amigos Ltda.
  Flores de los Arrayanes Ltda.
  Flores De Mayo Ltda.
  Flores del Gallinero Ltda.
  Flores del Potrero Ltda.
  Flores dos Hectareas Ltda.
  Flores de Pueblo Viejo Ltda.
  Flores el Puente Ltda.
  Flores el Trentino Ltda.
  Flores la Conejera Ltda.
  Flores Manare Ltda.
  Florlinda Ltda.
  Inversiones Santa Rosa ARW Ltda.
  Horticola el Triunfo
  Horticola Montecarlo Ltda.
Agroindustrial Don Eusebio Ltda. Group
  Agroindustrial Don Eusebio Ltda.
  Celia Flowers
  Passion Flowers
  Primo Flowers
  Temptation Flowers
Agroindustrial Madonna S.A.
Agroindustrias de Narino Ltda.
Agromonte Ltda.
Agropecuria Cuernavaca Ltda.
Agropecuaria la Marcela
Agropecuria Mauricio
Agrorosas
Agrotabio Kent
Aguacarga
Alcala
Alstroflores Ltda.
Amoret
Ancas Ltda.
Andes Group
  Cultivos Buenavista Ltda.
  Flores de los Andes Ltda.
  Flores Horizonte Ltda.
  Inversiones Penas Blancas Ltda.
A.Q.
Arboles Azules Ltda.
Aspen Gardens Ltda.
Astro Ltda.
Becerra Castellanos y Cia.
Bojaca Group
  Agricola Bojaca
  Universal Flowers
  Flores y Plantas Tropicales
Caicedo Group
  Agro Bosque S.A.
  Aranjuez S.A.
  Exportaciones Bochica S.A.
  Floral Ltda.
  Flores del Cauca
  Inversiones Targa Ltda.
  Productos el Zorro
Caico Group
  Andalucia S.A.
  Via el Rosal
Cantarrana Group
  Cantarrana Ltda.
  Agricola los Venados Ltda.
Carcol Ltda.
Cienfuegos Group
  Cienfuegos Ltda.
  Flores la Conchita
Cigarral Group
  Flores Cigarral
  Flores Tayrona
Classic
Clavelez
Claveles Colombianos Group
  Claveles Colombianos Ltda.
  Elegant Flowers Ltda.
  Fantasia Flowers Ltda.
  Splendid Flowers Ltda.
  Sun Flowers Ltda.
Claveles de los Alpes Ltda.
Coexflor
Colibri Flowers Ltda.
Color Explosion
Columbiano S.A. ''CAICO''
Combiflor
Consorcio Agroindustrial
Cota
Crest D'or
Crop S.A.
Cultiflores Ltda.
Cultivos Guameru
Cultivos Medellin Ltda.
Cultivos Miramonte Group
  Cultivos Miramonte S.A.
  Flores Mocari S.A.
Cultivos Tahami Ltda.
Cypress Valley
Daflor Ltda.
Degaflor
De La Pava Guevara E Hijos Ltda.
Del Monte
Del Tropico Ltda.
Dianticola Colombiana Ltda.
Disagro
Diveragricola
Dynasty Roses Ltda.
El Antelio S.A.
El Dorado
Elite Flowers (The Elite Flower/Rosen Tantau)
El Milaro
El Tambo
El Timbul Ltda.
Envy Farms Group
  Envy Farms
  Flores Marandua Ltda.
Euroflora
Exoticas
Exotic Flowers
Exotico
Expoflora Ltda.
Exporosas
Exportadora
Falcon Farms de Colombia S.A. (formerly Flores de Cajibio Ltda.)
Farm Fresh Flowers Group
  Agricola de la Fontana
  Flores de Hunza
  Flores Tibati
  Inversiones Cubivan
Ferson Trading
Flamingo Flowers
Flor Colombiana S.A.
Flora Intercontinental
Floralex Ltda.
Florandia Herrera Camacho & Cia.
Floraterra Group
  Flores Casablanca S.A.
  Flores San Mateo S.A.
  Siete Flores S.A.
Floreales Group
  Floreales Ltda.
  Kimbaya
Florenal (Flores el Arenal) Ltda.
Flores Abaco S.A.
Flores Acuarela S.A.
Flores Agromonte
Flores Aguila
Flores Ainsuca Ltda.
Flores Ainsus
Flores Alcala Ltda.
Flores Andinas Ltda.
Flores Aurora Ltda.
Flores Bachue Ltda.
Flores Calichana
Flores Calima S.A.
Flores Carmel S.A.
Flores Cerezangos
Flores Colon Ltda.
Flores Comercial Bellavista Ltda.
Flores Corola
Flores de Aposentos Ltda.
Flores de Bojaca
Flores de Guasca
Flores de Iztari
Flores de Memecon/Corinto
Flores de la Cuesta
Flores de la Hacienda
Flores de la Maria
Flores de la Montana
Flores de la Parcelita
Flores de la Sabana S.A.
Flores de la Vega Ltda.
Flores de la Vereda
Flores de Serrezuela S.A.
Flores de Suba Ltda.
Flores de Tenjo Ltda.
Flores del Cacique
Flores del Campo Ltda.
Flores del Cielo Ltda.
Flores del Cortijo
Flores del Lago Ltda.
Flores del Rio Group
  Agricola Cardenal S.A.
  Flores del Rio S.A.
  Indigo S.A.
Flores del Tambo
Flores de Oriente
Flores Depina S.A.
Flores el Aljibe Ltda.
Flores el Cipres

Flores el Lobo
Flores el Molino S.A.
Flores el Rosal Ltda.
Flores el Salitre Ltda.
Flores el Talle Ltda.
Flores el Tandil
Flores el Zorro Ltda.
Flores Flamingo Ltda.
Flores Fusu
Flores Galia Ltda.
Flores Gicro Group
  Flores Gicro Ltda.
  Flores de Colombia
Flores Gioconda
Flores Gloria
Flores Hacienda Bejucol
Flores Jayvana
Flores Juanambu Ltda.
Flores Juncalito Ltda.
Flores la Cabanuela
Flores la Fragrancia
Flores la Lucerna
Flores la Macarena
Flores la Mana
Flores la Pampa
Flores las Caicas
Flores las Mesitas
Flores los Sauces
Flores la Union/Gomez Arango & Cia.
Flores la Union/Santana
Flores Monserrate Ltda.
Flores Montecarlo
Flores Monteverde
Flores Palimana
Flores Pueblo Viejo Ltda.
Flores Ramo Ltda.
Flores S.A.
Flores Sagaro
Flores Saint Valentine
Flores Sairam Ltda.
Flores San Andres
Flores San Carlos
Flores San Juan S.A.
Flores Santa Fe Ltda.
Flores Santana
Flores Sausalito
Flores Selectas
Flores Silvestres
Flores Sindamanoi
Flores Suasuque
Flores Tenerife Ltda.
Flores Tiba S.A.
Flores Tocarinda
Flores Tomine Ltda.
Flores Tropicales (Happy Candy) Group
  Flores Tropicales Ltda.
  Happy Candy Ltda.
  Mercedes Ltda.
  Rosas Colombianos Ltda.
Flores Urimaco
Flores Violette
Florex Group
  Agricola Guacari S.A.
  Agricola el Castillo
  Flores San Joaquin
  Flores Altamira S.A.
  Flores de Exportacion S.A.
  Santa Helena S.A.
  Flores del Salitre Ltda.
  S.B. Talee de Colombia
Florexpo
Floricola
Floricola la Gaitana S.A.
Floricola la Ramada Ltda.
Florimex Colombia Ltda.
Florisol
Florpacifico
Flor y Color
Florval S.A.
Floval
Flower Factory
Flowers of the World/Rosa
Four Seasons
Fracolsa
Fresh Flowers
F. Salazar
Funza Group
  Flores Alborada
  Flores de Funza S.A.
  Flores del Bosque Ltda.
Garden and Flowers Ltda.
German Ocampo
Granja
Green Flowers
Grupo el Jardin
  Agricola el Jardin Ltda.
  La Marotte S.A.
  Orquideas Acatayma Ltda.
Guacatay Group
  Agricola Cunday
  Agricola Guacatay S.A
  Jardines Bacata Ltda.
Gypso Flowers
Hacienda la Embarrada
Hacienda Matute
Hana/Hisa Group
  Flores Hana Ichi de Colombia Ltda.
  Flores Tokai Hisa
Hernando Monroy
Hill Crest Gardens
Horticultura de la Sasan
Horticultura el Molino
Horticultura Montecarlo
Hosa Group
  Horticultura de la Sabana S.A.
  HOSA Ltda.
  Innovacion Andina S.A.
  Minispray S.A.
  Prohosa Ltda.
Illusion Flowers
Indigo S.A.
Industrial Agricola
Industrial Terwengel Ltda.
Industria Santa Clara
Ingro Ltda.
Innovacion Andina S.A.
Inverpalmas
Inversiones Almer Ltda.
Inversiones Bucarelia
Inversiones Cota
Inversiones el Bambu Ltda.
Inversiones Flores del Alto
Inversiones Maya, Ltda.
Inversiones Morcote
Inversiones Morrosquillo
Inversiones Playa
Inversiones and Producciones Tecnicas
Inversiones Santa Rita Ltda.
Inversiones Silma
Inversiones Sima
Inversiones Supala S.A.
Inversiones Valley Flowers Ltda.
Iturrama S.A.
Jardin de Carolina
Jardines de America
Jardines Choconta
Jardines Darpu
Jardines de Timana
Jardines Natalia Ltda.
Jardines Tocarema
J.M. Torres
Karla Flowers
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
La Plazoleta Ltda.
Las Amalias Group
  Las Amalias S.A.
  Pompones Ltda.
  La Fleurette de Colombia Ltda.
  Ramiflora Ltda.
Las Flores
Laura Flowers
L.H.
Linda Colombiana Ltda.
Loma Linda
Loreana Flowers
Los Geranios Ltda.
Luisa Flowers
Luisiana Farms
M. Alejandra
Manjui Ltda.
Mauricio Uribe
Maxima Farms Group
  Agricola los Arboles S.A.
  Colombian D.C. Flowers
  Polo Flowers
  Rainbow Flowers
  Maxima Farms Inc.
Merastec
Monteverde Ltda.
Morcoto
My Flowers Inc.
Nasino
Natuflora Ltda./San Martin Bloque B
Olga Rincon
Oro Verde Group
  Inversiones Miraflores S.A.
  Inversiones Oro Verde S.A.
Otono
Papagayo Group
  Agricola Papagayo Ltda.
  Inversiones Calypso S.A.
Petalos de Colombia Ltda.
Pinar Guameru
Piracania
Pisochago Ltda.
Plantaciones Delta Ltda.
Planatas S.A.
Prismaflor
Propagar Plantas S.A.
Queens Flowers Group
  Queens Flowers de Colombia Ltda.
  Jardines de Chia Ltda.
  Jardines Fredonia Ltda.

Agroindustrial del Rio Frio
Flores Canelon
Flores del Hato
Flores la Valvanera Ltda.
M.G. Consultores Ltda.
Reme Salamanca
Rosa Bella
Rosaflor
Rosales de Colombia Ltda.
Rosales de Suba Ltda.
Rosas Sabanilla Group
Flores la Colmena Ltda.
Rosas Sabanilla Ltda.
Inversiones la Serena
Agricola la Capilla
Rosas y Jardines
Rose
Roselandia
Rosex Ltda.
San Ernesto
Sansa Flowers
Santa Rosa Group
Flores Santa Rosa Ltda.
Floricola la Ramada Ltda.
Agropecuaria Sierra Loma
Santana Flowers Group
Santana Flowers Ltda.
Hacienda Curibital Ltda.
Inversiones Istra Ltda.
San Valentine
Sarena
Select Pro
Senda Brava Ltda.
Shasta Flowers y Compania Ltda.
Shila
Siempreviva
Soagro Group
Agricola el Mortino Ltda.
Flores Aguaclara Ltda.
Flores del Monte Ltda.
Flores la Estancia
Jaramillo y Daza
Solor Flores Ltda.
Starlight
Sunbelt Florals
Susca
Superflora Ltda.
Sweet Farms
Tag Ltda.
The Beall Company
The Rose
Tinzuque Group
Tinzuque Ltda.
Catu S.A.
Tomino
Toto Flowers Group
Flores de Suesca S.A.
Toto Flowers
The Tuchany Group
Tuchany S.A.
Flores Sibate
Flores Tikaya
Flores Munya
Tropical Garden
Uniflor Ltda.
Velez de Monchaux Group
Velez De Monchaux e Hijos y Cia S. en C.
Agroteusa
Victoria Flowers
Villa Cultivos Ltda.
Villa Diana
Vuelven Ltda.
Zipa Flowers

We have also received a request to review and determine whether there has been duty absorption within the meaning of 19 U.S.C. 1675(a)(4) of the Tariff Act of 1930, as amended.

Finally, we have received requests for revocation from the antidumping duty order for the following exporters/growers:

Agrodex Group
Agricola el Retiro Ltda.
Agricola los Gaques Ltda.
Agrodex Ltda.
Degaflores Ltda.
Flores Camino Real Ltda.
Flores de la Comuna Ltda.
Flores de la Mercedes Ltda.
Flores de Los Amigos Ltda.
Flores de los Arrayanes Ltda.
Flores De Mayo Ltda.
Flores del Gallinero Ltda.
Flores del Potrero Ltda.
Flores dos Hectareas Ltda.
Flores de Pueblo Viejo Ltda.
Flores el Puente Ltda.
Flores el Trentino Ltda.
Flores la Conejera Ltda.
Flores Manare Ltda.
Florlinda Ltda.
Inversiones Santa Rosa Arw Ltda.
Horticola el Triunfo
Horticola Montecarlo Ltda.
Caicedo Group
Agro Bosque S.A.
Aranjuez S.A.
Exportaciones Bochica S.A.
Floral Ltda.
Flores del Cauca
Inversiones Targa Ltda.
Productos el Zorro
Claveles Colombianos Group
Claveles Colombianos Ltda.
Elegant Flowers Ltda.
Fantasia Flowers Ltda.
Splendid Flowers Ltda.
Sun Flowers Ltda.
Cultivos Miramonte Group
Cultivos Miramonte S.A.
Flores Mocari S.A.
Flores Sagaro
Hosa Group
Horticultura de la Sabana S.A.
HOSA Ltda.
Innovacion Andina S.A.
Minispray S.A.
Prohosa Ltda.
Manjui Ltda.
Maxima Farms Group
Agricola los Arboles S.A.
Polo Flowers
Rainbow Flowers
Maxima Farms Inc.
Santana Flowers Group
Santana Flowers Ltda.
Hacienda Curibital Ltda.
Inversiones Istra Ltda.
Tinzuque Group
Tinzuque Ltda.
Catu S.A.Santana Flowers Ltda.

Interested parties must submit applications for administrative protective orders in accordance with section 353.34(b) of the Department's regulations. 19 CFR 353.34(b).

This initiation and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c).

Dated: April 9, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–9756 Filed 4–19–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Intent To Prepare a Draft Environmental Impact Statement on the Proposed Texas Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of intent.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is hereby giving notice of its intent to prepare a Draft Environmental Impact Statement (DEIS) on its proposed approval of the Texas Coastal Management Program (TCMP, or program) under the provisions of Section 306 of the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1455. The DEIS is scheduled for publication and release in May 1996.

The proposed Federal approval of the TCMP would make the state eligible for program administration and enhancement awards and require Federal actions to be consistent with the enforceable policies of the State's management program. 16 U.S.C. 1455, 1456. The alternatives to approval include delaying approval of the program, or denying approval which, in this case, is the no-action alternative.

The TCMP was developed pursuant to a public notice and comment process, including many public meetings that addressed the scope and contents of the TCMP. The Program is the culmination of several years of development and consists of numerous State policies on diverse coastal management issues. An initial document was submitted to NOAA in December 1994, but that document was withdrawn for further consideration. The Texas legislature

amended the program and in June 1995 the revised plan was released for public comment. Texas considered the comments in the preparation of the TCMP program submitted to NOAA in October 1995. Copies of the State's October program submittal document are available from NOAA. See address below.

Given the public process used to develop the TCMP, no scoping meetings are planned for the development of the DEIS. However, comments are solicited regarding the range of alternatives in the DEIS that have been identified in this notice. The decision whether to approve, deny or delay approval would be based primarily on the extent that the Texas Coastal Program satisfies the requirements of Section 306 of the Coastal Zone Management Act. Therefore, NOAA also solicits comments on the proposed Federal approval of the TCMP and the other alternatives under Section 306 of the Coastal Zone Management Act, particularly with respect to the adequacy of the TCMP on the following issues:

(1) The State's Coastal Zone Boundary;

(2) The coastal policies in terms of specificity, scope and enforceability;

(3) The scope and geographic coverage of the laws and regulations identified in the TCMP to manage impacts on important coastal resources such as: wetlands, tidal flats, submerged grasses, beaches and dunes and other valuable natural resources;

(4) The mechanisms for State agency coordination and consultation in order to ensure compliance with the State's coastal policies and effective implementation of the TCMP;

(5) The consideration of the national interest in, the need for, and management of, oil and gas and other energy related facilities and activities, ports, navigation projects, major water dependent activities and other activities of national interest; and

(6) The enhancement, coordination and simplification of State and local governmental decision making;

DATES: Individuals or organizations wishing to submit comments on the range of alternatives, the underlying issues for decision, or other issues should do so by May 22, 1996. Any comments received after that date will be included with the comments received on the DEIS and accordingly made part of the record. The dates for public meetings on the DEIS will be the subject of a subsequent notice.

ADDRESSES: Requests for the above described documents and all comments should be made to:

National Oceanic and Atmospheric Administration
National Ocean Service,
Office of Ocean and Coastal Resource Management,
Coastal Programs Division, Gulf/Caribbean Region
1305 East-West Highway (N/ORM3)
Silver Spring, Maryland 20910
Attention: Bill O'Beirne

FOR FURTHER INFORMATION CONTACT: Bill O'Beirne at tel. 301/713–3109 x160; fax (301) 713–4367; internet [bobeirne@coasts.nos.noaa.gov].

Dated: April 16, 1996.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–9859 Filed 4–19–96; 8:45 am]

BILLING CODE 3510–08–M

Technology Administration

Under Secretary for Technology; National Medal of Technology Nomination Evaluation Committee; Notice of Determination For Closure of Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for April 19, 1996. Late notice of this meeting is being provided due to several exceptional circumstances. Recently a decision was made to change the date of the National Medal of Technology Award ceremony from October to June of each year. In order to meet the new program schedule, the National Medal of Technology Nomination Evaluation Committee must meet no later than April 19, 1996. Also, the publication of this notice has been delayed because of the recent untimely death of the Secretary of Commerce.

The Committee was established to assist the Department in executing its responsibilities under 15 U.S.C. 3711. Under this provision, the Secretary is responsible for recommending to the President prospective recipients of the National Medal of Technology. The Committee's recommendations are made after reviewing all nominations received in response to a public solicitation. The Committee is chartered to have from six to twelve members, of which nine are now serving. Three additional Committee members are in the process of being appointed.

The meeting will be closed to discuss the relative merits of persons and companies nominated for the Medal. Public disclosure of this information would be likely to significantly frustrate implementation of the National Medal of Technology program because premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal.

Accordingly, I find and determine, pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, that the April 19, 1996, meeting may be closed to the public in accordance with Section 552b(c)(9)(B) of Title 5, United States Code because revealing information about Medal candidates would be likely to significantly frustrate implementation of a proposed agency action.

Dated: April 16, 1996.

Raymond G. Kammer,

Chief Financial Officer and Assistant Secretary for Administration.

Dated: April 16, 1996.

Barbara S. Fredericks

Assistant General Counsel for Administration.

[FR Doc. 96–9753 Filed 4–18–96; 3:50 pm]

BILLING CODE 3510–18–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, April 25, 1996.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

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: April 17, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–9996 Filed 4–18–96; 3:42 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Availability of Surplus Land and Buildings in Accordance With Public Law 103–421 Located at Fort Holabird, Baltimore, MD

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Availability.

SUMMARY: This notice identifies the surplus real property located at the Fort Holabird Military Reservation Baltimore, Maryland. The property is located in southeast Baltimore City just south of the Holabird Industrial Park located at the intersection of Dundalk and Holabird Avenues. Access to Interstate 95 and 695 are close by.

FOR FURTHER INFORMATION CONTACT: For more information regarding the particular property identified in this Notice (i.e., acreage, floor plans, existing sanitary facilities, exact location), contact Mr. Gerry Bresee, Real Estate Division, Army Corps of Engineers, P.O. Box 1715, Baltimore, MD 21203 (telephone 410–962–5173, fax 410–962–0866); or Mr. Ted Hartman, Base Transition Coordinator, U.S. Army Garrison, Fort George G. Meade, MD 20755–5155 (telephone 301–677–2130).

SUPPLEMENTARY INFORMATION: This surplus is available under the provisions of the Federal Property and Administrative Services Act of 1945 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Ms. Sara Trenery, City of Baltimore Development Corporation, 36 South Charles Street, Baltimore, MD 21201.

The surplus real property totals approximately 13.80 acres and contains 4 buildings totaling 140,242 square feet of space. Current range of uses include storage and administrative. Future uses may include administrative, storage and light industrial.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–9665 Filed 4–19–96; 8:45 am]

BILLING CODE 3710–4–M

DEPARTMENT OF EDUCATION

Computer Matching Program; Notice

AGENCY: Department of Education (ED).

ACTION: Notice of computer matching program between the U. S. Department of Education and the U. S. Postal Service (USPS).

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), requires agencies to publish advance notice of computer matching programs as a means of informing benefit recipients/employees of plans to conduct computer matches. This publishes notice that ED proposes to conduct a computer matching program with the USPS. The matching program will compare USPS payroll and ED debtor records to identify postal employees delinquently indebted to the federal government under certain programs administered by ED. ED will contact affected employees and will take appropriate steps to collect those debts under the salary offset provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) when voluntary payment is not made.

DATES: Comments must be received May 22, 1996. Unless comments are received that result in a contrary determination, the matching program covered by this notice will begin no sooner than 40 days after the computer matching agreement and this notice have been sent to the Congress and the Office of Management and Budget.

ADDRESSES: Comments may be mailed to the U. S. Department of Education, Washington Service Center, Attention: USPS CMA Comments, 600 Independence Avenue, S.W., Washington, DC 20202–5320.

FOR FURTHER INFORMATION CONTACT: Demetrius V. Windom, (202) 708–4774. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department of Education expects that this computer matching program will enable it to obtain current home and work addresses for 6,000 USPS employees having student loan obligations held by ED. ED has collected approximately $3 million from previous matches with the USPS, and expects to recover from the 1996 match $10.4 million over an average repayment period of five years. Set forth below is a description of the computer matching program proposed by this notice in compliance with OMB Bulletin No. 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public''.

Report of Computer Matching Program—U. S. Department of Education and U. S. Postal Service (Comparing ED Debtor Records and USPS Payroll)

A. Participating Agencies

The U. S. Postal Service (USPS) is the recipient agency and will perform the computer match with debtor records provided by the Department of Education (ED), the source agency in this matching program.

B. Purposes of the Matching Program

This matching program will compare USPS payroll and ED delinquent debtor files for the purposes of identifying postal employees who may owe delinquent debts to the federal government under programs administered by the Department of Education. The pay of an employee identified and verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 when voluntary payment is not made.

C. Legal Authorities Authorizing Operation of the Match

This matching program will be undertaken under the authority of the Debt Collection Act of 1982 (P. L. 97–365) which authorizes federal agencies to offset a federal employee's salary as a means of satisfying delinquent debts owed to the United States.

D. Categories of Individuals Matched and Identification of Records Used

The following systems of records, maintained by the participant agencies under the Privacy Act of 1974, as amended, will be used to disclose records for this matching program:

1. USPS' ''Finance Records—Payroll System, USPS 050–020,'' containing records for approximately 800,000 employees. [Disclosure will be made pursuant to routine use No. 24 of USPS 050–020, which last appeared in the Federal Register on December 4, 1992 (57 FR 57515).]

2. ED's ''Title IV Program Files'' (18–40–0024), containing debt records for approximately 3,000,000 borrowers. [A notice of this system was last published in the Federal Register on April 12, 1994 (59 FR 17351).]

E. Description of the Matching Program

ED will provide USPS a magnetic computer tape containing the names and social security numbers (SSN) of its loan defaulters. By computer, the USPS will compare that information with its payroll files, establishing matched individuals (i.e., ''hits'') on the basis of

like SSNs. For each matched individual, the USPS will provide to ED the name, SSN, home address and work location. The identity and debtor status of an individual will be verified by ED through a review of its manual application and payment files and independent inquiries as needed. In all cases of mismatched names or SSN's, ED's regional personnel will confirm identity through individual file check and/or external sources such as the Social Security Administration. If identity is established, ED's computer system will ascertain the current repayment status for the account, eliminating from subsequent follow-up those accounts that are in repayment status, recently paid in full or otherwise resolved.

The Debt Collection Act requires ED to give debtors advance notice of offset and an opportunity to contest the alleged debt. The Department's offset procedures include providing the debtor employee with the following notice and opportunities:

1. A 65-day written notice of the Department of Education's determination of the debt and an explanation of the debtor employee's rights under the Debt Collection Act;

2. An opportunity to inspect and copy records relating to the debt;

3. An opportunity to enter into a written agreement establishing a repayment schedule; and

4. An opportunity to a hearing on the existence or amount of the debt and on the terms of any involuntary repayment schedule.

Involuntary offsets will be made only after ED has afforded the debtor these opportunities and certified over the signature of an authorized agency official that all due process procedures have been followed.

F. Beginning and Ending Dates of the Matching Program

The matching program is expected to begin in May 1996 and to continue in effect for a period not to exceed 18 months. The agreement may be extended for one additional year beyond that period, if within 90 days prior to the actual expiration date of the matching agreement, the Data Integrity Boards of both the USPS and ED find that the computer matching program will be conducted without change and each party certifies that the matching program has been conducted in compliance with the matching agreement.

Dated: April 17, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–9818 Filed 4–19–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–567]

Proposed Information Collection and Request for Comments

April 17, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before June 21, 1996.

ADDRESSES: Written comments on the proposed collection of information may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873 and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The FERC–567, ''Annual Reports of System Flow Diagrams and System Capacity'' (OMB No. 1902–0005) consists of two related filing requirements as defined in 18 CFR Sections 260.8 and 284.12. The information collected under the requirements of FERC–567 is used by the Commission to obtain accurate data on pipeline facilities and the peak day capacity of these facilities. Specifically, the FERC–567 is used in determining the configuration and location of installed pipeline facilities; evaluating the need for proposed facilities to serve market expansions; determining pipeline interconnections and receipt and delivery points; and developing and evaluating alternatives to proposed facilities as a means to mitigate environmental impact of new pipeline construction. The FERC–5567 also contains valuable information that could be used to assist federal officials in maintaining adequate natural gas service in times of national emergency.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents (1)	Annual responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
89	1.618	85.1 Hours	12,255 Hours.

Estimated cost burden to respondents is $598,950; (*i.e.*, 12,255 hours divided by 2,087 hours per full time employee per year multiplied by $102,000 per year equals $598,950).

There is a net increase of 508 hours in the total burden hours over the last Office of Management and Budget clearance of the FERC–567 data collection, from 11,747 hours to 12,255. This increase is an adjustment and results from a determination that the number of respondents has decreased from 101 to 89 with a simultaneous increase in the number of responses per respondent, from 1.366 to 1.618. The number of responses per respondent is

greater than 1.0 because some respondents are required to submit both of the FERC–567 filing requirements while others are required to submit only one of the two.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9816 Filed 4–19–96; 8:45 am]

BILLING CODE 6717–-01–M

[Docket No. RP96–140–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

April 16, 1996.

Take notice that on April 11, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing documentation in compliance with the Commission's March 27, 1996 letter order in the above-referenced docket. This documentation reflects accounts in which the related Accrued-But-Not-Paid Gas Costs were booked.

Columbia notes that it requested a waiver of the letter order to the extent necessary to protect certain sensitive information related to its accruals for individual producers.

Columhia also states it provided a running total of the Accrued-But-Not-Paid Gas Costs which shows how the total relates to the benchmark least of cap set out in Article VII, Section C, of its Customer Settlement in Docket No. GP94–2.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–9761 Filed 4–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–179–002 and RP96–164–001]

Northern Natural Gas Company; Notice of Compliance Filing

April 16, 1996.

Take notice that on April 12, 1996, Northern Natural Gas Company (Northern), tendered for filing schedules recomputing certain charges to comply with the Commission's Order issued March 28, 1996 in the above referenced Docket Nos. RP96–164–000, pursuant to which Order Northern was directed to recompute its GSR price differentials according to the requirements of Section 25.G of its tariff and to file tariff sheets and supporting workpapers reflecting that recomputation, within 15 days of the issuance of the order.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken by this proceeding, but will not serve to make protestant a party 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. 96–9760 Filed 4–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1168–008, et al.]

Energy Source Power, et al.; Electric Rate and Corporate Regulation Filings

April 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Energy Source Power

[Docket No. ER94–1168–008]

Take notice that on April 3, 1996, Energy Source Power tendered for filing a letter stating that effective April 1, 1996 Vesta Energy Alternatives Company's name has been changed to Energy Source Power.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company

[Docket No. ER96–393–000]

Take notice that on April 3, 1996, Jersey Central Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company

[Docket No. ER96–1498–000]

Take notice that on April 3, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern

Indiana Public Service Company and Koch Power Services, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Koch Power Services, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–395–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 71 FERC ¶ 61,014 (1996).

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER96–1499–000]

Take notice that on April 4, 1996, Duke Power Company (Duke), tendered for filing a Schedule MR Transaction Sheet under Service Agreement No. 3 of Duke's FERC Electric Tariff, Original Volume No. 3.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company

[Docket No. ER96–1500–000]

Take notice that on April 4, 1996, Duke Power Company (Duke), tendered for filing Notices of Cancellation of (1) Schedule MR Transaction Sheets between Duke and PECO Energy Company dated January 31, 1996, February 2, 1996 (two transactions) and February 3, 1996, (2) Schedule MR Transaction Sheet between Duke and Koch Power Services, Inc. dated February 6, 1996, and (3) Schedule MR Transaction Agreement between Duke and Ohio Edison Company dated February 6, 1996.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER96–1501–000]

Take notice that on April 4, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, tendered for filing a Second Amendment dated March 12, 1996, and entered into by MidAmerican and the City of Independence, Missouri (Independence) to Firm Power Interchange Service Agreement, as amended, dated August 21, 1983, and entered into by Iowa Public Service Company (IPS), a predecessor of MidAmerican and Independence. This Second Amendment supplements Rate Schedule FERC No. 46, as supplemented, of Midwest Power Systems Inc., a predecessor of MidAmerican and a successor to IPS.

MidAmerican proposes to make the rate schedule change effective on or before June 1, 1996, because such date is the first date on which the first of the changes provided by the Second Amendment take effect. As a result, MidAmerican has requested a waiver of the Commission's 60-day notice requirement for this filing.

Copies of the filing were served upon Independence, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER96–1502–000]

Take notice that on April 4, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Citizens Lehman Power Sales under Rate GSS.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Eagle Gas Marketing Company

[Docket No. ER96–1503–000]

Take notice that on April 4, 1996, Eagle Gas Marketing Company (Eagle), petitioned the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) a disclaimer of jurisdiction over Eagle's power brokering activities; (3) acceptance of Eagle's Rate Schedule FERC No. 1; (4) waiver of certain Commission Regulations; and (5) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in Eagle's petition on file with the Commission.

Eagle states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where Eagle acts as a marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER96–1504–000]

Take notice that on April 4, 1996, San Diego Gas & Electric Company (SDG&E), tendered for filing a change in rates for service under the following Agreements with Southern California Edison Company (Edison):

(1) Short-Term Firm Transmission Service Agreement, Rate Schedule FERC No. 58;

(2) Interruptible Transmission Service Agreement, Rate Schedule FERC No. 59; and

(3) Firm Transmission Service Agreement, Rate Schedule FERC No. 60.

SDG&E respectfully requests, pursuant to § 35.11, waiver of prior notice requirements specified in § 35.3 of the Commission's regulations, and an effective date of January 1, 1996.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Ohio Edison Company Pennsylvania Power Company

[Docket No. ER96–1505–000]

Take notice that on April 4, 1996, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, an Agreement for Power Transactions with Cinergy Services, Inc. This initial rate schedule will enable the parties to purchase and sell capacity and energy in accordance with the terms of the Agreement.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. The Toledo Edison Company

[Docket No. ER96–1506–000]

Take notice that on April 4, 1996, The Toledo Edison Company, tendered for filing a Notice of Termination of FERC Rate Schedule No. 42.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER96–1508–000]

Take notice that on April 4, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1995), as an initial rate schedule, an agreement with Federal Energy Sales, Inc. (FES). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to FES and FES will provide from NYSEG either capacity

and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on April 5, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and FES.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER96–1509–000]

Take notice that on April 4, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Valero Power Services Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 23, 1996.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER96–1510–000]

Take notice that on April 4, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Valero Power Services Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 20, 1996.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Electric Power Company

[Docket No. ER96–1511–000]

Take notice that on April 5, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Federal Energy Sales Inc. (Federal Energy). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Federal Energy to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Federal Energy, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER96–1512–000]

Take notice that on April 5, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and UtiliCorp United (UtiliCorp). The Transmission Service Agreement allows UtiliCorp to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, under Docket No. ER95–1474, Rate Schedule STNF.

Wisconsin Electric requests an effective date of sixty days from the filing. Copies of the filing have been served on UtiliCorp, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9817 Filed 4–19–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–16–000, et al.]

MidAmerica Energy Company, et al.; Electric Rate and Corporate Regulation Filings

April 16, 1996.

Take notice that the following filings have been made with the Commission:

1. MidAmerican Energy Company

[Docket No. EC96–16–000]

Take notice that on April 12, 1996, MidAmerican Energy Company tendered for filing a Supplement to Exhibit G to the Application for Order Authorizing Corporate Reorganization filed in the above-referenced docket on March 29, 1996.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Newgulf Power Venture, Inc.

[Docket No. EG96–55–000]

On April 11, 1996, Newgulf Power Venture, Inc. (Applicant), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a wholly owned subsidiary of CSW Energy, Inc., which is a wholly owned subsidiary of Central and South West Corporation, a registered holding company. Applicant intends, directly or indirectly, to own and operate all or part of eligible facilities including, without limitation, an 85 MW electric generating facility located in or near Wharton County, Texas.

Comment date: May 7, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Montaup Electric Company

[Docket No. ER94–1062–004]

Take notice that on April 12, 1996, Montaup Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Company

[Docket Nos. ER95–1286–001, ER95–1287–000, ER95–1288–000, ER95–1289–000, ER95–1290–000 and EL96–6–000]

Take notice that on April 5, 1996, Public Service Electric and Gas Company tendered for filing a

compliance report applicable to the offer of settlement between the Boroughs of Milltown, South River, and Park Ridge, New Jersey; Jersey Central Power & Light Company; and Atlantic City Electric Company in Docket Nos. ER95–1286–000, ER95–1287–000, ER95–1288–000, ER95–1290–000 and EL96–6–000.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER96–1004–001]

Take notice that on April 12, 1996, New England Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. New England Ventures, Inc.

[Docket No. ER96–1387–000]

Take notice that on April 11, 1996, New England Ventures, Inc. tendered for filing an amendment to its March 25, 1996 filing filed in this docket.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER96–1435–000]

Take notice that on March 26, 1996, Wisconsin Pubic Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and Noram Energy Services. The Agreement provides for transmission service under the Comparable Transmission Service Tariff, FERC Original Volume No. 7.

WPSC requests that the agreement become effective retroactively to March 11, 1996.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER96–1513–000]

Take notice that on April 5, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Sonat Power Marketing, Inc. (Sonat). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Sonat to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Sonat, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Green Mountain Power Corporation

[Docket No. ER96–1514–000]

Take notice that on April 5, 1996, Green Mountain Power Corporation (GMP), tendered for filing a Service Agreement for sales of capacity and energy under its FERC Electric Tariff, Original Volume No. 2 (Opportunity Transmission Tariff) to Vermont Electric Cooperative, Inc. GMP has requested waiver of the notice requirements of the Commission's regulations in order to permit the Service Agreement to be made effective as of April 1, 1996.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Kentucky Utilities Company

[Docket No. ER96–1515–000]

Take notice that on April 8, 1996, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and Commonwealth Edison Company, and KU and Florida Power Corporation under its TS Tariff. KU requests effective dates of March 6, 1996 and March 15, 1996, respectfully, for these two Agreements.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. SEMCOR, Inc.

[Docket No. ER96–1516–000]

Take notice that on April 8, 1996, SEMCOR, Inc. (SEMCOR), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the date of the Commission's order accepting the Rate Schedule for filing.

SEMCOR intends to engage in electric power and energy transactions as a marketer. In these transactions, SEMCOR proposes to charge market-determined rates, mutually agreed upon by the parties. All sales and purchases will be arms-length transactions.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER96–1517–000]

Take notice that on April 8, 1996, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed six (6) service agreements between SCS, as agent of the Southern Companies, and (i) Federal Energy Sales, Inc., (ii) Entergy Power, Inc. (iii) Entergy Power Marketing Corporation, (iv) Jacksonville Electric Authority, (v) Utilicorp United, Inc., and (vi) Eastex Power Marketing, Inc. for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER96–1518–000]

Take notice that on April 8, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a transmission service agreement between itself and Upper Peninsula Power Company (UPPCO). The agreement provides for 2 MW of firm point-to-point transmission service to be rendered from Wisconsin Power and Light Company (WP&L) to UPPCO's isolated Iron River Michigan service area for the six months ending September 30, 1996.

Wisconsin Electric respectfully requests waiver of the Commission's advance notice requirements in order to permit an effective date of April 1, 1996, in order to comply with UPPCO's March 12, 1996 requests for service. Wisconsin Electric is authorized to state that UPPCO joins in the requested effective date.

Copies of the filing have been served on UPPCO, WP&L, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER96–1519–000]

Take notice that on April 8, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER96–1520–000]

Take notice that on April 8, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated April 2, 1996, establishing Engelhard Power Marketing, Inc. as a customer under the terms of WP&L's Point-to-Point Transmission Tariff.

WP&L requests an effective date of April 2, 1996 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–1521–000]

Take notice that on April 8, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and Morgan Stanley Capital Group, Inc. (MSCG) dated. This Service Agreement specifies that MSCG has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–791–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good causes shown and an effective date of April 2, 1996 for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on MSCG.

Comment date: April 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9814 Filed 4–19–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Request for Amendment of Project License

April 16, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Amendment of Project License.

b. *Project No.:* 8278.

c. *Date Filed:* March 18, 1996.

d. *Applicant:* Crystal Springs Hydroelectric, L.P.

e. *Name of Project:* Cedar Draw Creek Project.

f. *Location:* On Cedar Draw Creek in Twin Falls County, Idaho.

g. *File Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Dell Keehn, 11225 S.E. 6th, Suite 100, Bellevue, Washington 98004, (206) 453–0500.

i. *FERC Contact:* Thomas LoVullo, (202) 219–1168.

j. *Comment Date:* May 23, 1996.

k. *Description of Amendments:* (1) Crystal Springs Hydroelectric, L.P. (licensee) requested to install a variable flow turbine (multiple jet, impulse type) in place of one of the project's four fixed-flow turbines. The licensee stated that installation of the variable flow turbine would slightly reduce the generation capacity of the project (from 2,924 kilowatts (kW) to 2,751 kW) but would provide better control and management of water resources. The plant controls would be modified to allow smooth and continuous adjustment of powerhouse flows from a minimum of 5 cubic feet per second (cfs) to a maximum flow of 148 cfs.

The licensee's second amendment request concerned a reduction in the minimum flow requirement from 25 cfs to 10 cfs. The licensee stated that a reduction in the minimum flow would be more comparable with the upstream project's requirement of passing 5 cfs. The licensee stated that the installation of the new turbine equipment would provide more stable flows through the bypass reach of Cedar Draw. With a stabilized flow, stream bank vegetation would be enhanced, stream bank erosion reduced, water quality improved and possibly the food supply for fish improved. Further, the licensee proposed to mitigate for the reduction in the minimum flow by installing two fish ladders at two man-made barriers in Cedar Draw. The fish ladders would provide approximately 3.2 miles of additional habitat in Cedar Draw by allowing fish passage from the Snake River.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9759 Filed 4–19–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 24, 1996, 10:00 a.m.

PLACE: 888 First Street, NE., Room 2C, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 651st Meeting—April 24, 1996, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# EL87–5, 001, Island Power Company, Inc.
CAH–2.
Omitted
CAH–3.
Docket# P–2360, 026, Minnesota Power & Light Company
Other#S P–2360, 032, Minnesota Power & Light Company
CAH–4.
Docket# P–2417, 002, Northern States Power Company
CAH–5.
Docket# P–3083, 072, Oklahoma Municipal Power Authority
Other#S P–3083, 078, Oklahoma Municipal Power Authority
P–3083, 080, Oklahoma Municipal Power Authority
CAH–6.
Docket# DI94–1, 001, Town of Estes Park, Colorado
CAH–7.
Docket# P–2456, 009, Public Service Company of New Hampshire
CAH–8.
Docket# P–5772, 005, City of Augusta, Georgia

Consent Agenda—Electric

CAE–1.
Docket# ER96–224, 000, Niagara Mohawk Power Corporation
CAE–2.
Docket# ER96–1059, 000, Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company
Other#S ER96–10, 000, Norstar Energy Limited Partnership
CAE–3.
Docket# ER96–1210, 000, Washington Water Power Company
CAE–4.
Docket# ER96–1211, 000, Ocean State Power
Other#S ER96–1212, 000, Ocean State Power II
CAE–5.
Docket# ER96–1208, 000, Interstate Power Company
CAE–6.
Docket# ER96–1075, 000, Central Illinois Light Company
CAE–7.
Docket# ER96–1285, 000, Illinois Power Company
CAE–8.
Docket# ER96–924, 000, Direct Access Management, LP
CAE–9.
Docket# EL96–20, 000, Illinois Power Company

Consent Agenda—Gas and Oil

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.
Docket# RP96–185, 000, Algonquin Gas Transmission Company
CAG–4.
Docket# RP96–186, 000, Southern Natural Gas Company
CAG–5.
Docket# RP96–187, 000, Iroquois Gas Transmission System, L.P.
CAG–6.
Omitted
CAG–7.
Docket# RP96–195, 000, Tennessee Gas Pipeline Company
CAG–8.
Docket# RP96–196, 000, ANR Pipeline Company
CAG–9.
Docket# RP96–197, 000, Carnegie Interstate Pipeline Company
CAG–10.
Omitted
CAG–11.
Docket# RP96–171, 000, Noram Gas Transmission Company
CAG–12.
Docket# RP96–189, 000, Ozark Gas Transmission System
CAG–13.
Docket# RP96–190, 000, Colorado Interstate Gas Company
CAG–14.
Docket# RP96–194, 000, Mississippi River Transmission Corporation
CAG–15.
Docket# RP96–199, 000, Mississippi River Transmission Corporation
CAG–16.
Docket# RP96–200, 000, Noram Gas Transmission Company
CAG–17.
Docket# TM96–3–31, 000, Noram Gas Transmission Company
CAG–18.
Docket# RP95–182, 003, ANR Pipeline Company
CAG–19.
Docket# RP96–136, 002, Algonquin Gas Transmission Company
CAG–20.
Omitted
CAG–21.
Docket# RP95–427, 000, El Paso Natural Gas Company
CAG–22.
Docket# RP95–460, 002, Northwest Pipeline Corporation
Other#S RP96–31, 002, Northwest Pipeline Corporation
CAG–23.
Docket# RP96–58, 002, Koch Gateway Pipeline Company
CAG–24.
Docket# RP96–7, 002, Regulation of Negotiated Transportation Services of Natural Gas Pipelines
CAG–25.
Docket# RP95–136, 001, Williams Natural Gas Company

CAG–26.
Docket# PR96–1, 000, Equitable Storage Company
CAG–27.
Docket# PR96–4, 000, Consumers Power Company
CAG–28.
Docket# PR96–5, 000, Dow Pipeline Company
Other#s PR96–5, 001, Dow Pipeline Company
CAG–29.
Docket# RP95–187, 004, Northwest Pipeline Corporation
Other#s RP94–220, 011, Northwest Pipeline Corporation
TM95–2–37, 004, Northwest Pipeline Corporation
CAG–30.
Docket# RP91–143, 030, Great Lakes Gas Transmission Limited Partnership
Other#s RP91–143, 031, Great Lakes Gas Transmission Limited Partnership
RP91–143, 032, Great Lakes Gas Transmission Limited Partnership
RP95–422, 002, Great Lakes Gas Transmission Limited Partnership
CAG–31.
Docket# RP92–237, 023, Alabama-Tennessee Natural Gas Company
Other#s RP92–237, 022, Alabama-Tennessee Natural Gas Company
CAG–32.
Docket# PL94–4, 001, Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines
CAG–33.
Docket# RP95–397, 005, Panhandle Eastern Pipe Line Company
CAG–34.
Docket# RP95–447, 004, Williams Natural Gas Company
CAG–35.
Docket# RP94–367, 003, National Fuel Gas Supply Corporation
Other#s CP95–50, 001, National Fuel Gas Supply Corporation
CP95–324, 001, National Fuel Gas Supply Corporation
CP95–578, 001, National Fuel Gas Supply Corporation
CP95–727, 001, National Fuel Gas Supply Corporation
CAG–36.

Docket# RP94–120, 011, Koch Gateway Pipeline Company
CAG–37.
Docket# RP95–182, 004, ANR Pipeline Company
CAG–38.
Docket# RM96–10, 000, Oil Pipeline Cost-of-Service Filing Requirements
CAG–39.
Docket# IS94–32, 000, Chevron Pipe Line Company
CAG–40.
Docket# MG96–1, 001, El Paso Natural Gas Company
CAG–41.
Docket# PR92–20, 000, Supenn Pipeline
CAG–42.
Docket# RP95–186, 000, Natural Gas Pipeline Company of America
Other#s RP94–400, 000, Natural Gas Pipeline Company of America
CAG–43.
Docket# CP93–258, 000, Mojave Pipeline Company
Other#s CP93–258, 001, Mojave Pipeline Company
CP93–258, 002, Mojave Pipeline Company
CP93–258, 003, Mojave Pipeline Company
CP93–258, 004, Mojave Pipeline Company
CP93–258, 005, Mojave Pipeline Company
CP93–258, 006, Mojave Pipeline Company
CP93–258, 007, Mojave Pipeline Company
CP93–258, 008, Mojave Pipeline Company
CAG–44.
Docket# CP95–621, 000, East Tennessee Natural Gas Company
CAG–45.
Docket# CP96–10, 000, Transwestern Pipeline Company
Other#s CP96–10, 001, Transwestern Pipeline Company
CP96–60, 000, Northwest Pipeline Corporation
CAG–46.
Docket# CP95–250, 000, Noram Gas Transmission Company
CAG–47.
Docket# CP96–52, 000, Pine Needle LNG Company, LLC
Other#s CP96–134, 000, Transcontinental Gas Pipe Line Corporation
CAG–48.
Docket# CP96–105, 000, Noram Gas Transmission Company
CAG–49. Omitted
CAG–50.
Docket# CP95–318, 000, Williams Gas Processing—Mid-Continent Region Company
Other#s CP95–317, 000, Williams Natural Gas Company
CAG–51.
Docket# CP96–72, 000, Lee 8 Storage Partnership
CAG–52.
Docket# RM95–4, 002, Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Co.

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket# RM95–8, 000, Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission, et al.
Other#S RM94–7, 001, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities Final Rule.
E–2.
Docket# RM95–9, 000, Open Access Same-Time System (Formerly Real-Time Information Networks) and Standards of Conduct Final Rule.
E–3.
Docket# RM96–11, 000, Capacity Reservation Tariffs for Electric Transmission Providers Notice of Proposed Rulemaking.

Oil and Gas Agenda

I. Pipeline Rate Matters

.
Docket# RM96–1, 000, Standards for Business Practices of Interstate Natural Gas Pipelines Notice of Proposed Rulemaking.

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: April 17, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9927 Filed 4–18–96; 1:19 pm]

BILLING CODE 6717–01–P

[Docket No. CP96–218–000, et al.]

Eastern Shore Natural Gas Company, et al.; Natural Gas Certificate Filings

April 16, 1996.

Take notice that the following filings have been made with the Commission:

1. Eastern Shore Natural Gas Company

[Docket No. CP96–218–000]

Take notice that on February 29, 1996, Eastern Shore Natural Gas Company (Eastern Shore), Post Office Box 615, Dover, Delaware 19903–0615, tendered for filing an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Eastern Shore to (1) construct and operate 1.5 miles of 16-inch pipeline; and (2) abandon in place 1.5 miles of existing 10-inch pipeline, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. Eastern Shore states that the proposed pipeline segment, to be located in New Castle County, Delaware, would replace existing pipeline that must be relocated due to Delaware State Department of Transportation (DelDOT) highway construction. Construction of the proposed facilities is planned to be undertaken between Fall 1996 and Spring/Summer 1998. Eastern Shore requests expedited processing of its application because it must conform to DelDOT's construction schedule.

Eastern Shore estimates that the incremental cost of upsizing the pipeline segment proposed in its application will be $200,322 and estimates the total project cost to be $798,504. Eastern Shore states that it will finance this amount initially from internally generated funds and short-term notes and that permanent financing will be arranged after construction has been completed. Eastern Shore requests that the total cost of these facilities be rolled-in to its total system costs for rate purposes.

Comment date: May 7, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP96–297–000]

Take notice that on April 4, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed an abbreviated application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to construct and operate 24.5 miles of 36-inch diameter pipeline loop in Delta and Mackinac Counties, Michigan, all as more fully described in the application that is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

Great Lakes says that the proposed facilities will complete the looping of its 968-mile mainline system and will provide greater service reliability, additional operational flexibility, and annual fuel savings of up to 1.3 Bcf. Great Lakes also says that rolling-in the $44,300,000 cost of the proposed facilities will increase its existing rates by less than 5%.

Comment date: May 7, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP96–305–000]

Take notice that on April 9, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP96–305–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a new delivery point in Colorado County, Texas to deliver gas to Channel Industries Gas Company (Channel) under Tennessee's blanket certificate

issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it would modify a receipt meter, turn around the existing check valve, and install solar power equipment and electronic gas measurement equipment.

Tennessee states further that there would be no impact on peak day or annual deliveries and that Tennessee would be fully reimbursed for the installation of this facility.

Comment date: May 31, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Northern States Power Company (Minnesota)

[Docket No. CP96–312–000]

Take notice that on April 11, 1996, Northern States Power Company-Minnesota (Northern States), 414 Nicollet Mall—5th Floor, Minneapolis, MN 55402, filed in Docket No. CP96–312–000, an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for a service area determination consisting of the areas in and around the communities of Grand Forks and Emerado in Grand Forks County, North Dakota (including Grand Forks Air Force Base), and East Grand Forks, in Polk County, Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern States states that it is a public utility engaged in, among other things, the business of distributing natural gas to customers for residential, commercial and industrial use. Northern States requests a finding that it qualifies as a local distribution company for purposes of Section 311 of the Natural Gas Policy Act of 1978. Northern States also requests a waiver of all reporting and accounting requirements and rules and regulations which are ordinarily applicable to natural gas companies.

Northern States explains it makes no sales for resale in the proposed service area and does not plan to do so in the future. Northern States says it operates only distribution level facilities (below 175 psig) in the proposed service territory and does not have an extensive transmission system in the area. Northern States states its rates are fully regulated by the Minnesota Public Utilities Commission and the North Dakota Public Service Commission. Northern States asserts there are no neighboring gas distribution utilities providing retail gas service within 23 miles of East Grand Forks or Grand Forks. Northern States states that no neighboring utility will be significantly affected by the service area determination.

Comment date: May 7, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9815 Filed 4–19–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140242; FRL–5364–1]

Access to Confidential Business Information by Versar, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Versar, Inc. (VER), of Springfield, Virginia, and Versar's subcontractors, General Science Corporation (GSC) of Laurel, Maryland, and Syracuse Research Corporation (SRC) of Syracuse, New York for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division 7408 Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–D3–0013, contractor VER of 6850 Versar Center, Springfield, VA, and its subcontractors GSC of 6100 Chevy Chase Drive, Laurel, MD, and SRC of Merrill Lane, Syracuse, NY will assist the Office of Pollution Prevention and Toxics (OPPT) in providing exposure assessment support for both new and existing chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D3–0013, VER, GSC, and SRC will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. VER, GSC, and SRC personnel will be given access to information submitted to

EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of October 15, 1992 (57 FR 47336), VER, GSC, and SRC were authorized for access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA. EPA is issuing this notice to extend VER, GSC, and SRC's access to TSCA CBI under the new contract number 68–D3–0013.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide VER, GSC, and SRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, at VER's Springfield, VA site, and at SRC's Syracuse, NY site only.

VER and SRC will be authorized access to TSCA CBI at their facilities under the EPA ''*TSCA Confidential Business Information Security Manual.*'' GSC will be authorized access to TSCA CBI at EPA Headquarters only. Before access to TSCA CBI is authorized at VER and SRC's sites, EPA will approve their security certification statements, perform the required inspection of their facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, VER, GSC, and SRC will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until May 9, 1996.

VER, GSC, and SRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: April 12, 1996.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–9849 Filed 4–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–400102; FRL–5360–9]

Notice of Workshops on EPCRA Section 313 Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a series of 3–day training courses on the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The training course consists of a series of presentations covering the requirements of EPCRA and the sections of the Pollution Prevention Act of 1990 (PPA) that relate to the EPCRA requirements. The training course includes a section on the EPCRA and PPA reporting requirements extended to Federal agencies as a result of Presidential Executive Order 12856, ''Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements.'' The course focuses on the EPCRA Section 313 Toxic Chemical Release Inventory (TRI) reporting requirements. A variety of hands-on exercises using the TRI reporting Form R and associated guidance materials are used to help participants understand the TRI reporting process. Persons who should consider attending are Federal and private sector facility staff responsible for completing their facilities TRI reporting form(s) and consulting firms who may be assisting them.

DATES: The training courses will be held on the following dates in the following locations:

May 8-10, 1996, in Philadelphia, PA
May 14-16, 1996, in Chicago, IL
May 21-23, 1996, in Seattle, WA
May 29-31, 1996, in Atlanta, GA
June 4-6, 1996, in San Francisco, CA
June 11-13, 1996, in Dallas, TX

FOR FURTHER INFORMATION CONTACT: Eileen Fesco, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (301) 907–3844, ext. 254, Fax: (301) 907–9655, e-mail: fesco.eileen@epamail.epa.gov. EPA Regional Offices also provide EPCRA and PPA workshops. For information on these training opportunities, contact the EPCRA Information Hotline (5101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 1–800–535–0202.

SUPPLEMENTARY INFORMATION: Registration for the training courses will be taken on a first-come-first-served basis until 2 weeks prior to the start of each workshop. There is limited space available. To register, contact by either telephone, fax, or in writing, the person listed under FOR FURTHER INFORMATION CONTACT. When registering give your name, address, phone and fax numbers and the course you would like to attend. Notification will be sent to each applicant regarding their acceptance for the training session. There is no registration fee for this training. If there is insufficient interest in any of the workshops, they may be canceled. The Agency bears no responsibility for attendees' decision to purchase nonrefundable transportation tickets or accommodation reservations.

Dated: April 12, 1996.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 96–9850 Filed 4–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44624; FRL–5363–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on glycidyl methacrylate (CAS No. 106–91–2), and isobutyl alcohol (CAS No. 78–83–1) submitted pursuant to consent orders under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that the results of testing conducted pursuant to testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for glycidyl methacrylate (GMA) were submitted by the GMA Task Force pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on March 14, 1996. The submission includes two final reports entitled: (1) Glycidyl Methacrylate: Inhalation Teratology Probe Study in New Zealand White Rabbits and (2) Glycidyl Methacrylate: Inhalation Teratology Study in New Zealand White Rabbits. GMA, a glycidol derivative, is an epoxy resin additive used in paint coating formulations and adhesive applications. Its annual production volume is less than 5 million pounds.

Test data for isobutyl alcohol (CAS No. 78–83–1) were submitted by the Chemical Manufacturers Association on behalf of the following sponsors: BASF

Corporation, Eastman Chemical Company, Hoechst Celanese Chemical Group, Inc., Shell Oil Company, and Union Carbide Corporation. They were received by EPA on March 18, 1996. The submission includes three final reports entitled: (1) ''Three Month Neurotoxicity Study of Isobutanol Administered by Whole-Body Inhalation to CD Rats,'' (2) ''Three Month Schedule Controlled Operant Behavior Study of Isobutanol by Whole-Body Inhalation to CD Rats,'' and (3) ''Exposure Concentration Range-Finding Study for a Subchronic Inhalation Neurotoxicity Study of Isobutanol Administered by Whole-Body Inhalation to CD Rats.'' This chemical is used in direct solvent uses, in the preparation of isobutylamines, as a lube oil additive, in the preparation of isobutyl acetate, and in the preparation of amino resins.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44624). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: April 11, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–9851 Filed 4–19–96; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Environmental Review Procedures

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: The Export-Import Bank (''Ex-Im Bank'') is extending the effective date of its Environmental Procedures and Guidelines (initially issued in February, 1995) and has adopted certain changes to improve the specificity, clarity and use of the Guidelines. The revised Environmental Procedures and Guidelines will remain in effect until April 1, 1998, at which time they will again be subject to review by the Bank.

FOR FURTHER INFORMATION CONTACT: Popi Artavanis, Export-Import Bank of the United States, Engineering and Environment Division, 811 Vermont Ave., N.W., Washington, DC 20571, tel: (202) 565–3570.

SUPPLEMENTARY INFORMATION: Section 106 of the Export Enhancement Act (12 U.S.C. 635i–5) (''Section 106'') provides that Ex-Im Bank shall establish environmental review procedures consistent with the Bank's overall mandate to maintain U.S. export competitiveness. Pursuant to this section, the Ex-Im Bank Board of Directors approved a set of Environmental Procedures and Guidelines on February 1, 1995. The new procedures and guidelines were made effective on a one-year trial basis until February 1, 1996. Earlier this year, the Bank extended the effective date of these procedures and guidelines to April 1, 1996.

Prior to April 1, 1996, the Bank's staff solicited comments on the procedures and guidelines from exporters and exporter trade organizations, and conducted an internal review of the application of the procedures and guidelines to particular transactions over the course of the year. The staff concluded that the guidelines and procedures have generally accomplished their goal of providing an environmental benchmark for determining the acceptability of a project for financing. At the same time, the guidelines and procedures have minimized the impact on the exporting community, and allowed for efficient, practical implementation by staff. The Bank's staff introduced certain changes to improve the specificity, clarity and use of the guidelines and recommended the procedures and guidelines (with the proposed changes) be extended for an additional two years. On April 2, 1996, the Ex-Im Bank Board of Directors voted to extend the Environmental Procedures and Guidelines (with the staff's recommended changes) until April 1, 1998.

These procedures and guidelines are not subject to notice and comment requirements or to publication in the Federal Register pursuant to 5 U.S.C. 553(a)(2), 553(b)(A), and 553(d)(2).

Copies may be obtained by written request from Ex-Im Bank's Engineering and Environment Division, 811 Vermont Aveue, N.W., Washington, DC 20571.

Accordingly, under the authority of Section 106 of the Export Enhancement Act (12 U.S.C. 635i–5), the Environmental Procedures and Guidelines will remain in effect until April 1, 1998.

Dated: April 12, 1996.

Kenneth W. Hansen,

General Counsel, Export-Import Bank of the United States.

[FR Doc. 96–9669 Filed 4–19–96; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 23, 1996, from 11:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

—Policy Statement

—Farm Credit Administration Board Policy Statement on Association Structure

Date: April 18, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–9972 Filed 4–18–96; 1:24 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/State	MM docket No.
AJI Broadcasting, Inc. (Regarding the silent status of Station KRBG(FM)).	Canadian, Texas	96–92

Pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, AJI Broadcasting, Inc. has been directed to show cause why the license for Station KRBG(FM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

(1) To determine whether AJI Broadcasting, Inc. has the capability and intent to expeditiously resume the broadcast operations of KRBG(FM), consistent with the Commission's Rules.

(2) To determine whether AJI Broadcasting, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether AJI Broadcasting, Inc. is qualified to be and remain the licensee of Station KRBG(FM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–9793 Filed 4–19–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/State	MM docket No.
College of Southern Idaho, Licensee of KEZJ(AM). (Regarding the silent status of Station KEZJ(AM))	Twin Falls, ID ...	96–91

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, the College of Southern Idaho has been directed to show cause why the license for Station KEZJ(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether the College of Southern Idaho has the capability and intent to expeditiously resume broadcast operations of KEZJ(AM) consistent with the Commission's Rules.

2. To determine whether the College of Southern Idaho has violated Sections 73.1740 and/or 73.1750 of the Commissions Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the College of Southern Idaho is qualified to be and remain the licensee of Station KEZJ(AM).

A copy of the complete Show Cause Order and Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street NW., Washington, Dc The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–9792 Filed 4–19–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/State	MM docket No.
Davel Broadcasting Group, Inc.. (Regarding the silent status of Station KLZE(FM))	Owensville, Missouri	96–89

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Davel Broadcasting has been directed to show cause why the license for Station KLZE(FM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

(1) To determine whether Davel Broadcasting Group, Inc. has the capability and intent to expeditiously resume the broadcast operations of KLZE(FM), consistent with the Commission's Rules.

(2) To determine whether Davel Broadcasting Group, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Davel Broadcasting Group, Inc. is qualified to be and remain the licensee of Station KLZE(FM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–9795 Filed 4–19–96; 8:45 am]

BILLING CODE 6712–01–P

[DA 96–518]

Telecommunications Services Between the United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 29, 1996, the Commission approved the application of AT&T Corp. to provide telecommunications services between the United States and Cuba. The services authorized include both switched voice and private line services. Grant of the application also will permit AT&T to improve its capability to serve Cuba, because a new service agreement it entered into with its correspondent in Cuba, EMTELCUBA, becomes effective upon grant of the application. The Commission has authorized AT&T to provide service between the United States and Cuba in accordance with the

provisions of the Cuban Democracy Act. This will allow AT&T to help meet the large demand for direct telecommunications services between the United States and Cuba. Under the guidelines established by the Department of State, AT&T is to submit reports indicating the numbers of circuits activated by facility, on or before June 30, and December 31 of each year, and on the one-year anniversary of this notification in the Federal Register.

EFFECTIVE DATE: March 29, 1996.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Attorney, Common Carrier Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

Adopted: March 29, 1996.

Released: April 9, 1996.

1. Upon consideration of the above-captioned uncontested application, filed by American Telephone and Telegraph Company (AT&T) pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, it is ordered that application File No. I–T–C–96–009 is granted, and AT&T is authorized to:

a. lease from Comsat and operate 30 64–kbps satellite circuits between appropriately licensed U.S. earth stations and an appropriate INTELSAT satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by AT&T's correspondent;

b. multiplex the circuits authorized in a., above, through the use of Digital Circuit Multiplexing Equipment, to derive up to 120 circuits from the 30 circuits authorized; and

c. use said facilities to provide AT&T's regularly authorized services between the United States and Cuba.

It is further ordered that our authorization of AT&T to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and Cuba— that is, private lines which originate in the United States and terminate in Cuba or which originate in Cuba and terminate in the United States. In addition, AT&T may not—and AT&T's tariffs must state that its customers may not—connect private lines provided over these facilities to the public switched network at either the U.S. or Cuban end, or both, for the provision of international switched basic services, unless authorized to do so by the Commission upon a finding that Cuba affords resale opportunities equivalent to those available under U.S. law, in accordance with *Foreign Carrier Entry Order*, 60 FR 67332, December 29, 1995. The limitations in this paragraph are subject to the exceptions contained in Sections 63.01(k)(6)(i) and 63.17 of the Commission's Rules, 47 CFR §§ 63.01(k)(6)(i) and 63.17. *See also Cable & Wireless et al.*, DA–96–17, released January 16, 1996, para. 36.

4. It is further ordered that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 CFR Section 43.61.

5. It is further ordered that the applicant shall file annual circuit status reports in accordance with the requirements set forth in *Rules for Filing of International Circuit Status Reports*, CC Docket No. 93–157, Report and Order, 10 FCC Rcd 8605 (1995), 60 FR 51366, October 2, 1995.

6. It is further ordered that AT&T shall split 50/50 with ETESCA the $1.20 per minute accounting rate for the IMTS services.

7. It is further ordered that the surcharge agreed to between AT&T and ETESCA for received collect calls shall be no greater than $1.00 per call.

8. It is further ordered that AT&T shall submit reports on or before June 30, and December 31, of each year, and on the one-year anniversary of the notification of the grant of this application in the Federal Register, indicating the number of circuits activated by facility.

9. It is further ordered that this authorization is subject to AT&T's obtaining all necessary licenses and authorizations from the Departments of Treasury and Commerce.

10. It is further ordered that this order is subject to revocation without a hearing in the event the Department of State or the Federal Communications Commission determines that the continuation of communications between the United States and Cuba is no longer in the national interest.

11. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

Federal Communications Commission.

Diane J. Cornell,

Chief, Telecommunications Division, International Bureau.

[FR Doc. 96–9747 Filed 4–19–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

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 May 6, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. David Zalman, El Campo, Texas; to retain a total of 10.16 percent of the voting shares of Prosperity Bancshares, Inc., El Campo, Texas, and thereby indirectly acquire First Prosperity Bank, El Campo, Texas.

Board of Governors of the Federal Reserve System, April 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9812 Filed 4–19–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Center Bancorp, Inc., Union, New Jersey; to acquire 100 percent of the voting shares of Union Center Interim National Bank, Union, New Jersey, and merge it with Lehigh Savings Bank, SLA, Union, New Jersey, and thereby engage in owning and controlling a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Lehigh Savings will be the surviving institution, which will then merge with Union Center National Bank, Union, New Jersey.

2. NVE Bancorp, MHC, and NVE Bancorp, Inc., both of Englewood, New Jersey; to become bank holding companies by acquiring 100 percent of the voting shares of NVE Savings Bank, Englewood, New Jersey (successor to NVE Savings and Loan Association).

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Fort Brooke Bancorporation, Brandon, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Brooke Bank, Brandon, Florida.

2. Newnan Holdings, Inc., Newnan, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Southside Financial Group, Inc., Fayetteville, Georgia, and thereby indirectly acquire Citizens Bank & Trust of Fayette County, Fayetteville, Georgia.

In connection with this application, Applicant also has applied to acquire Newnan Savings Bank, FSB, Newnan, Georgia, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be performed throughout the State of Georgia.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Eau Claire Financial Services, Inc., St. Paul, Minnesota; to acquire 93.8 percent of the voting shares of American Bank Lake City, Lake City, Minnesota.

2. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of B & G Investment Company, San Antonio, Texas, and thereby indirectly acquire First State Bank, Bandera, Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. West Coast Bancorp, Lake Oswego, Oregon; to merge with Vancouver Bancorp, Vancouver, Washington, and thereby indirectly acquire Bank of Vancouver, Vancouver, Washington.

In connection with this application, Applicant also has applied to acquire 19.9 percent of the voting shares of Vancouver Bancorp, Vancouver, Washington, and thereby indirectly acquire Bank of Vancouver, Vancouver, Washington.

Board of Governors of the Federal Reserve System, April 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9810 Filed 4–19–96; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-8442) published on page 15263 of the issue for April 5, 1996.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Kanabec Credit Company, Mora, Minnesota, is revised to read as follows:

1. Kanabec Credit Company, Mora, Minnesota; to acquire directly and indirectly 44.8 percent of First Citizens Financial Corp., Mason City, Iowa, and thereby indirectly acquire First Citizens National Bank, Mason City, Iowa.

Comments on this application must be received by April 29, 1996.

Board of Governors of the Federal Reserve System, April 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9811 Filed 4–19–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice 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 the proposal complies with the standards of section 4 of the BHC Act, including 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'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bradley County Financial Corp., Cleveland, Tennessee; to engage *de novo* through its subsidiary, Tennessee Financial Services, Inc., Cleveland, Tennessee, in consumer finance and insurance agency activities, pursuant to §§ 225.25(b)(1)(i) and 225.25(b)(8)(ii) of the Board's Regulation Y. The proposed activities will be conducted throughout the States of Tennessee and Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire Bancshares Life Insurance Company, San Antonio, Texas, and thereby engage in sales and underwriting of credit life, credit accident, and credit health insurance, pursuant to § 225.25(b)(8)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9809 Filed 4–19–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Joan Gans, R.N., Denver Department of Health and Hospitals: Based on an audit of records conducted by the National Institute of Allergy and Infectious Diseases (NIAID) and Ms. Gans— admission, ORI found that Joan Gans, R.N., while employed at the Denver Community Program for Clinical Research on AIDS at the Department of Public Health, Denver Department of Health and Hospitals, committed scientific misconduct by falsifying and fabricating data related to patients entered on clinical trials. The research was supported by a NIAID contract.

Ms. Gans has entered into a Voluntary Exclusion Agreement with ORI in which she has voluntarily agreed:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government, as defined in 45 CFR Part 76 (Debarment Regulations) for a period of two (2) years beginning April 4, 1996;

(2) That for a period of one (1) year immediately following the two (2) year voluntary exclusion above, any institution that submits an application for Public Health Service (PHS) support for a research project on which Ms. Gans' participation is proposed or that uses her in any capacity in PHS supported research must concurrently submit a plan for supervision of her duties; the supervisory plan must be designed to ensure the scientific integrity of Ms. Gans' research contribution, and the institution must submit a copy of the plan to ORI; and

(3) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years beginning April 4, 1996.

The above voluntary exclusion, however, shall not apply to Ms. Gans' future training or practice of clinical nursing whether as a nursing student, resident, fellow, or licensed nurse, as the case may be, unless that practice involves research or research training.

No scientific publications were required to be corrected as part of this Agreement. The questioned data will be excluded before any findings of the affected clinical trials are reported.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 96–9778 Filed 4–19–96; 8:45 am]

BILLING CODE 4160–17–P

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: ACF Uniform Discretionary Grant Application Form.

OMB No.: New.

Description: ACF has more than thirty discretionary grant programs. The proposed information collection form would be a uniform discretionary application form usable for all of these grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All ACF discretionary grant programs would be eligible but not required to use this application form. The application consists of general information and instructions; the Standard Form 424 series that requests basic information, budget information and assurances; the program application requesting the applicant to describe how these objectives will be reached; and certifications. Guidance for the content of information requested in the program application is found in OMB Circulars A–102 and A–110.

Respondents; Not-for-profit institutions, State, Local and Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application Form	4,418	1	4	17,672

Estimated Total Annual Burden Hours: 17,672.

Additional Information: ACF is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by April 17, 1996. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the

Administration for Children and Families, Reports Clearance Officer, Roberta Katson at (202) 401–5756.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Dated: April 10, 1996.

Roberta Katson,

Director, Office of Information Resource Management Services.

[FR Doc. 96–9750 Filed 4–19–96; 8:45 am]

BILLING CODE 4184–01–M

[Program Announcement No. ACF/ACYF/RHYP 96–2]

Runaway and Homeless Youth Program (RHYP): Fiscal Year (FY) 1996 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1996, and Request for Applications for FY 1996 and FY 1997

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Extension of due date for receipt of applications for the Basic Center Program for Runaway and Homeless Youth (BCP) for FY 1996.

SUMMARY: This notice amends program announcement number ACF–ACYF–RHYP–96–2 published in the Federal Register on April 15, 1996 by extending the due date for submission of the BCP applications to June 7, 1996. This notice does not affect the due date for TLP applications. That date remains June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013; Telephone: 1–800–351–2293.

SUPPLEMENTARY INFORMATION: Under Part A of the Runaway and Homeless Youth Act, as amended, the overall purpose of the Basic Center Program is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (outreach, temporary shelter, food, clothing, counseling, aftercare, and related services) of runaway and homeless youth and their families.

(Catalog of Federal Domestic Assistance. Number 93.623, Basic Center Program for Runaway and Homeless Youth; Number 93.550)

Dated: April 16, 1996.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 96–9861 Filed 4–19–96; 8:45 am]

BILLING CODE 4184–01–M

President's Committee on Mental Retardation; Notice of Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation.

TIME AND DATE: Full Committee Meeting, May 24, 1996, 10:00 a.m.–4:00 p.m.

PLACE: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.

STATUS: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

TO BE CONSIDERED: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness.

THE PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs and services for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

CONTACT PERSON FOR MORE INFORMATION: Gary H. Blumenthal, Wilbur J. Cohen Building, Room 5325, 330 Independence Avenue, SW., Washington, DC 20201–0001, (202) 619–0634.

Dated: April 16, 1996.

Gary H. Blumenthal,

Executive Director, PCMR.

[FR Doc. 96–9860 Filed 4–19–96; 8:45 am]

BILLING CODE 4184–01–M

Food And Drug Administration

[Docket No. 95N–0308]

Inapplicability of the Dietary Supplement Health and Education Act to Animal Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing guidance regarding the inapplicability of the Dietary Supplement Health and Education Act of 1994 (the DSHEA) to products intended for use in animals. The agency is issuing this notice in response to inquiries received on whether the DSHEA applies to products intended for use in animals.

DATES: Submit written comments by July 22, 1996.

ADDRESSES: Written comments may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donny Dean, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1726.

SUPPLEMENTARY INFORMATION: FDA has had inquiries concerning whether the DSHEA applies to products intended for use in animals. After examining the statutory language, intent, and legislative history, the agency has determined that the DSHEA does not apply to animal products.

On October 25, 1994, the DSHEA (Pub. L. 103–417) was signed into law. The DSHEA amends the Federal Food, Drug, and Cosmetic Act (the act) to create a new regulatory scheme for ''dietary supplements.'' The DSHEA, among other things, amended the act by adding section 201(ff) (21 U.S.C. 321(ff)), which defines a ''dietary supplement,'' in part, as a product, other than tobacco, intended to supplement the diet that contains at least one or more of the following ingredients: A vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any of the previously

mentioned ingredients (section 201(ff)(1) of the act). The DSHEA's main effect on the act was the removal of certain dietary supplement ingredients from regulation under 21 U.S.C. 321(s) and 348, two provisions of the act regulating the safety of food ingredients. In addition, the DSHEA permits certain limited claims to be made about dietary supplements without resulting in the supplement becoming a drug under 21 U.S.C. 321(g).

The definition of ''dietary supplement'' in the DSHEA does not explicitly state whether it includes or excludes products intended for use in animals other than man. The legislative record, which is extremely brief, is likewise silent about this issue. FDA has carefully examined the new law to determine if it should be applied to animal products, and believes that it should not. When the DSHEA is read as a whole, FDA believes it is evident that Congress was concerned only with human products and did not consider animal products. For this reason, the agency concludes that Congress did not intend the law to apply to animal products. Equally important, there are some critical differences between products intended for human use and products intended for animal use that strongly favor maintaining the status quo for animal products. Accordingly, FDA does not intend to apply the DSHEA to animal products.

There is much evidence in the DSHEA that Congress did not intend to apply the amendments to animal products. First, the extensive congressional findings in section 2 of the DSHEA focus strictly on the use of dietary supplements by humans. These findings begin by stating that ''improving the health status of United States *citizens* ranks at the top of the national priorities * * *,'' id., section 2(l) of the DSHEA (emphasis added); see also id., section 2(3)(A) and (2)(4) of the DSHEA (discussing the effect of supplements on human health conditions, such as ''cancer, heart disease, and osteoporosis'' and ''medical procedures, such as coronary bypass surgery or angioplasty.'') This strict focus on humans in the congressional findings reflects Congress' intent that the law apply only to humans. See *United States* v. *Solid Gold Holistic Animal Equine Nutrition Center* et al., No. CV 88–0473–GT, slip op. at 7–8 (S.D. Cal. March 2, 1995) (Ref. 1).

Next, although the definition of ''dietary supplement'' contains no explicit reference to products intended for use by animals, part of the definition does contain an explicit reference to products intended for use by humans (section 3 of the DSHEA (creating 21 U.S.C. 321(ff)(1)(E))). This is further evidence that Congress intended the law to apply to supplements used by humans, not supplements for other animals.

Furthermore, many of the changes made by the DSHEA apply only to supplements intended for human use because the sections of the act that were amended by the DSHEA apply only to human products—yet another strong signal that Congress was only concerned with human supplements. For example, when the DSHEA sets out the standards for determining whether a product that has been approved or investigated as a drug can also be sold as a dietary supplement, it cites only to the human drug provisions of the act, but not to any of the animal drug provisions. See 21 U.S.C. 321(ff)(3). Likewise, the changes to food labeling made by the DSHEA apply only to human food because the sections in the act that are amended are in 21 U.S.C. 343(r), which applies only to ''food for human consumption.''

Moreover, FDA believes the public health will be better protected if ingredients in animal dietary supplements are not subject to the special treatment provided for ingredients of human supplements by the DSHEA. Under the act's food additive provisions, 21 U.S.C. 321(s) and 348, before FDA can approve a product for use in a food producing animal, FDA must determine that the product will not leave harmful residues in food (21 U.S.C. 348(b)(2) and (c)(5), and 21 CFR part 570). If the compound or any of its metabolites induces cancer, the act imposes additional requirements on the approval of the compound (21 U.S.C. 348(c)(3)(A) and 21 CFR part 500, subpart E). However, nowhere in its revision of the regulation of ingredients in dietary supplements does the DSHEA address how the effect of supplements on food producing animals and human food safety is to be assessed. It seems unlikely that Congress would so alter the regulation of animal foods with no consideration—indeed, no mention—of the impact of the alteration on the safety of the nation's food supply.[1]

Not only are there human food safety concerns, but when compared with human use of supplements, there is less information on the safe use of dietary supplements in animals. Many substances that fall under the definition of dietary supplements for human consumption, such as herbs and other botanicals, have a history of use in humans that can be used to establish reasonably safe levels. However, the same is not true for use of many of these same ingredients in animals. As far as FDA is aware, very few substances that meet the criteria of 21 U.S.C. 321(ff)(1) and (ff)(2) have any established history of safe use in any animal. Moreover, each animal species requires different nutrients, absorbs and metabolizes nutrients differently, and can exhibit different toxic reactions to food and its components. The lack of information on the safe use of these kinds of substances in animals, and the fact that the animal population is not as homogenous as the human population are two more reasons why FDA has determined that the DSHEA should not apply to animal products.[2]

Finally, many drugs intended to increase the production of meat, milk, egg, or fiber (so-called production drugs) or otherwise affect animal performance could arguably be covered as dietary supplements under the DSHEA. Currently, products bearing such production claims are animal drugs under the act, and as such, can only be marketed after approval by FDA after the manufacturer conducts extensive scientific studies to show that the drug is both safe (in animals and humans) and effective (21 U.S.C. 360b). To allow new production drugs to be marketed under the provisions of the DSHEA not only raises exactly the same food safety concerns previously discussed about food additives, but would also be unfair to existing approved products, and would serve as a disincentive to develop and use legitimate drugs in the future.

In sum, although the DSHEA does not speak directly to the question, we think that the DSHEA was not intended to apply to animal products. Moreover, we

[1] The findings make clear that one underpinning of the new legislation was Congressional concern that consumers should have the freedom to make their own choices about whether to take dietary supplements. However, that critical element of consumer choice is lacking when the supplement (or its metabolite) ends up in the diet as an unidentified residue in meat, milk, or eggs.

[2] The law devotes no resources to the human and animal health issues raised by the use of supplements in animals. The DSHEA does mandate the establishment of an office within the National Institutes of Health to oversee scientific study of dietary supplements, as well as a seven-member commission to provide recommendations for the regulation of label claims for supplements. However, nothing in the law directs either new group to address the use of dietary supplements in animals. Thus, there will not be any independent resource from which the Center for Veterinary Medicine (CVM) can obtain unbiased information on benefits to animal health and production, safety to animals and humans consuming edible byproducts from treated animals, or the validity of claims for animal supplements. Lacking such a resource, FDA believes it is prudent for the burden to remain, as it is now, on the manufacturer to generate safety and effectiveness data and provide it to FDA for review in feed additive petitions and new animal drug applications.

believe that there are significant, complex scientific and regulatory issues relating to human and animal safety that would need to be resolved by Congress before a similar scheme for animal supplements could be put into place. Accordingly, FDA has concluded that animal dietary supplements are not covered by the DSHEA.

Interested persons may, on or before July 22, 1996, submit to the Dockets Management Branch (address above) written comments on this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 11, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–9780 Filed 4–19–96; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

[Docket No. 84N–0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologics as of December 31, 1995. FDA has announced the availability of previous lists, which are brought up-to-date monthly, identifying the drugs and biologicals granted orphan-drug designation pursuant to the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the list of current orphan-drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

FOR FURTHER INFORMATION CONTACT: Peter Vaccari, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0983.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development (OPD) reviews and takes final action on applications submitted by sponsors seeking orphan-drug designation under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologicals. This list is made current on a monthly basis and is available upon request from OPD (contact identified above). At the end of each calendar year, the agency publishes an up-to-date cumulative list of designated orphan drugs and biologicals, including the names of designated compounds, the specific disease or condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1988 was published in the Federal Register of April 21, 1989 (54 FR 16294). This list is available on request from FDA's Dockets Management Branch (address above). Those requesting a copy should specify the docket number found in brackets in the heading of this document.

The list that is the subject of this notice consists of designated orphan drugs and biologicals through December 31, 1995, and, therefore, brings the March 2, 1993 (58 FR 12041), publication up-to-date.

The orphan-drug designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for orphan-drug designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577, November 23, 1988.) Copies of the regulations (see 57 FR 62076, December 29, 1992) for use in preparing an application for orphan-drug designation may be obtained from OPD (address above).

The names used in the cumulative list for the drug and biological products that have not been approved or licensed for marketing may not be the established or proper names approved by FDA for these products if they are eventually approved or licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established proper name.

Dated: April 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–9782 Filed 4–19–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Tentative Schedule of Meetings for 1996

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for the remainder of 1996. At the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. The IOM recommended that the agency publish an annual tentative schedule of its meetings in the Federal Register. In response to that recommendation, FDA is publishing its annual tentative schedule of meetings for the remainder of 1996.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report, the IOM recommended that FDA adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the Federal Register. FDA has implemented this recommendation. A tentative schedule of forthcoming meetings will be published annually in the Federal Register. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. The schedule is tentative and amendments to this notice will not be published in the Federal Register. FDA will, however, publish a Federal Register notice 15 days in advance of each upcoming advisory committee meeting, announcing the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for the remainder of 1996:

Committee name	Dates of meetings
OFFICE OF THE COMMISSIONER	
Board of Tea Experts	No meetings planned
Science Board to the Food and Drug Administration	July 2 (subcommittee meeting)
	August 16 (subcommittee meeting)
	October 11 (subcommittee meeting)
	November 12
	December 2 (subcommittee meeting)
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH	
Allergenic Products Advisory Committee	November 15
Biological Response Modifiers Advisory Committee	June 10–11
	October 21–22
Blood Products Advisory Committee	June 20–21
	September 26–27
	December 12–13
Vaccines and Related Biological Products Advisory Committee	April 10–11
	July 10–11
	October 29–30
CENTER FOR DRUG EVALUATION AND RESEARCH	
Advisory Committee for Pharmaceutical Science (formerly Generic Drugs Advisory Committee.	August 15–16
Advisory Committee for Reproductive Health Drugs (formerly Fertility and Maternal Health Drugs Advisory Committee).	June 27–28
	October 24–25
Anesthetic and Life Support Drugs Advisory Committee	April 29–30
Anti-Infective Drugs Advisory Committee	July 25–26
	October 17–18
Antiviral Drugs Advisory Committee	June 6–7
	August 1–2
	October 3–4
	December 12–13
Arthritis Advisory Committee	May 7
	July 9–10
	September 10–11
	November 19–20
Cardiovascular and Renal Drugs Advisory Committee	May 2–3
	October 24–25
Dermatologic and Ophthalmic Drugs Advisory Committee	November 21–22
Drug Abuse Advisory Committee	August 15–16
Endocrinologic and Metabolic Drugs Advisory Committee	June 27–28
	September 26–27
	December 10–11
Gastrointestinal Drugs Advisory Committee	September 19–20
Medical Imaging Drugs Advisory Committee	November 22
Nonprescription Drugs Advisory Committee	April 19
	June 13–14
	August 1–2
	October 9–11
	December 16–17
Oncologic Drugs Advisory Committee	April 19
	June 13–14
	September 11–12
	December 16–17
Peripheral and Central Nervous System Drugs Advisory Committee	June 3–4
	September 16–17
	December 2–3
Psychopharmacologic Drugs Advisory Committee	July 15–16
	October 21–22
Pulmonary-Allergy Drugs Advisory Committee	December 16–17
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION	
Food Advisory Committee	July 22–24
	September 23–25
	November 18–20
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH	
Device Good Manufacturing Practice Advisory Committee	No meetings planned
Medical Devices Advisory Committee	
Anesthesiology and Respiratory Therapy Devices Panel	June 21
	September 20
	November 22
Circulatory System Devices Panel	June 17–18

Committee name	Dates of meetings
	November 4–5
Clinical Chemistry and Clinical Toxicology Devices Panel	No meetings planned
Dental Products Panel	June 6–7 (Plaque subcommittee meeting)
	August 5–6 (Plaque subcommittee meeting)
	September 10–12
	December 10–11 (Plaque subcommittee meeting)
	December 10–12
Ear, Nose, and Throat Devices Panel	June 10–11
	September 4–5
	December 12–13
Gastroenterology-Urology Devices Panel	September 5–6
	December 12–13
General and Plastic Surgery Devices Panel	No meetings planned
General Hospital and Personal Use Devices Panel	June 17–18
	September 16–17
Hematology and Pathology Devices Panel	August 8–9
	October 24–25
Immunology Devices Panel	June 7
	August 8
	December 6
Microbiology Devices Panel	No meetings planned
Neurological Devices Panel	September 11
Obstetrics-Gynecology Devices Panel	July 22–23
	October 21–22
Ophthalmic Devices Panel	April 1
	July 25–26
	October 17–18
Orthopedic and Rehabilitation Devices Panel	May 22–23
Radiological Devices Panel	May 13
	September 16
	November 18
National Mammography Quality Assurance Advisory Committee	April 23–25
	July 9–10
	September 25–27
	December 10–12
Technical Electronic Product Radiation Safety Standards Committee	April 9–10
CENTER FOR VETERINARY MEDICINE	
Veterinary Medicine Advisory Committee	May 29

Committee name	Dates of meetings
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH	
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants.	September 16–17
Science Board to the National Center for Toxicological Research	November 13–14

Dated: April 12, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–9781 Filed 4–19–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–R–79, HCFA–R–43, HCFA–222]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collection for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency—s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Payment Adjustment for Sole Community Hospitals; *Form No.:* HCFA-R–79; *Use:* Hospitals designated as ''Sole Community Hospitals'' that experience a five percent decrease in discharges in one cost reporting period, as compared to the previous period, due to unusual circumstances, beyond its control, may request an adjustment to its Medicare payment amount. *Frequency:* On

occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, local or tribal government; *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Hours Requested:* 160.

2. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Conditions of Participation for Portable X-ray Suppliers (42 CFR 405 Subpart N); *Form No.:* HCFA-R–43; *Use:* This information is needed to determine if portable X-ray suppliers are in compliance with published health and safety requirements. *Frequency:* Annually; *Affected Public:* Business or other-for-profit; *Number of Respondents:* 554; *Total Annual Responses:* 554; *Total Annual Hours Requested:* 1,385.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Independent Rural Health Center/Freestanding Federally Qualified Health Center Cost Report; *Form No.:* HCFA–222; *Use:* The independent rural health clinic/freestanding federally qualified health center cost report is the cost report to be used by the mentioned clinics/centers to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, local or tribal government; *Number of Respondents:* 3,000; *Total Annual Responses:* 3,000; *Total Annual Hours Requested:* 120,000.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 15, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–9768 Filed 4–19–96; 8:45 am]

BILLING CODE 4120–03–P

Office of Inspector General

Program Exclusions: March 1996

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of March 1996, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
Backmon, Marquil D, Baltimore, MD	04/10/96
Botbyl, Kerry Ann, Cabot, AR	04/09/96
Chase, Charles Lee, Baltimore, MD	04/10/96
Cheatham, Mary R, Bryan, TX	04/09/96
Cloud, Thomas C, North Hollywood, CA	04/09/96
Dartez, Melvin, Grants, NM	04/09/96
Delesdernier, Kenneth E, Spanaway, WA	04/09/96
Dileo, George A, Uniontown, PA	04/10/96
Dunbar, Angel Ladele, Danville, AR	04/09/96
Edwards, David Franklin, Mt. Gilead, NC	03/31/96
Lister, Felicia Ann, Jacksonville, AR	04/09/96
Marang, Biotshoko, Detroit, MI	04/10/96
McCathrin, Elizabeth, Garland, TX	04/09/96
Moore, James O, Kansas City, MO	04/10/96
Pawlowski, Kimberly Kristie, Gassville, AR	04/09/96
Phillips, Kim, Canandaigua, NY	04/10/96
Rermgosakul, Adul, Ellicott City, MD	04/10/96
Skinner, Jennifer, Jackson, MS	04/09/96
Slattery, Thomas G, Fair Oaks, CA	04/09/96
Wheeler, Rudolph Davis, Baltimore, MD	04/10/96
PATIENT ABUSE/NEGLECT CONVICTIONS	
Anding, Carmen E, Hattiesburg, MS	04/09/96
Carnine, Kenneth S, Rancho Mirage, CA	04/09/96
Daigle, Elliot L Jr, Port Allen, LA	04/09/96
Evans, Becky Marie, Conway, AR	04/09/96
Jackson, Lionel, Baltimore, MD	04/10/96
Jones, Shelia A, Memphis, TN	03/31/96
Kirk, Lateshia Dawn, Bowling Green, KY	03/31/96
Lamar, Allena, Montgomery, AL	03/31/96
Leggs, Dewaine L, Nashville, TN	03/31/96
Ligons, Tony, Spencer, OK	04/09/96
Marshall, Vickie, Birmingham, AL	03/31/96
Martin, Queen Ester, Laurel, MS	04/09/96
McCray, Erica, Birmingham, AL	03/31/96
Owen, Phillip Edwin, Fort Smith, AR	04/09/96
Powell, Jessica, Birmingham, AL	03/31/96
Shaffer, Francis W, Selinsgrove, PA	04/10/96
Thompson, Lashan R, Gulfport, MS	04/09/96
Trice, Brian Keith, Dubuque, IA	04/10/96
CONTROLLED SUBSTANCE CONVICTIONS	
Aikins-Afful, Nathaniel, Randallstown, MD	04/10/96
Gerst, Gary A, Columbus, OH	04/10/96
LICENSE REVOCATION/SUSPENSION/SURRENDER	
Arre, Patricia, Simsbury, CT	04/10/96
Blevins, Michael Dee, Plainview, TX	04/09/96
Camas, John M, Dewey Beach, DE	04/10/96
Campbell, Doneice Marie, Brownwood, TX	04/09/96
Carroccio, John Paul, Green Forest, AR	04/09/96
Clement, Ann Marie, Simsbury, CT	04/10/96
Cropper, Kenneth Ross, Lake Jackson, TX	04/09/96
David's Mission Rexall Drug, Mission, TX	04/09/96
Dehart, Kenneth Lee, Rockport TX	04/09/96
Dengate, Christine A, Denver, CO	04/10/96
Donovan, Deborah, Colchester, CT	04/10/96
Dovalina, David E, Mission, TX	04/09/96
Edwards, Dennis Avery, Fort Worth, TX	04/09/96
Gralewski, Lori, Pittsburgh, PA	04/10/96
Grickis, Dana, Waterbury, CT	04/10/96
Halsey, Donald J, Anadarko, OK	04/09/96
Ickrath, Jennelle, Norwalk, CT	04/10/96
Keeling, Judity R, Delta, CO	04/10/96
Killen, Beverly D, Kingsland, TX	04/09/96
Koval, Barbara, Homestead, PA	04/10/96
Krall, Joseph, Glen Burnie, MD	04/10/96

Subject, city, state	Effective date
McKee, Kimberle, Aurora, CO	04/10/96
Mecinski, Michael F, Baltimore, MD	04/10/96
Miller, Walter Evans, Tyler, TX	04/09/96
Mooney, William M, Silverthorne, CO	04/10/96
Morales, Marlene, McNeil, San Antonio, TX	04/09/96
New, Jacqueline Mae, Port Arthur, TX	04/09/96
Nimmons, Rufus K Jr, Seneca, SC	03/31/96
Ourso, Robert J Jr, Slidell, LA	04/09/96
Pennington, Karen, Oklahoma City, OK	04/09/96
Perez, Mirta R, West Hartford, CT	04/10/96
Perry-Thornton, Elena V, Boaz, AL	03/31/96
Pope, Debra Dianne, Little Rock, AR	04/09/96
Poulin, April M, Manchester, NH	04/10/96
Reardon, George, West Hartford, CT	04/10/96
Sebby, Carolyn Jean, Bull Shoals, AR	04/09/96
Sela, Michael M, Pasadena, CA	04/09/96
Stone, Lori Ann, Yantis, TX	04/09/96
Thompson, Hugh S, Darlington, SC	03/31/96
Vaillancourt, James C, Peterborough, NH	04/10/96
Williams, Linda C, Great Falls, MT	04/10/96
Williams, Eddie R, Denver, CO	04/10/96
FEDERAL/STATE EXCLUSION/SUSPENSION	
Aronoff, JoAnne, Birmingham, MI	04/10/96
Pekarsky, Anatoly, Staten Island, NY	04/10/96
OWNED/CONTROLLED BY CONVICTED/EXCLUDED	
Medical Institute For Mental, Los Lunas, NM	04/09/96
University Nursing Care Center, Gainesville, FA	04/14/96
DEFAULT ON HEAL LOAN	
Anderson, Mark G, Sandy Hook, CT	04/10/96
Anderson, Mary Lou, Royal Oak, MI	04/10/96
Bernard, Theresa J, Ossining, NY	04/10/96
Berry, Virgil A Jr, Starke, FL	03/31/96
Bonner, Michael W, Houston, TX	04/09/96
Bright, Gale Dean, Kansas City, MO	04/10/96
Clancey, Michael D, Fairmont, MN	04/10/96
Clunes, Bradley D, Hillsboro, OR	04/09/96
Collins, Jennifer Gail, Catlettsburg, KY	03/31/96
Courtney, Barbara, Irving, TX	04/09/96
Flateau, Jacqueline, Romulus, MI	04/10/96
Fulton, Alma R, Affton, MO	04/10/96
Glover, Geraldine M, Cleveland Hgts, OH	04/10/96
Guinn, Michael L, Ponca City, OK	04/09/96
Hadley, Pamela L, Philadelphia, PA	04/10/96
Hembree, Gloria N, Fairhope, AL	03/31/96
Hill, William Gregg, New Orleans, LA	04/09/96
Hurd, Michael A, Houston, TX	04/09/96
Johnson, Albert Willard, Cullman, AL	03/31/96
Justice, James L, Lawrenceville, GA	03/31/96
Mathiesen, Douglas A, Shawnee Mission, KS	04/10/96
McNeil-Derr, Diana Julia, Yakima, WA	04/09/96
Meskill, Richard A, Ft. Smith, AR	04/09/96
Moses, Michael J, Humble, TX	03/31/96
Nadel, Glenn R, Marietta, GA	03/31/96
Oksenholt, Lorrie M, Reno, NV	04/09/96
Orsulak, Joseph P, Bossier City, LA	04/09/96
Ott, Margie D, Tulsa, OK	04/09/96
Pilon, Lewis E, Welches, OR	04/09/96
Pinkerman, James R, Temecula, CA	04/09/96
Powell, Reed Madsen Jr, Hesperia, CA	04/09/96
Rolon, Zandra Z, Santa Cruz, CA	04/09/96
Rothman, Jerry K, Duluth, MN	04/10/96
Saffold, Michael D, Baltimore, MD	04/10/96
Scovel, Michael Ernest Sr, Everett, WA	04/09/96
Serrano, Nydia, Lorain, OH	04/10/96
Spatrisano, Bonnie L, Waldport, OR	04/09/96
Strozier, Mark C, Mission, KS	04/10/96
Taylor, John E, Tulsa, OK	04/09/96
Tutt, Gwendolyn M, Roswell, GA	03/31/96
Tyrrell, Michael D, Spokane, WA	04/09/96
Underhill, Luke, COrpus Christi, TX	04/09/96
Walsh, Richard J, Ventura, CA	04/09/96
Weitz, Eliot S, Philadelphia, PA	04/10/96
Wilson, Anthony R, Westbury, NY	04/10/96

Dated: April 11, 1996.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 96–9677 Filed 4–19–96; 8:45 am]

BILLING CODE 4150–04–P

National Institutes of Health

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Cancer Centers Program Working Group, April 24, 1996 at the Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, Virginia.

This meeting will be closed to the public on April 24, from 8:30 am to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Cancer Centers Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Paulette Gray, Executive Secretary, National Cancer Institute Board of Scientific Advisors, National Cancer Institute, 6130 Executive Boulevard, EPN, Room 600, Bethesda, MD 20892, (301/496–4218).

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9839 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Notice of Closed Meeting

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 National Eye Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Clinical Research.

Date: May 1, 1996.

Time: 9:00 a.m..

Place: National Eye Institute, 6120 Executive Blvd., Suite 350, Rockville, MD 20879.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (301) 496–5561.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or 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.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9835 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

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 Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Molecular Genetics of Coagulation Disorders.

Date: May 13–14, 1996.

Time: 8:30 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland.

Contact Person: Louis M. Ouellette, Ph.D., Two Rockledge Center, Room 7216, 6701 Rockledge Drive, Bethesda, MD 20892–7924 (301) 435–0310.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or 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.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9844 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

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 meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 25, 1996.

Time: 2 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or 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 fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9836 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: May 1, 1996.

Time: 10:00 a.m. to 2:00 p.m.

Place: Executive Plaza South, Room 400C, Bethesda, MD (telephone conference call).

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or 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 fifteen 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 No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9837 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, Wednesday, May 22 and Thursday, May 23, 1996, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public on Wednesday, May 22, from 8:00 a.m. to 3:00 p.m. for a status report by the Director, NIA; a review of NIA Programs; a report on the Center for Inherited Disease Research; a report on the Working Group on Program; a report on the Minority Task Force Meeting; and other items of interest.

The meeting will be open again on Thursday, May 23, from 8:00 a.m. until adjournment for a report by the Director, National Institute of Neurological Disorders and Stroke; and a review of NIA Programs. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on Wednesday, May 22, from 3:00 p.m. to recess for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9838 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

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 National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Research Training Grant Applications in Microbiology.

Date: May 2, 1996.

Time: 11:00 a.m.

Place: Teleconference, Solar Bldg., Room 1A03, 6003 Executive Boulevard, Bethesda, MD 20892, (301) 496–0748.

Contact Person: Dr. Dianne Tingley, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C07, Bethesda, MD 20892–7610, (301) 496–0818.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or 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.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9840 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse (NIDA) on May 21–22, 1996, at the Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

On May 21, from 9 a.m. to 3 p.m., the meeting will be held in Conference Rooms E and G. In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, this portion of the meeting will be closed to the public for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On May 22, from 9 a.m. to 5 p.m., the meeting will be held in Conference Room G. This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Eleanor C. Friedenberg, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Eleanor C. Friedenberg in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9842 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

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 National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: High Throughput Genotyping for Locating Human Disease Genes (Telephone Conference Call).

Date: May 1, 1996.

Time: 2:00 P.M.

Place: National Institute of Environmental Health Sciences, North Campus, Building 17, Conference Room 1713, Research Triangle Park, NC.

Contact Person: Dr. Linda K. Bass, National Institute of Envionmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1307.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limiatations imposed by the contract review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9845 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Aging; 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 meetings:

Name of SEP: National Institute on Aging Special Emphasis Panel.

Date: April 30, 1996.

Time: 2:00 p.m.—Teleconference.

Place: Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.

Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institute of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To evaluate and review grant applications, cooperative agreement applications, or contract proposals.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute on Aging Special Emphasis Panel.

Date: May 13–14, 1996.

Time: 7:00 to 11:00 p.m.–May 13, 8:00 a.m. to 5:00 p.m.–May 14.

Place: Weber's Inn, Ann Arbor, Michigan.

Contact Person: Dr. Louise L. Hsu, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To evaluate and review (grant applications, cooperative agreement applications, or contract proposals).

Name of SEP: National Institute on Aging Special Emphasis Panel.

Date: June 4, 1996.

Time: 10:00 a.m.—Teleconference.

Place: Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.

Contact Person: Dr. William A. Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To evaluate and review (grant applications, cooperative agreement applications, or contract proposals).

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or 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.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9846 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

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: Behavioral and Neurosciences.

Date: May 3, 1996.

Time: 10:00 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5179, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Clinical Sciences.

Date: May 6, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4138, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or 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.

(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: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9841 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

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: Behavioral and Neurosciences.

Date: April 30, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5192, Telephone Conference.

Contact Person: Dr. David L. Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Behavioral and Neurosciences.

Date: May 6, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 5160, Telephone Conference.

Contact Person: Dr. Samuel Rawlings, Scientific Review Administrator, 6701 Rockledge Drive, Room 5160, Bethesda, Maryland 20892, (301) 435–1244.

Name of SEP: Behavioral and Neurosciences.

Date: May 26, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5168, Telephone Conference.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussion could reveal confidential trade secrets or 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.

(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: April 16, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–9843 Filed 4–19–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3684–N–02]

Office of the Assistant Secretary for Community Planning and Development; Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages Fiscal Year 1994; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 for the Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages. The purpose of this Notice is to publish the names and addresses of the awardees and the amount of the awards made available by HUD to provide assistance to the Indian Tribes and Alaskan Native Villages.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing Development Division, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–0068, ext. 111 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: The Emergency Shelter Grants program funding for this Notice is authorized by

the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993 (Pub. L. 102–389, approved October 6, 1992). The proposed rule on Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages, published in the Federal Register on April 5, 1993 (58 FR 17764), describes the method for allocating these funds.

This Notice announces FY 1994 funding of $1,469,000 that was used to assist in improving the quality of existing emergency shelters for the homeless, to make available additional emergency shelters, to meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and to help prevent homelessness. The FY 1994 awards announced in this Notice were selected for funding consistent with the provisions in the Notices of Funding Availability published in the Federal Register on June 28, 1994 (59 FR 33380).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: April 16, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1994—EMERGENCY SHELTER GRANTS PROGRAM FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES—RECIPIENTS OF FUNDING DECISIONS

Tribe	Amount
Pleasant Point Passamaquoddy Tribe, P.O. Box 343, Perry, Maine 04667	$266,138
Menominee Indian Tribe of Wisconsin, Tribal Center, P.O. Box 910, Keshena, WI 54135	61,371
Prairie Band Potawatomi, Route 2, Box 50A, Mayetta, KS 66509	75,595
Miami Tribe, P.O. Box 1326, Miami, OK 74355	66,890
Ponca, P.O. Box 2 White Eagle, Ponca City, OK 74601	64,782
Fort Sill Apache Tribe of Oklahoma, Apache Business Committee, Route 2, Box 121, Apache, OK 730006	56,029
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, OK 74465	56,029
Choctaw, P.O. Drawer 1210, Durant, OK 74701	28,015
Kickapoo, Route 1, Box 157–A, Horton, KS 66439	26,681
Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570	441,536
Southern Ute Indian Tribe, P.O. Box 737, Ignacio, CO 81137	110,457
Northern Cheyenne Tribe, P.O. Box 128, Lame Deer, MT 59043	66,247
Crow Creek Sioux Tribe, P.O. Box 50, Fort Thompson, SD	64,656
Native Village of Eyak Tribal Council, P.O. Box 1388, Cordova, AK 99574–1388	84,555
Total Amount	$1,468,981

[FR Doc. 96–9757 Filed 4–19–96; 8:45 am]

BILLING CODE 4210–33–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3505–N–02]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages, Fiscal Year 1993; Announcement of Funding Awards

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1993 for the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages. The purpose of this Notice is to publish the names and addresses of the awardees and the amount of the awards made available by HUD to provide assistance to the Indian Tribes and Alaskan Native Villages.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing Development Division, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–0068, ext. 111 (this is not a toll-free number). Hearing- or speech-impaired persons, may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CDBG Program for Indian Tribes and Alaskan Native Villages is authorized under Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR Part 571.

This Notice announces FY 1993 funding to be used to assist in the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and economic opportunities. The FY 1993 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability published in the Federal Register on August 26, 1993 (58 FR 45176).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: April 16, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1993 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FUNDING DECISIONS

[Program Name: Community Development Block Grant; Program for Indian Tribes and Alaskan Native Villages; Statute: Public Law 101–625; Nofa Published: August 26, 1993]

Funding recipient (name and address)	Amount approved
EASTERN/WOODLANDS ONAP	
Sokoagon Chippewa, Route 1, Box 625, Crandon, WI 54520	$300,000
Sault Ste. Marie, 206 Grenough St., Sault Ste. Marie, MI 49783	300,000
Red Lake, P.O. Box 550, Red Lake, MN 56671	160,000
Poarch Creek, HC 69, Box 85B, Atmore, AL 36502	298,821
Lac Courte Oreilles, Route 2, Box 2700, Hayward, WI 54843	203,700
Forest County, P.O. Box 340, Crandon, WI 54520	300,000
Pleasant Point, P.O. Box 343, Perry, ME 04667	300,000
Seneca Nation, P.O. Box 1490. Irving, NY 14081	295,550
Indian Township, P.O. Box 301, Princeton, ME 04668	196,465
Choctaw, P.O. Box 6010, Choctaw Branch, Philadelphia, MS 39350	300,000
Eastern Cherokee, P.O. Box 455, Cherokee, NC 28719	300,000
SOUTHERN PLAINS ONAP	
Absentee-Shawnee Tribe, 2025 S. Gordon Cooper Drive, Shawnee, OK 74801	300,000
Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465	500,000
Cheyenne-Arapaho, Tribe, P.O. Box 38, Concho, OK 73022	266,560
Chickasaw Nation, P.O. Box 1548, Ada, OK 74820	500,000
Chitimacha Tribe, P.O. Box 661, Charenton, LA 70523–6691	300,000
Citizen Band of Potawatomi Tribe, 1901 S. Gordon Cooper Drive, Shawnee, OK 74801	400,000
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	400,000
Creek Nation, P.O. Box 580, Okmulgee, OK 74447	500,000
Iowa Tribe of KS & NE, Route 1, Box 58–A, White Cloud, KS 66094	300,000
Kaw Tribe, P.O. Box 50, Kaw City, OK 74641	300,000
Osage Nation, 627 Grandview, Pawhuska, OK 74056	500,000
Ponca Tribal Business Committee, Box 2, White Eagle, Ponca City, OK 74601	300,000
Seminole Nation, P.O. Box 1498, Wewoka, OK 74884	400,000
Seneca-Cayuga Tribe, P.O. Box 1283, Miami, OK 74355	300,000
Coushatta Tribe, P.O. Box 818, Elton, LA 70532	300,000
Pawnee Business Council, P.O. Box 470, Pawnee, OK 748058	300,000
Sac & Fox Nation, Route 2, Box 246, Stroud, OK 74079	400,000
Wyandotte Tribe, P.O. Box 250, Wyandotte, OK 74370	274,954
NORTHERN PLAINS ONAP	
Ft. Belknap, P.O. Box 66, RR 1, Harlem, MT 59526	800,000
Sisseton, P.O. Box 509, Agency Village, SD 57262	500,000
Rosebud, P.O. Box 430, Rosebud, SD 57570	341,250
Southern Ute, P.O. Box 737, Ignacio, CO 81137,	800,000
N. Arapahoe, P.O. Box 396, Ft. Washakie, WY 82514	547,600
Ft. Peck, P.O. Box 1027, Poplar, MT 59526	223,090
Shoshone, P.O. Box 538, Ft. Washakie, WY 82514	800,000
Salish-Kootenai, P.O. Box 278, Pablo, MT 59855	800,000
Standing Rock, P.O. Box D, Fort Yates, ND 58538	769,002
Turtle Mtn., P.O. Box 900, Belcourt, ND 58316	680,000
Southwest Onap	
Howonquet Indian Council of the Smith River Rancheria, P.O. Box 239, Smith River, CA 95567	450,000
Trinidad Rancheria, P.O. Box 630, Trinidad, CA 95570–0630	449,712
Single Springs Rancheria, P.O. Box 1340, Single Springs, CA 95682	449,110
Pit River Indian Tribe, P.O. Drawer 1570, Burney, CA 96013	450,000
Pinoleville Rancheria, 367 N. State Street #204, Ukiah, CA 95482	333,796
Picayune Rancheria, P.O. Box 269, Coarsegold, CA 93614	440,000
Hoopa Valley Indian Reservation, P.O. Box 1348, Hoopa, CA 95546	518,086
Guidiville Rancheria, P.O. Box 339, Talmage, CA 95481	450,000
Greenville Rancheria, 634 Saint Marks, Suite C, Redding, CA 96003–1815	450,000
Colusa Rancheria, P.O. Box 8, Colusa, CA 95932	379,000
Zuni Pueblo Indian Reservation, P.O. Box 339, Zuni, NM 87327	997,634
Big Pine Indian Reservation, P.O. Box 700, Big Pine, CA 93513	450,000
Tonto Apache Tribe, Tonto Apache Reservation #30, Payson, AZ 85541	450,000
Tohono O'odham Indian Tribe, P.O. Box 837, Sells, AZ 85634	1,884,940
Santa Ana Pueblo, P.O. Box 517, Santa Ynez, CA 93460	370,228
Kaibab-Paiute Tribe, H.C. 65, Box #2, Fredonia, AZ 86022	277,626
Hualapai Indian Tribe, P.O. Box 179, Peach Springs, AZ 86434	450,000
Gila River Indian Community, P.O. Box 97, Sacaton, AZ 85247	86,250
Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363	450,000

APPENDIX A.—FISCAL YEAR 1993 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FUNDING DECISIONS—Continued

[Program Name: Community Development Block Grant; Program for Indian Tribes and Alaskan Native Villages; Statute: Public Law 101–625; Nofa Published: August 26, 1993]

Funding recipient (name and address)	Amount approved
Cuyapaipe Band of Mission Indians, 2271 Alpine Blvd., Alpine, CA 91901	354,850
Cabazon Indian Reservation, 84–245 Indio Springs Drive, Indio, CA 92201	415,000
Maopa Band of Paiutes, P.O. Box 340, Moapa, NV 89025–0340	450,000
The Navajo Nation Council, P.O. Box 9000, Window Rock, AZ 86515	1,034,839
San Carlos Apache Tribe, P.O. Box ''O'', San Carlos, AZ 85550	743,695
Manzanita Band of Mission, P.O. Box 1302, Boulevard, CA 91905	416,335
Mescalero Indian Reservation, P.O. Box 176, Mescalero, NM 88340	546,617
White Mountain Apache Tribe, P.O. Box 700, Whiteriver, AZ 85941	1,096,527
Bishop Paiute Indian Reservation, P.O. Box 548, Bishop, CA 93515	450,000
NORTHWEST ONAP	
Shoshone Bannock Tribes, P.O. Box 306, Fort Hall, ID 83203	269,999
Burns Paiute Tribe, H.C. 71, 100 Pasigo St., Burns, OR 97720	267,721
Confederated Tribes of the Grand Ronde Community of Oregon, 9615 Grand Ronde Road, Grand Ronde, OR 97347	270,000
Klamath Tribe, P.O. Box 436, Chiloquin, OR 97624	270,000
Nisqually Tribe, 4820 She-Nah-Num Dr. S.E., Olympia, WA 98503	260,000
Nooksack Tribe, P.O. Box 157, Deming, WA 98244	270,000
Sauk-Suiattle Tribe, 5318 Chief Brown Lane, Darrington, WA 998241	96,726
Shoalwater Bay Tribe, P.O. Box 130, Tokeland, WA 98590	270,000
Skokomish Tribe, N. 80 Tribal Center Road, Shelton, WA 98584	270,000
ANCHORAGE ONAP	
Klawock Cooperative Assn., P.O. Box 112, Klawock, AK 99925	486,472
Chalkyitsik Village Council, P.O. Box 57, Chalkyitsik, AK 99788	371,090
Native Village of Savoonga, P.O. Box 120, Savoonga, AK 99769	500,000
Egegik Village Council, P.O. Box 29, Egegik, AK 99579	300,000
Seldovia Village Tribe, Drawer L, Seldovia, AK 99663	134,911
Tanana Chiefs Conference (Nulato), 122 First Avenue, Fairbanks, AK 99701	500,000
Tuluksak Native Council, P.O. Box 156, Tuluksak, AK 99679	337,647
Tlingit-Haida (Juneau), 320 W. Willoughby Avenue, Juneau, AK 99801	500,000
Koyukuk Native Village, P.O. Box 109, Koyukuk, AK 99754	206,929
Native Village of Chevak, 140 Aurora Street, Chevak, AK 99563	500,000

[Fr Doc. 96–9758 Filed 4–19–96; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–1150–00]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dakotas District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas District Resource Advisory Council will be held May 30–31, 1996 at the Phil Town Inn, Sturgis, South Dakota at 8:00 a.m. (MDT). The meeting will focus on land exchanges in South Dakota, oil and gas developments, and the Belle Eldridge Mine. The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management.

The meeting is open to the public. A public comment period is set for 11:00 a.m.on the 31st. The public may make oral statements to the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspections and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jon Pinner, Administrative Officer, Dakotas District Office, 2933 3rd Ave West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: April 16, 1996.

Douglas J. Burger,

District Manager.

[FR Doc. 96–9805 Filed 4–19–96; 8:45 am]

BILLING CODE 4310–DN–P

[NV–930–1430–01; N–57578]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public lands in Elko and Eureka Counties, Nevada, administered by the Bureau of Land Management, including the mineral estate with no known value, have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1716).

Mount Diablo Meridian, Nevada

T. 35 N., R. 49 E.,
Sec. 8, NW¼;
Sec. 18, lots 1, 2, E½NW¼.

T. 36 N., R. 49 E.,
Sec. 26, SW¼SW¼NW¼, SW¼;
Sec. 34, N½, W½SW¼, SE¼.

T. 36 N., R. 50 E.,
Sec. 8, SE¼SE¼;
Sec. 17, E½NE¼, NE¼SE¼;
Sec. 28, S½NW¼.

Containing 1278.64 acres, more or less.

In exchange for these lands the United States will acquire the following described private lands from Barrick Goldstrike Mines, Inc.

Mount Diablo Meridian, Nevada

T. 33 N., R. 55 E.,
Sec. 31, lots 1–4, E½, E½W½.

Containing 689.68 acres, more or less.

FOR FURTHER INFORMATION: Further information concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire non-Federal land located within the South Fork Canyon Special Recreation Management Area that has high values for riparian and wildlife habitat and public recreation. The public interest will be well served by completing the exchange.

Barrick will acquire the mineral and surface estate in and to the Federal lands, subject to a reservation to the United States for oil, gas, and geothermal resources. The United States will acquire an undivided one-half interest in the mineral estate in and to the non-Federal lands.

The above described lands will be subject to an appraisal to determine the value of the lands to be exchanged. Land values will be equalized based on the final appraisal. Any equalization payment would be made in accordance with 43 CFR 2201.5(c)(2).

Subject to valid existing rights, publication of this notice in the Federal Register will segregate the subject lands from all appropriations under the public land laws, including the mining laws, mineral leasing laws, and the Geothermal Steam Act. The segregation will terminate upon issuance of the patent or upon publication in the Federal Register of a termination of segregation, or two years from date of publication, whichever occurs first.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil and gas and geothermal. A more detailed description of this reservation, which will be included in the patent document, is available for review at the Elko District office.

The patent will be subject to:

1. Those rights for powerline purposes which have been granted to Sierra Pacific Power Co., its successors or assignees, by right-of-way grant N–38874 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

2. Those rights for powerline purposes which have been granted to Sierra Pacific Power Co., its successors or assignees, by right-of-way grant N–47775 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for water pipeline purposes which have been granted to Elko Land and Livestock Co., its successors or assignees, by right-of-way grant N–52388 under the authority of the Act of October 21, 1976 (43 U.S.C 1761).

4. Those rights for water storage reservoir purposes which have been granted to Elko Land and Livestock Co., its successors or assignees, by right-of-way grant N–54209 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for fenceline purposes which have been granted to the Bureau of Land Management, its successors or assigns, by right-of-way reservation N–60524 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

6. Those rights for fenceline purposes which have been granted to the Bureau of Land Management, its successors or assigns, by right-of-way reservation N–60525 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

7. Those rights for cattleguard purposes which have been granted to the Bureau of Land Management, its successors or assigns, by right-of-way reservation N–60526 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

8. Those rights for access road purposes which have been granted to Newmont Gold Company, its successors or assigns, by right-of-way grant N–60654 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

Permitted grazing use on the selected lands would be reduced by 339 AUMs (suspended and active livestock use) from the grazing permit held by Elko Land and Livestock Co. as a result of this action. Unless the two-year notification is waived for the above reduction, the reduction would occur two years after receipt of the official notification in accordance with the regulations contained in 43 CFR 4110.4.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the proposed land exchange and Environmental Assessment to the Elko District Office, Bureau of Land Management, Attn: Kenneth Nelson, Realty Specialist, 3900 E. Idaho Street, Elko, NV 89801. All objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action shall become the final determination of the Department of the Interior.

Dated: April 10, 1996.

David J. Vandenberg,

Acting District Manager.

[FR Doc. 96–9774 Filed 4–19–96; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Control of Acadia National Park, National Park Service, Bar Harbor, ME

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of the inventory of human remains in the control of the National Park Service at Acadia National Park, Bar Harbor, ME.

A detailed inventory and assessment of the human remains has been made by professional staff of the National Park Service in consultation with representatives of the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Nation, identified collectively hereafter as the Wabanaki Tribes of Maine.

Human remains representing nine individuals and associated funerary objects from the Fernald Point site (ME Site 43–24), a precontact shell midden within the Park boundaries, was previously published in a Notice of Inventory Completion dated July 21, 1994. This site represents the Ceramic Period (1–1600 AD).

In 1995, additional human remains from the nine previously reported individuals were located among faunal remains of the Park's museum collection. Three human bone fragments representing a minimum of one individual from the same site were also discovered. No known individuals were identified. No further associated funerary objects are present.

Evidence presented by representatives of the Wabanaki Tribes of Maine identifies Acadia National Park area as both a historic and precontact gathering place for the Wabanaki Tribes of Maine. The Prehistoric Subcommittee of the Maine State Historic Preservation Office's Archaeological Advisory Committee has found it reasonable to trace a shared group identity from the Late Prehistoric Period (1000–1500 AD) inhabitants of Maine as an undivided whole to the four modern Indian tribes known collectively as the Wabanaki

Tribes of Maine on the basis of geographic proximity; survivals and continuity of stone, ceramic and perishable material culture skills; and probable linguistic continuity across the Late Prehistoric/Contact Period boundary. In a 1979 article, Dr. David Sanger, the archeologist who conducted the 1977 excavations at the Fernald Point Site and uncovered the above mentioned burials, recognizes a relationship between Maine sites dating to the Ceramic Period (1- 1600 AD) and present-day Algonquian speakers generally known as Abenakis, including the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Nation.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least ten individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains and the Wabanaki Tribes of Maine representing the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Nation.

This notice has been sent to officials of the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Mr. Paul Haertel, Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609; telephone: (207) 288–0374, May 22, 1996. Repatriation of the human remains may begin after that date if no additional claimants come forward.

Dated: April 10, 1996

C. Timothy McKeown

Acting Departmental Consulting ArcheologistArcheology & Ethnography Program

[FR Doc. 96–9785 Filed 4–19–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Grand Portage National Monument, National Park Service, Grand Marais, MN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of the inventory of human remains and associated funerary objects in the control of the National Park Service at Grand Portage National Monument, Grand Marais, MN.

A detailed assessment of the human remains and associated funerary objects was made by National Park Service professional staff and presented in writing to the Chairman of the Grand Portage Reservation Business Committee. The National Park Service has received no official reply.

In 1962, four historical burials were excavated on a low hill on Grand Portage Creek within the monument boundaries by representatives of the Minnesota Historical Society. Human remains and associated funerary objects were recovered and taken by the Minnesota Historical Society to St. Paul for analysis. Most of the human remains were returned to Grand Portage National Monument in 1968. These human remains were subsequently destroyed in the Great Hall fire of 1969.

The human remains retained by the Minnesota Historical Society represent a minimum of two individuals. No known individuals were identified. The 11,000 objects found with the four original burials include glass trade beads, trade silver and brass jewelry, iron knives, textile fragments, birch bark, clay pipe fragments, and non-human bone fragments. These objects indicate the burials date between 1800–1825. Ethnographic information gathered at the time of the original excavation identified the hillside burial location as being consistent with traditional Chippewa practice. The burial site is also within the traditional-use lands of Grand Portage village, a permanent occupation of the Grand Portage Band during the time of these burials.

Based on the above mentioned information, officials of the Grand Portage National Monument have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least two individuals of Native American ancestry. Monument officials have also determined that, pursuant to 25 U.S.C. 3001 (3)(A) and (B) the 11,000 items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, monument officials 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 the human remains and funerary objects and the Grand Portage Reservation Business Committee.

This notice has been sent to officials of the Grand Portage Reservation Business Committee. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dean C. Einwalter, Superintendent, Grand Portage National Monument, P.O. Box 668, Grand Marais, MN 55604; telephone (218) 387–2788 before May 22, 1996. Repatriation of the human remains and associated funerary objects to the Grand Portage Reservation Business Committee may begin after that date if no additional claimants come forward.

Dated: April 16, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology and Ethnography Program

[FR Doc. 96–9786 Filed 4–19–96; 8:45 am]

BILLING CODE 4310–70–F

[FR Doc. 96–9758 Filed 4–19–96; 8:45 am]

BILLING CODE 4210–33–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development (BIFAD); Notice of Meeting

Pursuant to the Federal Advisory Committee Act, Notice is hereby given of the one hundred and twentieth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9:00 a.m. to 5:00 p.m. on May 14, and from 9:00 a.m. to 12:00 noon on May 15, 1996 in Room 1207, both days, in the Department of State, at Twenty-First Street N.W. and Virginia Avenue N.W. (2201 C St NW.), Washington, DC 20523.

The Agenda will concentrate on preparation for the U.S. position for the upcoming World Food Summit being organized by the Food and Agriculture Organization of the United Nations. This advice will be useful to USAID, as well as to other U.S. Government Agencies.

The Agenda for this meeting will include a review of short and long term projections of the world food supply. BIFAD will examine the assumptions upon which these projections are made. Also, the Board will consider possible political and economic impact on the United States of food insecurity in developing countries. BIFAD will present its views on these questions and advise on what the United States can do to improve global food security.

The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Dr. Shirley Pryor at Agency for International Development, Office of Agriculture and Food Security, SA–2, Room 401, Washington, DC 20523–-0214, telephone (202) 663–2545, fax (202) 663–2552 or internet[spryor@usaid.gov] with the following information necessary for entrance to the State Department: full name, organization, Social Security number and date of birth. You should enter the State Department at the C Street entrance.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood, the Designated Federal Officer for BIFAD at USAID. Write him in care of the Agency for International Development, Office of Agriculture and Food Security, SA–2, Room 401K, Washington, DC 20523–0214, telephone him at (202) 663–2536 or fax (202) 663–2552.

Tracy Atwood,

AID Designated Federal Officer, Chief, Food Policy Division, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs.

[FR Doc. 96–9769 Filed 4–19–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Georgia-Pacific Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in Delaware, Civil No. 96–164, as to defendant, Georgia-Pacific Corporation (''Georgia-Pacific'').

On March 29, 1996, the United States filed a Complaint alleging that the proposed acquisition by Georgia-Pacific of the gysum business assets of Domtar, Inc. (''Domtar'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed the same time as the Complaint, requires Georgia-Pacific to divest its Buchanan, New York and Wilmington, Delaware gypsum board plants, along with certain tangible and intangible assets.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, (202) 514–2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and vence of this action is proper in the District of Delaware.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and from the date of the filing of this Stipulation, shall comply with all the terms and provisions of the Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: March 29, 1996.

For Plaintiff, United States:

Anne K. Bingaman,

Assistant Attorney General District of Columbia #369900.

Anthony V. Nanni,

Chief, Litigation I Section, State of New York (no bar number assigned).

Willie L. Hudgins,

Asst. Chief, Litigation II Section, State of Virginia #01547.

John Schmoll,

Attorney, State of Wisconsin #1013897, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307–5780.

Gregory M. Sleet,

US Attorney,

By: Richard G. Andrews,

AUSA, State of Delaware #2199, 1201 Market Street, Suite 1100, Wilmington, Delaware 19899, (302) 573–6277.

For Defendant, Georgia-Pacific Corp.

Donald L. Flexner,

Esquire, Crowell & Morning 1001 Pennsylvania Avenue, N.W. Washington, DC 20004–2595 (202) 624–2500.

Matthew B. Lehr,

Esquire, State of Delaware #2370, Morris, Nichols, Arsht & Tunnell, 1201 Market Street, Wilmington, Delaware 19801, (302) 575–7281.

Order

It is so ordered, this 29th of March, 1996.

United States District Judge

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on March 29, 1996, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an

admission by any party with respect to any issue of law or fact herein;

And whereas, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendant to make certain divestitures for the purpose of establishing viable competition in the production and sale of gypsum board;

And whereas, defendant has represented to plaintiff that the divestitures ordered herein can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Georgia-Pacific'' or ''defendant'' means defendant Georgia-Pacific Corporation, a Georgia corporation headquartered in Atlanta, Georgia, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. ''The Northeast Region'' means the District of Columbia and the states of Maine, Vermont, New Hampshire, Rhode Island, Connecticut, Massachusetts, New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia.

C. ''Gypsum Board Assets'' means: (1) all rights, titles and interests, including all fee and all leasehold and renewal rights, in Georgia-Pacific's Buchanan, New York gypsum board plant and related warehouses and docking facilities (the ''Buchanan Plant'') including, but not limited to, all real property, capital equipment, fixtures, inventories, contracts (including but not limited to customer contracts), customer lists, trucks and other vehicles, interests, assets or improvements related exclusively to the production, distribution and sale of gypsum board at the Buchanan Plant; and

(2) All rights, titles and interests, including all fee and all leasehold and renewal rights, in Georgia-Pacific's Wilmington, Delaware gypsum board plant and related warehouses and docking facilities (the ''Wilmington Plant'') including, but not limited to, all real property, capital equipment, fixtures, inventories, contracts (including but not limited to customer contracts), customer lists, trucks and other vehicles, interests, assets or improvements related exclusively to the production, distribution and sale of gypsum board at the Wilmington Plant.

D. ''Gypsum board'' means material that consists primarily of a solid, flat core of processed gypsum between two sheets of paper surfacing, and which is used principally for constructing or repairing interior walls and ceilings of commercial and residential buildings.

III. Applicability

A. The provisions of this Final Judgment apply to the defendant, its successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale or other disposition of all or substantially all of the Gypsum Board Assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Georgia-Pacific is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and fifty (150) calendar days after the filing of this Final Judgment, to:

(i) Divest the Gypsum Board Assets to a purchaser or purchasers;

(ii) Enter into a perpetual, non-exclusive license (or licenses, as the case may be) with the purchaser or purchasers, transferable to any future purchaser of the Wilmington or Buchanan Plants, to use, in manufacturing gypsum board at such Plants, all intangible assets, wherever located, that have been used in the last six (6) months in the manufacture of gypsum board at such Plants, including but not limited to, trade secrets and know-how, but excluding patents for the DENS products, trademarks, trade names, service marks, and service names; and

(iii) At the option of the purchaser or purchasers, enter into a supply contract for gypsum rock (which may or may not include transportation) and/or gypsum linerboard paper sufficient to meet all or part of the capacity requirements of the Buchanan and Wilmington Plants over a period of up to ten (10) years; provided that the terms and conditions of any contractual arrangement meant to satisfy this provision must be related reasonably to market conditions for gypsum rock and/or gypsum linerboard paper.

B. Divestiture of Georgia-Pacific's leasehold interest, if any, in the Gypsum Board Assets shall be by transfer of the entire leasehold interest, which shall be for the entire remaining term of such leasehold, including any renewal rights.

C. Defendant agrees to use its best efforts to accomplish the divestitures as expeditiously and timely as possible. Plaintiff, in its sole discretion, may extend the time period for any divestiture for two additional periods of time not to exceed sixty (60) calendar days in toto.

D. In accompanying the divestitures ordered by this Final Judgment, defendant promptly shall make known, by usual and customary means, the availability of the Gypsum Board Assets and the licenses and supply contracts described in Section IV (A) of this Final Judgment (collectively, the ''Divestiture Package''). Defendant shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendant shall make known to any person making an inquiry regarding a possible purchase of the Divestiture Package that the assets described in Section II (C) and the licenses and supply contracts described in Section IV (A) of this Final Judgment are being offered for sale and that the Buchanan and Wilmington Plants and related assets may be purchased as a two-plant package or sold separately to two different purchasers. Defendant shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Package customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendant shall make available such information to plaintiff at the same time that such information is made available to any other person.

E. Defendant shall not interfere with any negotiations by any purchaser or

purchasers to employ any Georgia-Pacific employee who works at, or whose principal responsibility is the manufacture, sale or marketing of gypsum board produced at Georgia-Pacific's Buchanan and Wilmington Plants.

F. Defendant shall permit prospective purchasers of the Divestiture Package to have access to personnel and to make such inspection of the Gypsum Board Assets, the intangible assets relating to the licenses described in Section IV (A) of this Final Judgment, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Unless plaintiff otherwise consents in writing, the divestiture pursuant to Section IV (A), or by the trustee appointed pursuant to Section V of this Final Judgment, shall include the Divestiture Package and be accomplished by selling or otherwise conveying the assets described in Section II (C) and by entering into the licenses and supply contracts described in Section IV (A) of this Final Judgment, to one or two purchasers, in such a way as to satisfy plaintiff, in its sole discretion, that the Divestiture Package can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the manufacture and sale of gypsum board. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's sole satisfaction that: (1) The purchaser or purchasers have the capability and intent of competing effectively in the manufacture and sale of gypsum board in the Northeast Region; (2) the purchaser or purchasers have or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of gypsum board in the Northeast Region; and (3) none of the terms of any agreement between the purchaser or purchasers and defendant give defendant the ability unreasonably to raise the purchaser's or purchasers' costs, to lower the purchaser's or purchasers' efficiency, or otherwise to interfere in the ability of the purchaser or purchasers to compete effectively in the Northeast Region.

V. Appointment of Trustee

A. In the event that Georgia-Pacific has not divested the Divestiture Package within the time specified in Sections IV (A) or (C) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Divestiture Package.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Gypsum Board Assets and enter into the licenses and supply contracts described in Section IV (A) of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgement, the trustee shall have the power and authority to hire at the cost and expense of defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser or purchasers acceptable to plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendant must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendant, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Georgia-Pacific and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Package and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendant shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of defendant, and defendant shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture order under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Georgia-Pacific or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendant, the proposed purchaser or purchasers,

or any other third party additional information concerning the proposed divestiture and the proposed purchaser or purchasers. Defendant and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendant, the proposed purchaser or purchasers, and any third party, whichever is later, plaintiff shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant and the trustee that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser or upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendant under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Georgia-Pacific shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entering into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Package, and shall describe in detail each contact with any such person during that period. Each such affidavit shall further describe in detail any negotiations, including negotiations concerning the terms, conditions and price, between a purchaser or purchasers of the Gypsum Board Assets and Georgia-Pacific for the license(s) and supply contract(s) for gypsum rock and/or gypsum linerboard paper described in Section IV (A) of this Final Judgment.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Georgia-Pacific shall deliver to plaintiff an affidavit which describes in detail all actions Georgia-Pacific has taken and all steps Georgia-Pacific has implemented on an on-going basis to preserve the Gypsum Board Assets pursuant to Section IX of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section IX (F) of this Final Judgment with respect to Georgia-Pacific's efforts to preserve the Gypsum Board Assets. The affidavit also shall describe, but not be limited to, Georgia-Pacific's efforts to maintain and operate the Gypsum Board Assets as an active competitor, maintain the management, sales, marketing and pricing of the Gypsum Board Assets apart from Georgia-Pacific's gypsum business, maintain and increase sales of gypsum board producted at the Buchanan and Wilmington Plants, and maintain the Gypsum Board Assets in operable condition at current or greater capacity configurations. Georgia-Pacific shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Georgia-Pacific's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendant shall preserve all records of all efforts made to preserve and divest the Divestiture Package.

VIII. Financing

With prior written consent of the plaintiff, defendant may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendant shall take all steps necessary to ensure that the Gypsum Board Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the manufacture and sale of gypsum board in the Northeast Region; and that, except as necessary to comply with Section IX (B) of this Final Judgment, the management of the Gypsum Board Assets will not be influenced by Georgia-Pacific and the books, records, and competitively sensitive sales, marketing and pricing information associated with the Gypsum Board Assets will be kept separate and apart from Georgia-Pacific's other gypsum board business.

B. Defendant shall use all reasonable efforts to maintain and increase sales of gypsum board produced at its Buchanan and Wilmington Plants, and defendant shall maintain at 1995 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing and merchandising support for gypsum board sold from the Buchanan and Wilmington Plants. Georgia-Pacific's sales and marketing employees responsible for sales of gypsum board from the Buchanan and Wilmington Plants shall not be transferred or reassigned to other plants of defendant.

C. Defendant shall take all steps necessary to ensure that the Gypsum Board Assets are fully maintained in operable condition at no lower than their current rated capacity configurations, and shall maintain and adhere to normal maintenance schedules for the Gypsum Board Assets.

D. Defendant shall not, except as part of a divestiture approved by plaintiff, remove, sell or transfer any of the Gypsum Board Assets, including all intangible assets that relate to the licenses described in Section IV (A) of this Final Judgment, other than gypsum board and related products sold in the ordinary course of business.

E. Defendant shall take no action that would jeopardize the divestiture of the Divestiture Package.

F. Defendant shall appoint a person or persons to oversee the Gypsum Board Assets, and who will be responsible for defendant's compliance with Section IX of this Final Judgment.

X. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal offices, shall be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the

Antitrust Division, made to defendant's principal offices, defendant shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Section X of this Final Judgment shall be divulged by a representative of plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(b)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

Nature and Purpose of the Proceeding

On March 29, 1996, the United States filed a civil antitrust Complaint,) which alleges that Georgia-Pacific Corporation's (''Georgia-Pacific'') proposed acquisition of the gypsum business of Domtar Inc. (''Domtar'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the combination of the third and fourth largest gypsum board sellers in the Northeast Region would lessen competition substantially in the production and sale of gypsum board in the Northeast Region. As defined in the Complaint, the Northeast Region encompasses Washington, D.C. and the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Georgia-Pacific from acquiring control of Domtar's gypsum business, or otherwise combining such business with Georgia-Pacific's own business in the United States.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Georgia-Pacific to complete its acquisition of Domtar's gypsum business, but require certain divestitures that will preserve competition in the Northeast Region. This settlement consists of a Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment orders Georgia-Pacific to divest to one or more purchases its Buchanan, New York and Wilmington, Delaware gypsum board plants, and certain related tangible and intangible assets. Georgia-Pacific must complete the divestiture of these plants and related assets within one hundred and fifty (150) calendar days after the date on which the proposed Final Judgment was filed (i.e., March 29, 1996), in accordance with the procedures specified therein.

The Stipulation and Order and proposed Final Judgment require Georgia-Pacific to ensure that, until the divestitures mandated by the proposed Final Judgment have been accomplished, the two gypsum board plants and related assets to be divested will be maintained and operated as an independent, ongoing, economically viable and active competitor. Georgia-Pacific must preserve and maintain the gypsum board plants to be divested as saleable and economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of Georgia-Pacific's gypsum board business. Thus, subject to Georgia-Pacific's obligation to preserve the assets to be divested, the two plants will be operated independent of, and in competition with, Georgia-Pacific, pending divestiture. Georgia-Pacific will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

The United States and Georgia-Pacific have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

Description of the Events Giving Rise to the Alleged Violation

A. Georgia-Pacific, Domtar and the Proposed Transaction

Georgia-Pacific, based in Atlanta, Georgia, is a diversified producer of building products and pulp and paper, with net sales of over $12 billion for its 1994 fiscal year. Operating ten gypsum board plants in the United States, Georgia-Pacific is the nation's third largest gypsum products manufacturer, with an annual capacity to produce approximately 3.1 billion square feet of gypsum board. In 1995, Georgia-Pacific's United States gypsum board sales totaled about $251 million.

Domtar, Inc., a Canadian corporation headquartered in Montreal, Canada, operates its gypsum business in the United States through its wholly owned subsidiaries, Domtar gypsum, Inc., and Domtar Industries, Inc., with offices in Ann Arbor, Michigan. The fourth largest producer and seller of gypsum board in the United States, Domtar has the annual capacity to produce about four billion square feet of gypsum board in North America. In 1995, Domtar's United States gypsum board sales totaled about $221 million.

On November 8, 1995, Georgia-Pacific agreed to acquire certain stock and all the gypsum manufacturing operations of Domtar and its subsidiaries in a cash transaction valued at $350 million. For $280 million, Georgia-Pacific will acquire Domtar's nine U.S. gypsum board plants, one gypsum linerboard paper mill, and two plants producing gypsum joint treatment. Georgia-Pacific

also proposes to acquire for $70 million Domtar's forty-nine percent interest in a gypsum quarry in Mexico, four Canadian gypsum board plants, one Canadian gypsum plaster plant, one Canadian gypsum joint treatment plant and a Canadian gypsum products warehouse. This transaction, which would take place in a concentrated oligopolistic industry, precipitated the government's suit.

B. The Transaction's Effects in the Northeast Region

The Complaint alleges that the manufacture of gypsum board constitutes a line of commerce, or relevant product market, for antitrust purposes, and that the Northeast Region constitutes a section of the country, or relevant geographic market. The Complaint alleges the effect of Georgia-Pacific's acquisition may be to lessen competition substantially in the manufacture and sale of gypsum board in the Northeast Region.

Gypsum board consists of processed gypsum rock sandwiched between sheets of liner board paper. Sometimes called drywall, wallboard or sheetrock, gypsum board is used to construct and repair interior walls and ceilings in residential and commercial buildings. No good economic functional substitutes exist for gypsum board.

Gypsum board customers in the Northeast Region have been served almost exclusively by gypsum board manufacturing plants located in the Region. Gypsum board is a bulky, fragile and heavy product and is cumbersome and expensive to ship long distances. It is generally sold on a delivered price basis, and freight is an important cost component. As a result, competition is regional, with producers selling the majority of gypsum board to buyers within a 500 mile radius of the producing plant. Domtar services the Northeast Region from its Newington, New Hampshire and Camden, New Jersey gypsum board plants, and Georgia-Pacific serves the Region from its Buchanan, New York and Wilmington, Delaware plants.

The Complaint alleges that Georgia-Pacific's acquisition of Domtar would increase the likelihood of coordinated pricing activity among gypsum board in manufacturers serving the Northeast Region and will increase the likelihood of anticompetitive price increases for consumers there. The acquisition would increase concentration significantly in the already highly concentrated, difficult-to-enter Northeast Region. If the proposed acquisition were to proceed, Georgia-pacific and the two largest producers in the Northeast Region, United States Gypsum Co. and National Gypsum Co., each with approximately 30 percent of the market, would control collectively about 90 percent of the gypsum board sales in the Northeast Region. Using the Herfindahl-Hirschman Index (''HHI'') as a measure of market concentration (HHI is defined and explained in Appendix A to the Complaint), the acquisition increases the HHI by over 400 points to over a 2700 post-merger level in the Northeast Region.

The structure of the gypsum board industry is fertile grounds for anticompetitive coordination. For example, gypsum board is a homogeneous product, and price is an important dimension of competition. Capacity, production and pricing information is widely available and price changes are normally announced well in advance of implementation. In addition, at least once every generation this century, civil or criminal actions have exposed successful price-fixing agreements among the dominant gypsum board manufacturers. *See United States* v. *Gypsum Industries Association, et al.*, E25–215 (S.D.N.Y. 1922); *United States* v. *United States Gypsum Co.*, 333 U.S. 364 (1948); *Wall Products Co.* v. *National Gypsum Co.*, 326 F. Supp. 295 (N.D. Cal. 1971); *United States* v. *United States Gypsum Co., et al.*, 600 F.2d 414 (3rd Cir. 1979).

New entry in the Northeast Region is unlikely to restore the competition lost through Georgia-Pacific's removal of Domtar from the marketplace. De novo entry into gypsum board manufacturing requires a significant capital investment and likely would take over two years before the gypsum board plant comes on-line.

Furthermore, manufacturers with gypsum board plants outside the Northeastern United States are unlikely to offer significant competition in the Northeast Region. With their capacity largely devoted to servicing the needs of customers concentrated around their plants, which are far from the Northeast, manufacturers outside the Northeast Region have neither the ability nor the incentive to ship sufficient quantities of gypsum board to defeat a small but significant nontransitory price increase in the Northeast Region. Collectively, the outside manufacturers represent less than six percent of the footage of gypsum board sold in the Northeast Region in 1995. Historically, whether in times of strong or weak demand, manufacturers located outside the Northeast have not had anything more than a small share of the sales in there.

D. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the Northeast Region will be lessened substantially; actual and potential competition between Georgia-Pacific and Domtar in the Northeast Region will be eliminated; and prices for gypsum board in the Northeast Region are likely to increase above competitive levels.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the production and sale of gypsum board in the Northeast Region by placing in independent hands the two gypsum board plants used by Georgia-Pacific to serve the Northeast Region prior to this acquisition. Within one hundred and fifty (150) calendar days after filing the proposed Final Judgment, Georgia-Pacific must divest its Wilmington, Delaware and Buchanan, New York gypsum board plants and related assets. Georgia-Pacific shall enter into a supply contract for gypsum rock and/or gypsum liner board paper which at the option of the purchaser(s) may be up to 10 years and sufficient to meet all or part of the Buchanan and Wilmington plants' requirements at terms reasonably related to market conditions. The plants and related assets will be sold to one or more purchasers who demonstrate to the sole satisfaction of the United States that they will be an economically viable and effective competitor, capable of maintaining or surpassing Georgia-Pacific's pre-acquisition market performance in the sale of gypsum board in the Northeast Region.

Until the ordered divestitures take place, Georgia-Pacific must take all reasonable steps necessary to accomplish the divestitures, and cooperate with any prospective purchaser. If Georgia-Pacific does not accomplish the ordered divestitures within the specific one hundred and fifty (150) calendar days, which may be extended by up to sixty (60) calendar days by the United States, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestitures. Georgia-Pacific must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Georgia-Pacific will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to

provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee shall file promptly with the Court a report which sets forth the trustee's efforts to accomplish the divestiture, explains why the divestiture has not been accomplished, and makes any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment neither will impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Georgia-Pacific or Domtar.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and Georgia-Pacific have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Georgia-Pacific. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the production and sale of gypsum board that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII

Standard of Review Under the APPA for proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 1995–1 Trade Cas. (CCH) ¶ 71,027, at 74,822 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24598 (1973). Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 1995–1 Trade Cas. at 74,829–74,833. Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

United States v. *Bechtel*, 648 F.2d at 666 (citation omitted) (emphasis added).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' (citations omitted). *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom., Maryland* v. *United States*, 460 U.S. 1001 (1983).

VIII

Determinative Documents

There are no determinative materials or documents within the meaning of the APA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Executed on: April ____, 1996.

John Schmoll,

Attorney, State of Wisconsin #1013897 Dept. of Justice, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5780.

Gregory M. Sleet,

United States Attorney,

By:

Richard G. Andrews,

Esquire, State of Delaware #2199, 1201 Market Street, Suite 1100, Wilmington, Delaware 19899, (302) 573–6277.

[FR Doc. 96–9767 Filed 4–19–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Michigan Materials and Processing Institute

Notice is hereby given that, on March 13, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Michigan Materials and Processing Institute (''MMPI'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its organization. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following companies were recently accepted as a Class A Shareholders in MMPI: American Commodities, Inc., Flint, MI; Automotive Composites Consortium, Dearborn, Auburn Hills, and Warren, MI; B&P Process Equipment and Systems, L.L.C., Saginaw, MI; Raybestos Products Company, Crawfordsville, IN; RheTech, Inc., Whitmore Lake, MI; and Dow Chemical Company, Midland, MI. Owens-Corning Fiberglas Corporation is no longer a shareholder in MMPI.

No other changes have been made in either the membership or the planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, MMPI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act of September 6, 1990, 55 FR 36710. The last notification was filed with the Department on August 1, 1995, and is unpublished.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–9766 Filed 4–19–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Semiconductor Research Corporation

Notice is hereby given that, on March 25, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et. seq.* (''the Act''), Semiconductor Research Corporation (''SRC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SRC has added LV Software, Inc. (dba Logic Vision) of San Jose, CA; as an Affiliate Member and Shipley Company, L.L.C. of Marlborough, MA, as a Science Area Member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SRC intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, SRC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281).

The last notification was filed with the Department on December 11, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on February 5, 1996 (61 FR 4289).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 96–9765 Filed 4–19–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

Agency Information Collection Activities: Revision of Existing Collection; Comment Request

ACTION: Notice of information collection under review; application to replace alien registration card.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or

additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comment and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Application to Replace Alien Registration Card.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–90. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to Replace a previously issued card.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,300,000 responses at 55 minutes (.90) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,170,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 16, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–9752 Filed 4–19–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: May 9, 1996, 10:00 am–12:00 noon, U.S. Department of Labor, Room S–1101, 200 Constitution Ave., NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Fernand Lavalle, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, D.C. this 16th day of April, 1996.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 96–9820 Filed 4–19–96; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Job Training Partnership Act; Pilots and Demonstration Program

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice.

SUMMARY: On March 22, 1996, the U.S. Department of Labor (DOL) sent grant announcements for a limited competition to service delivery areas (SDAs) that cover areas designated as empowerment zones and enterprise communities (EZ/ECs). Under this grant announcement, DOL will select a small number of sites to pilot-test a new initiative for serving out-of-school youth proposed in the President's fiscal year 1997 budget. In the pilot demonstration, opportunity areas for youth will be establishing within EZ/ECs, with the goal of increasing the employment rates of 16–24 year-olds in the target communities from current levels of less than 50 percent to 80 percent. Persons or groups interested in the possibility of participating in preparing proposals for this grant announcement can contact their local SDA or EZ/EC board. The names and addresses of contact persons for SDAs with EZ/ECs is attached.

FOR FURTHER INFORMATION: Brenda Banks, Grants Management Specialist (SGA/DAA 96–002), U.S. Department of Labor, Employment and Training Administration/OGCM/DAA, 200 Constitution Ave., N.W., Room S–4203, Washington, D.C. 20210. Phone Number (202) 219–8702 (This is not a toll-free call).

Signed at Washington, D.C. this 15th day of April 1996.

Robert J. Litman,

Deputy Administrator, Office of Policy and Research.

List of SDAs With EZ/ECs

Urban

California: Los Angeles, Ms. Susan Cleere-Flores, Los Angeles City Training and Job Development Division, 215 West Sixth Street, 10th Floor, Los Angeles, California 90014, (213) 485–5019, (213) 485–8151

California: Oakland, Ms. Gay Plair-Cobb, Oakland Private Industry Council, 360 22nd Street, Suite 250, Oakland, California 94612–3025, (510) 891–9393, (510) 891–9968

Georgia: Atlanta, Ms. Valena Rhodes-Franklin, Private Industry Council, Inc., 100 Edgewood Avenue, Suite 1600, Atlanta, Georgia 30303, (404) 658–6310, (404) 658–7091

Chicago: Illinois, Ms. Mary Gonzalez-Koening, Office of Employment and Training, 510 North Peshtigo Court, Suite 2A, Chicago, Illinois 60611, (312) 744–7700, (312) 744–9001

Baltimore: Maryland, Ms. Linda Harris, Office of Employment Development, 417 East Fayette Street, Suite 468, Baltimore, Maryland 21202, (410) 396–1910, (410) 396–3675

Boston: Massachusetts, Mr. Edward DeMore, Economic Development and Industrial Corporation, 43 Hawkins Street, Boston, Massachusetts 02114, (617) 635–3342, (617) 635–4286

Detroit: Michigan, Mr. Willie Walker, City of Detroit Employment and Training Department, 707 West Milwaukee Street, Detroit, Michigan 48202, (313) 876–0674, (313) 876–0686

Kansas: Kansas City, Ms. Ann Conway, Kansas Private Industry Council, Inc., 1020 Gateway Centre II, Fourth and State, Kansas City, Kansas 66101, (913) 371–1607, (913) 371–6189

Missouri: Kansas City, Mr. Clyde McQueen, Full Employment Council, 1740 Paseo, Suite D, Kansas City, Missouri 64108, (816) 471–2330, (816) 471–0132

New York: Harlem, Bronx, Ms. Nora Chang Wang, New York City Department of Employment, 220 Church Street, Room 514–I, New York, New York, 10013, (212) 442–2155, (212) 442–2355

Ohio: Cleveland, Mr. James L. Barnes, Department of Human Resources, 1925 St. Clair Avenue, Cleveland, Ohio 44114, (216) 664–2466, (216) 664–2951

Philadelphia: Pennsylvania, Ms. Patricia Irving, Philadelphia Private Industry Council, Inc., 3 Parkway Atochem Building, Suite 501, Philadelphia, Pennsylvania 19102, (215) 963–2100, (215) 567–7171

New Jersey: Camden, Mr. William J. Maguire, Employment and Training Center, 1800 Pavillion, 2101 Ferry Avenue, Camden, New Jersey 08104, (609) 566–7202, (609) 566–7261

Texas: Houston, Mr. Terry Hudson, Houston Works, 1919 Smith Street, Suite 500, Houston, Texas 77002, (713) 654–1919, (713) 655–0715

Enterprise Communities

Alabama: Birmingham, Mr. Howard Melton, Birmingham/Jefferson County Job Training Council, 2015 Second Avenue, North, Suite 400, Birmingham, Alabama 35203, (205) 254–2405, (205) 254–2282

Arizona: Phoenix, Mr. James Moore, City of Phoenix Employment and Training Administration, 234 North Central, Suite 800, Phoenix, Arizona 85004, (602) 262–6776, (602) 534–3722

Arkansas: Pulaski County, Mr. John Martin, Central Arkansas PDD, Inc., P.O. Box 187, Lonoke, Arkansas 72086, (501) 676–2721, (501) 676–5020

California: Los Angeles: Huntington Park, Mr. David Meyer, Los Angeles County Department of Community and Senior Services, 3175 West 6th Street, 10th Floor, Los Angeles, California 90020, (213) 738–2611, (213) 487–0379

California: San Diego, Ms. Aurelia Koby, San Diego Consortium and Private Industry Council, 1551 Fourth Avenue, Suite 600, San Diego, California 92101, (619) 238–1445, (619) 238–6063

California: San Francisco: Bayview: Hunter's Point, Ms. Eunice Elton, Private Industry Council of San Francisco, Inc., 1049 Market Street, 4th Floor, San Francisco, California 94103, (415) 621–6853, (415) 621–0793

Colorado: Denver, Ms. Erma Zamora, Mayor's Office of Employment and Training, 1391 North Speer Boulevard, Suite 500, Denver, Colorado 80204, (303) 893–3382, (303) 899–4029

Connecticut: Bridgeport, Mr. Henry Durell, Private Industry Council of Southern Connecticut, Inc., 181 Middle Street, Bridgeport, Connecticut 06604, (203) 576–7030, (203) 335–9703

Connecticut: New Haven, Mr. William Villano, New Haven Private Industry Council, 580 Ella T. Grasso Boulevard, New Haven, Connecticut 06519, (203) 624–1493, (203) 562–1106

Delaware: Wilmington, Mr. Martin Duffy, Delaware Private Industry Council, Linden Building, 625 Orange Street, Suite B, Wilmington, Delaware 19801, (302) 577–6702

District of Columbia: Washington, Mr. Daryl Hardy, District of Columbia Department of Employment Services, 500 C. Street, NW., Suite 600, Washington, DC 20001, (202) 724–7130, (202) 724–7112

Florida: Miami: Dade County, Mr. Joseph Alfano, South Florida Employment and Training Consortium, 3403 Northwest 82nd Avenue, Suite 30, Miami, Florida 33122, (305) 594–7615, (305) 477–0113

Georgia: Albany, Mr. Wayne Williams, Southwest Georgia Regional Development Center, P.O. Box 346, Camilla, Georgia 31730, (912) 336–5616, (912) 430–4337

Illinois: East St. Louis, Mr. Steven Schneider, St. Clair County Intergovernmental Grant Department, 19 Public Square, Belleville, Illinois 62220, (618) 277–6790, (618) 236–1190

Illinois: Springfield, Ms. Maura Gardiner, Sangamon County Land of Lincoln Consortium, 727 North Grand Avenue, East Springfield, Illinois 62702, (217) 525–7060, (217) 525–2934

Indiana: Indianapolis, Mr. Bill Stephen, Indianapolis Private Industry Council, 17 West Market Street, Indianapolis, Indiana 46204, (317) 684–2220, (317) 639–0103

Iowa: Des Moines, Mr. Don Peckham, Central Iowa Employment and Training Consortium, 150 Des Moines Street, Des Moines, Iowa 50309, (515) 281–9700, (518) 281–9727

Kentucky: Louisville, Ms. Pamela O. Anderson, Louisville and Jefferson County Job Training, Fincastle Building, 305 West Broadway Street, Suite 600, Louisville, Kentucky 40202, (502) 574–4711, (502) 574–4288

Louisiana: New Orleans, Mr. Cliff Thomas, Orleans Private Industry Council, Inc., 1440 Canal Street, Suite 1818, New Orleans, Louisiana 70112, (504) 523–1116, (504) 523–1950

Louisiana: Ouachita Parish, Mr. Frank Jones, Ouachita Parish Policy Jury, P.O. Box 1811, Monroe, Louisiana 71210, (318) 327–1386, (318) 327–1393

Massachusetts: Lowell, Mr. Henry Przydzial, Office of Employment and Training, 206 Jackson Street, Lowell, Massachusetts 01852, (508) 459–2336, (508) 459–2111

Massachusetts: Springfield, Mr. Raymond Jarvis, Hampden County Employment and Training, 1176 Main Street, Springfield Massachusetts 01103, (413) 781–6900, (413) 736–0650

Michigan: Flint, Mr. Gregory Eason, Jobs Central, Inc., 711 North Saginaw Street, Suite 22, Flint, Michigan 48503, (810) 233–5974, (810) 233–8652

Michigan: Muskegon, Mr. Paul Roy, Jr., Muskegon County Department of Employment and Training, 20 West Muskegon Avenue, Muskegon, Michigan 49440, (616) 724–6381, (616) 724–6687

Minnesota: Minneapolis, Mr. F.A. Wells, Minneapolis Employment and Training Program, ½ City Hall, 350 South Fifth Street, Room 310, Minneapolis, Minnesota 55415, (612) 673–5700, (612) 673–2108

Minnesota: St. Paul, Ms. Jacqui Shoholm, Department of Plan and Economic Development, Job Creation and Training Section, 215 East 9th Street, 3rd Floor, St. Paul, Minnesota 55101, (612) 228–3262, (612) 228–3277

Mississippi: Jackson, Mr. Joe Whitfield, Hind County Private Industry Council, 207 West Amite Street #1, Jackson, Mississippi 39201, (601) 354–1424, (601) 949–2291

Missouri: St. Louis, Ms. Valerie Russell, St. Louis Agency of Training and Employment, 317 North 11th Street, Suite 400, St. Louis, Missouri 63101, (314) 214–4300, (314) 622–3511

Nebraska: Omaha, Ms. Ola Anderson, Job Training of Greater Omaha, 2421–23 North 24th Street, Omaha, Nebraska 68110, (402) 444–4700, (402) 444–3755

Nevada: Clarke County: Las Vegas, Mr. David Hicks, Nevada Business Services, Las Vegas, Nevada 89127, (702) 384–3808, (702) 384–8029

New Hampshire: Manchester, Mr. Ray Worden, New Hampshire Job Training Council, 64–B Old Suncook Road, Concord, New Hampshire, 03301 (603) 228–9500, (603) 228–8557

New Jersey: Newark, Mr. Howard Atkins, Office of Employment and Training, 32 Green Street, Newark, New Jersey 07102, (201) 733–5383, (201) 733–5901

New Mexico: Albuquerque, Mr. Carlos Duran, Private Industry Council, 1701 4th Street, Albuquerque, New Mexico

87102, (505) 768–6050, (505) 768–6044

New York: Albany: Schenectady: Troy, Mr. Joseph Mancinelli, Rensselaer County Employment and Training, County Office Building, 1600 7th Avenue, Troy, New York 12180, (518) 270–2860, (518) 270–2865

New York: Buffalo, Mr. Patrick Quigley, Buffalo/Cheektowaga Consortium, 506 Delaware Avenue, Buffalo, New York 14202, (716) 885–9840, (716) 885–9849

New York: Newburgh: Kingston, Mr. Charles Bruno, Orange County Private Industry Council, 75 Webster Avenue, Goshen, New York 10924, (914) 294–5151, (914) 294–3456

New York: Rochester, Ms. Susan Keefe, Office of Employment and Training, 140 West Main Street, 2nd Floor, Rochester, New York 14614, (716) 428–7385, (716) 428–6956

North Carolina: Charlotte, Mr. Gus Psomadakis, City of Charlotte Employment and Training Department, City Hall, 600 East Trade Street, Charlotte, North Carolina 28202, (704) 336–3952, (704) 336–6588

Ohio: Akron, Ms. Susan Hale, Job Training Partnership Administration, 161 South High Street, Suite 200, Akron, Ohio 44308, (216) 375–2912, (216) 375–2081

Oklahoma: Oklahoma City, Ms. Sylvia Flemming, Oklahoma City, One North Walker Avenue, Oklahoma City, Oklahoma 73102, (405) 297–2445, (405) 297–3799

Oregon: Portland, Mr. Dennis Cole, The Private Industry Council, 720 Southwest Washington, Suite 250, Portland, Oregon 97205, (503) 241–4600, (503) 241–4622

Pennsylvania: Harrisburg, Mr. James MacDonald, Susquehanna Employment and Training Corporation, 100 North Cameron Street, First Floor, Harrisburg, Pennsylvania 17101, (717) 236–7931, (717) 236–9016

Pennsylvania: Pittsburgh, Ms. Anne McCafferty, Department of Peronnel and Civil Service Commission, City/County Building Room 431, Pittsburgh, Pennsylvania 15219, (412) 255–2696, (412) 255–8909

Rhode Island: Providence, Mr. William Formicola, 180 West Minster Street, Second Floor, Providence, Rhode Island 02865, (401) 333–3944

South Carolina: Charleston, Ms. Lenita Jacobs-Simmons, Charleston, County Employment and Training Administration, P.O. Box 91, Charleston, South Carolina 29402, (803) 720–2206, (803) 720–2209

Tennessee: Memphis, Ms. Alma Mardis, City of Memphis, 100 North Main Building, Suite 2810, Memphis, Tennessee 38103, (901) 576–6536, (901) 576–6297

Tennessee: Nashville, Mr. Ross Jackson, North Tennessee Private Industry Council, Inc., 110 Main Street, P.O. Box 1125, Clarksville, Tennessee 37041, (615) 551–9110, (615) 551–9026

Texas: Dallas, Ms. Laurie Larrea, Private Industry of Dallas, 3625 North Hall, Suite 900, Dallas, Texas 75219, (214) 522–7191, (214) 522–8886

Texas: El Paso, Mr. Norm Haley, Upper Rio Grande Private Industry Council, 1155 Westmoreland Drive, Suite 235, El Paso, Texas 79925, (915) 772–5627, (915) 779–8366

Texas: San Antonio, Ms. Nickie Valdez, Alamo Workforce Development Council, Suite 104, Employment and Training Department, 215 South San Saba, San Antonio, Texas 78207, (210) 272–3250

Texas: Waco. Mr Morrison Parrott, Heart of Texas Council of Government, 300 Franklin Avenue, Waco, Texas 76701, (817) 756–7844, (817) 756–0102

Utah: Ogden, Mr. Sid Jefferies, Private Industry Council, Inc., P.O. Box 1309, Ogden, Utah 84402, (801) 399–8850, (801) 399–8114

Vermont: Burlington, Mr. Robert Ware, Vermont Department of Employment and Training, P.O. Box 488, Five Green Mountain Drive, Montpelier, Vermont 05601, (802) 828–4325, (802) 828–4374

Virginia: Norfolk, Mr. Richard Sciullo, Southeastern Virginia Job Training Administration, East Office Building, 861 Glenrock Road Circle, Suite 223, Norfolk, Virginia 23502, (804) 461–3945, (804) 461–6117

Washington: Seattle, Mr. Al Starr, The Seattle/King County Private Industry Council, Market Place One, 2001 Western Avenue, Suite 250, Seattle, Washington 98121, (206) 448–0478, (206) 448–0484

Washington: Tacoma, Mr. Colin Conant, Tacoma/Pierce County Employment and Training Consortium, Municipal Building, 747 Market Street, Room 644, Tacoma, Washington 98402, (206) 591–5450, (206) 591–5455

West Virginia: Huntington, Mr. Paul R. Skaff, Jr., Job Training Program, 112 California Avenue, Charleston, West Virginia 25305, (304) 558–5920, (304) 558–0675

Wisconsin: Milwaukee, Mr. Federice Zaragoza, Milwaukee County Private Industry Council, 101 West Pleasant Street, Suite 104, Milwaukee, Wisconsin 53212, (414) 271–7557, (414) 271–4549

Rural

Kentucky: Kentucky Highlands, Mr. Steve Clark, Lake Cumberland Area Development District, Lakeway Drive, P.O. Box 1570, Russell Springs, Kentucky 42642
Mr. Doug Singleton, 410 East Mt. Vernon Street, Somerset, Kentucky 42502

Mississippi: Mid Delta, Mr. Steve Halliburton, Mississippi Service Delivery Area, P.O. Box 23669, Jackson, Mississippi 39225

Texas: Rio Grande Valley, Mr. Eduardo Guerra, South Texas Private Industry Council, 4717 D Baugherty Street, P.O. Box 1757, Laredo, Texas 78044

Alabama: Chambers County, Mr. Oliver C. Jones, Alabama Department of Economic and Community Affairs, 401 Adams Avenue, P.O. Box 5690, Montgomery, Alabama 36103

Arizona: Arizona Border, Ms. Vada Phelps, JTPA Administration, 77 Calle Portal, Suite C 220, Sierra Vista, Arizona 85635
Mr. Jesus Kataura, JTPA Administration, P.O. Box 595, Nogales, Arizona 85621
Mr. John Morales, JTPA Administration, 2725 South Avenue B, Yuma, Arizona 85364

Arkansas: East Central, Ms. Sharon Williams, Eastern Arkansas Private Industry Council, Inc., P.O. Box 1388, West Memphis, Arkansas 72301

Arkansas: Mississippi County, Mr. Sammy McGuire, Employment and Training Services, Inc., 2809 Forrest Home Road, Jonesboro, Arkansas 72401

Imperial County, Mr. Sam Couchman, Imperial County Office of Employment and Training, 155 South Eleventh Street, El Centro, California 92243

California: Watsonville, Mr. James De Alba, Santa Cruz County Human Resources Agency, 1040 Emeline Avenue, Santa Cruz, California 95060

Florida: Jackson County, Ms. Freda Sheffield, Florida Panhandle Private Industry Council, 600 South Dixie Highway, West Palm Beach, Florida 33401

Georgia: Central Savannah, Ms. Aray Darden, CSRA Employment and Training Consortium, 209 7th Street, P.O. Box 1446, Augusta, Georgia 30913

Georgia: Crisp: Dooley Counties, Mr. Bobby Lowe, Middle Flint RDC, 203 East College, P.O. Box 6, Ellaville, Georgia 31806

Louisiana: Northeast Delta, Mr. C.W. Frazier, Jr., Private Industry Council, Inc., P.O. Box 14269, Monroe, Louisiana 71207

Louisiana: Macon Ridge, Mr. Norman Tison, Lasalle Community Action, Courthouse Building, Room 23, P.O. Drawer 19, Jena, Louisiana 71342

Michigan: Five Cap, Mr. Paul Griffith, West Central Employment and Training Consortium, 110 Elm Street, Big Rapids, Michigan 49307

Missouri: East Prairie, Ms. Mary McBride, Southeast Missouri (SEMO) Private Industry Council, 760 South Kings Highway Street, Suite F, Cape Girardeau, Missouri 63701

New Mexico: Mora: Taos: Rio Ariba Counties, Mr. Ronald Martinez, New Mexico Department of Labor, P.O. Box 4218, Santa Fe, New Mexico 87502

North Carolina: Halifax: Edgecombe: Wilson Counties, Ms. Pamela Whitaker, Region L Council of Governments, P.O. Drawer 2748, Rocky Mount, North Carolina 27802

North Carolina: Robeson County, Ms. Sylvia Pate, Lumber River Council of Governments, P.O. Drawer 1529, Lumberton, North Carolina 28359

Ohio: Greater Portsmouth, Mr. Richard Bussa, Scioto County Community Action Organization, 433 3rd Street, P.O. Box 1525, Portsmouth, Ohio 45662

Oklahoma: Choctaw: McCurtain Counties, Mr. Chester Dennis, KEDDO, P.O. Box 638, Wilburton, Oklahoma 74578

Oregon: Josephine, Mr. Bruce McGregor, The Job Council, 1257 North Riverside, Suite 7, Medford, Oregon 97501

Pennsylvania: Lock Haven, Mr. Gary Hoover, Mid-State Employment and Training Consortium, 318 North Allegheny Street, Bellefonte, Pennsylvania 16823

South Dakota: Beadle: Spink Counties, Mr. Lloyd Schipper, Kneip Building, 700 Governor's Drive, Pierre, South Dakota 57501

South Carolina: Williamsburg County, Mr. Jack David, South Carolina Employment Security Commission, 1550 Gadsden Street, P.O. Box 995, Columbia, South Carolina 29202

Tennessee: Fayette: Haywood,
Mr. Robin Collins, City of Memphis, 100 North Main Building, Suite 2810, Memphis, Tennessee 38103
Mr. Lafayette McKinnie, JTPA Administrative Office, Commerce Center, Highway 45 Bypass, Jackson, Tennessee 38305

Tennessee/Kentucky: Scott: McCreary Counties, Mr. Bobby Renfro, Roane State College, 127 South Kentucky Street, Kingston, Tennessee 37763

Virginia: Accomack, Mr. Michael Jenkins, Bay Consortium Private Industry Council, Inc., P.O. Box 1117, Warsaw, Virginia 22572

Washington: Lower Yakima, Mr. Michael Shanahan, Yakima County Department of Employment and Training, 630 East Yakima Avenue, Yakima, Washington 98901

West Virginia: West Central, Mr. Paul R. Skaff, Jr., Job Training Programs, 112 California Avenue, Charleston, West Virginia 25305

[Doc. 96–9663 Filed 4–19–96; 8:45 am]

BILLING CODE 4510–30–M

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on May 7, 8 and 9. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, N.E., Washington, D.C.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, May 7, 1996

9:30 a.m.—Committee on Prices and Living Conditions—Meeting Room 3

1. Update on program developments
   a. Consumer Price Index
   b. Producer Price Indexes
2. Other business

1:30 p.m.—Committee on Employment and Unemployment Statistics—Meeting Room 3

1. Welcome/Introductions
2. Budget situation update
3. Redesign of the Occupational Employment Statistics Survey
4. Redesign of the Mass Layoff Statistics Program
5. Contingent Workers-analysis and plans for next collection
6. North American Industry Classification System redesign proposal
7. Report on the 1995 Survey of Employer Provided Training

Wednesday, May 8, 1996

9:30 a.m.—Committee on Wages and Industrial Relations—Meeting Room 3

1. COMP2000 plans and progress
2. Plans for collective bargaining series
3. Compensation research
4. Other business

Thursday, May 9, 1996

9:30 a.m.—Committee of Occupational Safety & Health Statistics—Meeting Room 3

1. Review of the worker demographic and case characteristic data from the 1994 Survey of Occupational Injuries and Illnesses
2. Injury and illness estimates based on multiple years data
3. FY 1996 budget and its program impact
4. INTERNET demo
5. Discussion of format for the 1994 Bulletin

1:30 p.m.—Committee on Productivity, Technology and Growth—Meeting Room 3

1. Developments in the Office of Employment Projections
2. Report on recent developments in the Office of Productivity
3. Revisions of major sector labor productivity series: adoption of new output indexes
4. Trends in productivity in retail trade industries

2:30 p.m.—Committee on Foreign Labor Statistics—Meeting Room 3

1. International comparisons of hourly compensation of manufacturing production workers

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5970.

Signed at Washington, D.C. this 12th day of April 1996.

Katharine G. Abraham,

Commissioner.

[FR Doc. 96–9821 Filed 4–19–96; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Pace Mining & Processing, Inc.

[Docket No. M–96–13–C]

Pace Mining & Processing, Inc., 10448 Robinson Creek Road, Virgie, Kentucky 41572 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Patrick No. 2 Mine (I.D. No. 15–13308) located in Knott County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane detectors instead of machine-mounted methane monitors on S & S Model 482 scoops (permissible DC-powered machines) used to haul coal from the working face to the section tailpiece. The petitioner states that each scoop operator would be certified in the proper use of the detector; and that this petition for modification is submitted based on an economic and safety point of view.

2. Tennessee Energy Corp.

[Docket No. M–96–14–C]

Tennessee Energy Corp., 1000 Pocket Road, Whitwell, Tennessee 37397 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Mine No. 43 (I.D. No. 40–02972) located in Sequatchie County, Tennessee. The petitioner proposes to use a 9-foot steel tongue with a hole on each end aligned with existing holes in the frame of the motor and flatcar and secured with a pin, to couple the motor to the flatcar instead of using automatic couplers. The petitioner asserts that the proposed alternative method would not diminish the safety of the miners.

3. Roberts Brothers Coal Company

[Docket No. M–96–15–C]

Roberts Brothers Coal Company, P.O. Box 397, Mortons Gap, Kentucky 42440 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Cardinal No. 2 Mine (I.D. No. 15–17216) located in Hopkins County, Kentucky. The petitioner requests a modification of the standard to allow two belt flights to be monitored by one identification line. The petitioner states that the alternative method of monitoring the conveyor belt would not diminish the safety of the miners.

4. Pilgrim Mining Company, Inc.

[Docket No. M–96–16–C]

Pilgrim Mining Company, Inc., P.O. Box 2046, Inez, Kentucky 41224 has filed a petition to modify the application of 30 CFR 75.388 (boreholes in advance of mining) to its Voyager Mine Number Two (I.D. No. 15–17639) located in Martin County, Kentucky. The petitioner requests relief from drilling boreholes horizontally into the coal seam when approaching within 200 feet of an adjacent mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Shell Energy Co., Inc.

[Docket No. M–96–17–C]

Shell Energy Co., Inc., P.O. Box 423, Fairmont, West Virginia 26554 has filed a petition to modify the application of 30 CFR 75.380(d)(3) and (d)(4) (escapeways; bituminous and lignite mines) to its Stacey-Meranda Mine (I.D. No. 46–08086) located in Harrison County, West Virginia. The petitioner has installed roof support along the No. 2 belt conveyor between Nos. 4 & 5 blocks for a distance of about 30 feet and has installed post and cribs for additional roof supports due to a safeguard notice issued on October 31, 1995. The petitioner proposes to maintain the affected area by installing belt crossover or crossunder at each end of the clearance area; to post luminous warning signs that state ''Danger Close Clearance'' at each end of the affected area; to install start and stop switches for the belt conveyor on the inby and outby ends of the affected area; and to deenergize, lockout and tag the disconnect drives when maintenance or cleaning is done in the affected area. The petitioner states that modification of the standard would result in enhanced safety and reduced exposure to hazardous conditions for mine personnel.

6. Eagle Nest, Inc.

[Docket No. M–96–18–C]

Eagle Nest, Inc., P.O. Box 270, Van, West Virginia 25206 has filed a petition to modify the application of 30 CFR 75.503 (18.41) (permissible electric face equipment; maintenance) to its Eagle Nest Inc. Mine (I.D. No. 46–07711) located in Boone County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines used inby the last open crosscut with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; to have a tag that states ''DO NOT DISENGAGE PLUGS UNDER LOAD'' on all battery plug connectors used on the machines; and to provide instructions in the safe practices and provisions to all persons who are required to operate or maintain the machines. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Consolidation Coal Company

[Docket No. M–96–19–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. Due to deteriorating roof conditions, traveling the intake air course from 45 block Main North to 3 block to make weekly examinations would be unsafe. The petitioner proposes to establish check points to monitor methane and to ensure passage of air; to maintain the check points in safe condition at all times; to have a certified person test for methane and the quantity of air at each check point on a weekly basis; and to have the certified person making the examinations and tests place their initials, date, and time in a record book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Kedco, Inc.

[Docket No. M–96–20–C]

Kedco, Inc., P.O. Box 1358, Gilbert, West Virginia 25621 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Kedco No. 2 Mine (I.D. No. 46–08019) located in Mingo County, West Virginia. The petitioner proposes to allow belt air to be blended with the air to the faces from the intake entries to accommodate the split-tail system for ventilation. The petitioner proposes to install a low-level carbon monoxide detection system capable of providing both visual and audible alarm signals as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Eagle Nest, Inc.

[Docket No. M–96–21–C]

Eagle Nest, Inc., P.O. Box 270, Van, West Virginia 25206 has filed a petition to modify the application of 30 CFR 75.1403–5(g) (criteria-belt conveyors) to its Eagle Nest Mine (I.D. No. 46–07711) located in Boone County, West Virginia. The petitioner proposes to clearly mark the outby and inby ends of all areas with signs where 24 inches of unobstructed clearance cannot be provided as a clear travelway on both sides of all belt conveyors; to provide belt crossings for adequate clearance adjacent to areas of less than 24 inches of clearance, man doors to adjacent entries, access through a crosscut to an adjacent entry, and control switches to shut off the belt; to identify alternate access routes with appropriate signs; to have the areas clear of persons working or traveling while the belt is in operation where there is less than 24 inches of clearance; to have a minimum of 24 inches of clearance on the tight

side of the belt conveyors for all future mine development except where secondary roof or rib support is installed outby the section loading point; and to submit proposed revisions including initial and refresher training for the Part 48 Training Plan to the District Manager within 60 days after the proposed decision becomes final. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. KenAmerican Resources, Inc.

[Docket No. M–96–22–C]

KenAmerican Resources, Inc., 7590 State Highway 181, Central City, Kentucky 42330 has filed a petition to modify the application of 30 CFR 75.380(g) (escapeways; bituminous and lignite mines) to its Paradise No. 11 Mine (I.D. No. 15–17606) located in Muhlenberg County, Kentucky. The petitioner proposes to use a two phase initial development stage outlined in this petition during and until completion of the initial development stage for its No. 9 Slope. The petitioner states that the initial development stage is the normal course of mining in the No. 9 seam from the time of commencement of mining until connection to the airshaft and to be completed when the connection is made to the airshaft. The petitioner specifically requests modification of the standard so that the primary escapeway for the No. 9 slope would not be required to be separated from the belt entries until completion of the initial development stage. The petitioner is currently operating in the No. 11 seam with the No. 9 seam approximately 100 feet below and construction of a slope into the No. 9 seam commenced on the surface. The petitioner intends to maintain works in the No. 11 seam on an active status and to shift operations to the No. 9 seam when the (No. 9 slope) is completed. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. BHP Minerals

[Docket No. M–96–23–C]

BHP Minerals, P.O. Box 155, Fruitland, New Mexico 87416 has filed a petition to modify the application of 30 CFR 77.807–3 (movement of equipment; minimum distance from high-voltage lines) to its Navajo Mine (I.D. No. 29–00097) located in San Juan County, New Mexico. The petitioner proposes to use within three feet of the 25,000-volt railway trolley system equipment that do not contain a boom or mast or that is capable of extension into the railway trolley in normal operation. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 22, 1996. Copies of these petitions are available for inspection at that address.

Dated: April 12, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 96–9764 Filed 4–19–96; 8:45 am]

BILLING CODE 4510–43–P

Extension of Deadline for Submission of Applications for SGA 96–03

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, DOL.

SUMMARY: This Notice announces an extension of SGA 96–03 from April 15, 1996, to April 24, 1996, for applications for assistance in providing employment, training, supportive and transitional housing services for eligible homeless veterans. Awards are anticipated to be made in June 1996.

CLOSING DATE: The closing date for receipt of a completed application package in response to this notice is April 24, 1996.

ADDRESS: A copy of the application package and instructions for completion may be obtained by written request directed to: U.S. Department of Labor, Office of Procurement Services, Rm. N5416, 200 Constitution Ave., NW., Washington DC 20210, Attention: Grants Specialist Lisa Harvey, Telephone (202) 219–9355, or U.S. Department of Housing and Urban Development, Office of Special Needs Assistance Programs, Rm. 7266, 451 7th Street, SW., Washington DC 20410, Attention Paul B. Dornan, Telephone (202) 708–1226, Reference SGA 96–03.

The U.S. Department of Labor Grant Officer will insure the integrity of this competition and will ensure awards are made in accordance with appropriate U.S. Department of Labor and U.S. Department of Housing and Urban Development regulations and the criteria specified above.

Signed at Washington, DC this 16th day of April, 1996.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 96–9822 Filed 4–19–96; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–043]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Computer Sciences Corporation (CSC), of Calverton, Maryland, has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. GSC–13,672–1, entitled ''System and Method for Creating Expert Systems,'' which is assigned to the United States of America as represented by the Administration of the National Aeronautics and Space Administration. CSC has requested a partially exclusive license to practice the invention in the area of aerospace, healthcare, and ship navigation. Written objections to the prospective grant of a license to CSC should be sent to Mr. R. Dennis Marchant, Patent Counsel, NASA Goddard Space Flight Center, Mail Code 204, Greenbelt, Maryland 20771.

DATES: Responses to this Notice must be received by June 21, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. R. Dennis Marchant, Patent Counsel, (301) 286–7351.

Dated: April 15, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–9797 Filed 4–19–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review: Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: Grant/Cooperative Agreement Provisions.
3. The form number is applicable: None.
4. How often the collection is required: On occasion, one time.
5. Who will be required or asked to report: Recipients of NRC grants or cooperative agreements.
6. An estimate of the number of responses: 90.5.
7. The estimated number of annual respondents: 60.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 1,068.5 (17.8 hours per respondent).
9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: N/A.
10. Abstract: The Division of Contracts uses provisions, required to obtain or retain a benefit in its awards and cooperative agreements to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the recipient are settled.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by May 22, 1996: Peter Francis, Office of Information and Regulatory Affairs (3150–0107), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 16th day of April, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–9855 Filed 4–19–96; 8:45 am]

BILLING CODE 7590–01–P

Correction to Notice of Partial Denial of Amendment to Facility Operating Licenses and Opportunity for a Hearing

On April 10, 1996, the Federal Register published a Notice of Partial Denial of Amendment to Facility Operating Licenses and Opportunity for a Hearing. On page 15983, under Commonwealth Edison Company, Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457, first paragraph, the Facility Operating License Nos. should have read NPF–37, NPF–66, NPF–72 and NPF–77.

Dated at Rockville, Maryland, this 16th day of April 1996.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Sr. Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–9853 Filed 4–19–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on April 16, 1996 (61 FR 16649), that states that the Commission is considering issuance of an amendment to Facility Operating License Nos. NPF–35 and NPF–52, issued to the Duke Power Company. This action is necessary to change the filing date.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION: On page 16650, in the third complete paragraph in the center column, the date ''May 15, 1996,'' should read ''May 16, 1996.''

Dated at Rockville, Maryland, this 17th day of April 1996.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–9858 Filed 4–19–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–498]

Houston Lighting and Power Company, et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on April 16, 1996 (61 FR 16651), that states that the Commission is considering issuance of an amendment to Facility Operating License No. NPF–76, issued to the Houston Lighting and Power Company. This action is necessary to change the filing date.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION: On page 16653, in the fifth complete paragraph in the first column, the date ''May 15, 1996,'' should read ''May 16, 1996.''

Dated at Rockville, Maryland, this 17th day of April 1996.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–9857 Filed 4–19–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–344]

Portland General Electric Company, Trojan Nuclear Plant; Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility

I

The Portland General Electric Company (PGE or the licensee) is the holder of Facility Operating License No. NPF–1 issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to 10 CFR Part 50 on November 21, 1975, for the operation of the Trojan Nuclear Plant (TNP or the facility). The facility is located on the west bank of the Columbia River in Columbia County, Oregon. The license was amended to a possession-only license on May 5, 1993, removing the authority of the licensee to operate TNP.

II

The plant operated until November 9, 1992, when a leak in the ''B'' steam generator was detected and forced a shutdown of the plant. The licensee notified the NRC of the decision to permanently cease power operations on January 27, 1993. The fuel was transferred to the spent fuel pool, and on March 24, 1993, the NRC staff issued a Confirmatory Order to confirm a PGE commitment not to place fuel back into the reactor building without written approval by the NRC. The operating license was amended to a possession-only license on May 5, 1993. TNP is permanently defueled and cannot be operated nor can fuel be placed in the reactor under the terms of the license. The licensee submitted the decommissioning plan and a supplement to the environmental report for TNP on January 26, 1995.

On March 8, 1995, in accord with 10 CFR 50.82(e), a Notice of Receipt of the Decommissioning Plan and the Supplement to the Environmental Report and an Opportunity for Public Comment were published in the Federal Register (60 FR 12788). Because of public interest in the decommissioning process, the Federal Register notice announced a local public meeting to provide the public an opportunity to comment on the plan. The meeting was held on March 29, 1995, at St. Helens, Oregon, and was transcribed.

By a letter of December 18, 1995, the staff informed the licensee that the decommissioning plan was acceptable. The staff documented its review of the licensee's decommissioning plan and supplement to the environmental report in a safety evaluation report and environmental assessment related to the licensee's request to authorize facility decommissioning. Public comments received at the meeting on March 29, 1995, in St. Helens, Oregon, were addressed in an appendix to the safety evaluation report.

On December 22, 1995, by a notice in the Federal Register (60 FR 66569) the Commission announced that the Commission was considering issuance of an Order approving the Trojan Decommissioning Plan. The notice also offered an opportunity for a hearing on the licensee's decommissioning plan. The licensee and members of the public were afforded 30 days from the date that the notice appeared in the Federal Register to submit a request for hearing and a petition for leave to intervene. No request for a hearing has been filed.

On January 22, 1996, the Oregon Department of Energy (ODOE) issued the results of its review of the PGE decommissioning plan for Trojan. The ODOE also offered a 30 day window of opportunity for members of the public to request a hearing under the State of Oregon statutes. On February 13, 1996, the NRC staff and the ODOE held a joint public meeting near the plant site in the town of Rainier, Oregon. The results of the review by both the NRC staff and the ODOE staff of the licensee's decommissioning plan and the supplement to the environmental report were presented. There were no comments by members of the public. The time period in which a member of the public or the licensee could request a contested case hearing in the State venue on the proposed decommissioning expired without a request. On March 7, 1996, the Energy Facility Siting Council of the ODOE voted to approve the proposed rule that allows the licensee to proceed with decommissioning.

III

The NRC has reviewed the PGE decommissioning plan with respect to the provisions of the Commission's rules and regulations and has found that decommissioning as described in the TNP Decommissioning Plan will be performed in accordance with the regulations of 10 CFR 50.82 and 10 CFR Chapter I and will not be inimical to the common defense and security or to the health and safety of the public.

IV

Pursuant to 10 CFR 51.21, 51.30, and 51.35, the Commission prepared an environmental assessment, which was issued on December 18, 1995. The Commission published on December 22, 1995, in the Federal Register (60 FR 66568) a notice of issuance of the Environmental Assessment and Final Finding of No Significant Impact. On the basis of the environmental assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

V

Accordingly, pursuant to Sections 103, 161b, 161i, and 161o, of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2133, 2201(b), 2201(i), 2201(o), and 10 CFR 50.82, the PGE Decommissioning Plan is approved and decommissioning of TNP is authorized in accordance with the plan.

For further details with respect to this action, see: (1) The application for authorization to decommission the facility of January 26, 1995, as supplemented November 13, 1995; (2) the Environmental Assessment by the U.S. Nuclear Regulatory Commission Related to the Request to Authorize Facility Decommissioning, December 1995; and (3) the Safety Evaluation Report by the U.S. Nuclear Regulatory Commission Related to the Request to Authorize Facility Decommissioning, December 1995. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC 20555, and at the Local Public Document Room for the TNP at the Branford Price Millar Library, Portland State University, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 15th day of April 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–9854 Filed 4–19–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–272, 50–311, AND 50–354]

Public Service Electric and Gas Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its December 9, 1994, application for proposed amendments to Facility Operating License Nos. DPR–70 and DPR–75 for Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey; and Items 2 and 3 of the November 28, 1994 application for proposed amendment and its October 18, 1993, application for proposed amendment to Facility Operating License NFP–57 for Hope Creek Nuclear Generating Station, also located in Salem County, New Jersey.

The Commission had previously issued Notices of Consideration of Issuance of Amendment published in the Federal Register on March 29, 1995 (60 FR 16199), August 2, 1995 (60 FR 39450), and December 8, 1993 (58 FR 64615). However, by letter dated April 3, 1996, the licensee withdrew the changes identified above.

For further details with respect to this action, see the applications for amendment dated December 9, 1994, November 28, 1994, and October 18, 1993, and the licensee's letter dated April 3, 1996, which withdrew the changes identified above. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079 (for Salem Nuclear Generating Station, Units 1 and 2); and the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070 (for Hope Creek Nuclear Generating Station).

Dated at Rockville, Maryland, this 16th day of April 1996.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–9856 Filed 4–19–96; 8:45 am]

BILLING CODE 7590–01–P

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, May 2 and Friday, May 3, 1996, at the Washington Marriott, 1221 22nd Street NW., Washington, DC, in the Dupont Room. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. The Commission will review draft reports on access to care for Medicare beneficiaries, setting volume performance standards and updating the Medicare Fee Schedule conversion factor for 1995, and Medicare beneficiary financial liability. Other topics for discussion could include academic medical centers, employer-provided supplemental insurance, and a description of a Commission-sponsored managed care survey. A final agenda will be available on Friday, April 26, 1996 and will be mailed at that time.

ADDRESS: 2120 L Street, NW.; Suite 200; Washington, DC 20037. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Annette Hennessey, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220 after April 25, 1996.

Lauren LeRoy,

Executive Director.

[FR Doc. 96–9864 Filed 4–19–96; 8:45 am]

BILLING CODE 6820–SE

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–21890; 812–9528]

Baker, Fentress & Company, et al.; Notice of Application

April 15, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (The ''Act'').

APPLICANTS: Baker, Fentress & Company (the ''Company''); JALC Acquisition Corp. (''Acquisition Corp.''); Meadow Lane Associates, L.P., Purchase Associates, L.P., L.R.K. Savings, L.P., SLSB Partners, L.P., and Island Drive Partners, L.P. (collectively, the ''LEVCO Partnerships''); and John A. Levin, Melody L. Prenner Sarnell, and Jeffrey A. Kigner (collectively, the ''Individual Applicants'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 2(a)(3)(D), 2(a)(19), and 12(d)(3), under sections 6(c) and 17(b) for an exemption from section 17(a), and under section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order to (1) permit the Company to acquire all of the outstanding securities of John A. Levin & Co., Inc. (''LEVCO'') and merge LEVCO into Acquisition Corp.; (ii) permit the Company to implement an incentive compensation plan for LEVCO and the Individual Applicants; (iii) permit LEVCO to continue to operate and advise the LEVCO Partnerships, as general partner, and to make additional contributions to a LEVCO Partnership and to receive incentive compensation from the limited partners; and (iv) deem limited partners of the LEVO Partnerships who are not otherwise affiliated persons of the company to continue to be deemed not to be affiliated persons if such limited partner owns an interest in the LEVCO Partnerships of less than five percent.

FILING DATES: The application was filed on March 13, 1995, and amended on July 24, and December 11 1995. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

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 SECs 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 May 9, 1996, 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 200 West Madison Street, Suite 3510, Chicago, Illinois 60606, Attn: David D. Peterson, President and Chief Executive Officer; and John A. Levin & Co., Inc., One Rockefeller Plaza, 25th Floor, New York, New York 10020, Attn: John A. Levin, President.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202)

942–0574, or Robert A. Robertson, Branch Chief, 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.

Applicants' Representations

1. The Company is registered under the Act as a closed-end management investment company. Since its inception, the Company has been internally managed by its officers under the supervision of its board of directors. The Company is also registered as an investment adviser under the Investment Advisers Act of 1940, and it actively solicits investment advisory accounts. Acquisition Corp. is a wholly-owned subsidiary of the Company, organized for the purpose of acquiring LEVCO (the ''Acquisition'').

2. LEVCO is a registered investment adviser with an established investment management business. The Individual Applicants collectively own approximately 91 percent of the outstanding common stock of LEVCO.

3. Each LEVO Partnership is organized as a limited partnership. The LEVCO Partnerships are private investment companies relying on the exclusion from the definition of investment company provided by section 3(c)(1) of the Act. The LEVO Partnerships are advised by LEVCO. Applicants request that the proposed relief apply to the LEVCO Partnerships and all subsequently organized private investment companies that rely on section 3(c)(1) of the Act and that are advised by NEW LEVCO or an entity controlling, controlled by, or under common control with NEW LEVCO or in which GP Subsidiary (as defined below) or another entity controlled by the Company is a general partner. Applicants also request that the proposed relief apply to the Individual Applicants and other persons who become similarly situated in the future.

4. The Company believes that growth by increasing the assets under management of the Company is in the best interests of the Company and its stockholders. Consequently, on November 5, 1992, the Company's board approved the Company providing investment management services to third parties. The Company anticipates that fees resulting from the investment management services will enable the Company to achieve part of its objective to increase its earnings potential, decrease expenses and to strengthen its ability to retain and attract highly qualified personnel. However, the Internal Revenue Code of 1986 (the ''Code'') limits the amount of revenue from investment management services the Company can receive without jeopardizing its status as a ''regulated investment company'' under Subchapter M of the Code. Accordingly, the Company's board approved the organization of a subsidiary to perform investment management services. Subsequently the opportunity to acquire LEVCO was presented to the Company.

5. The Company proposes to acquire, through Acquisition Corp., all of the outstanding stock of LEVCO, along with LEVCO's wholly-owned broker-dealer subsidiary (''LEVCO Broker Subsidiary'') and another wholly-owned company (''GP Subsidiary''), which is the general partner of each of the LEVCO Partnerships. LEVCO will be merged into Acquisition Corp., with Acquisition Corp. being the surviving entity (the surviving merged entity is referred to as ''NEW LEVCO''). NEW LEVCO will be a subsidiary of the Company, and will itself have two wholly-owned subsidiaries: LEVCO Broker Subsidiary and GP Subsidiary. All of the outstanding common stock of NEW LEVCO may be transferred to another wholly-owned subsidiary of the Company (not yet formed) resulting in NEW LEVCO's being an indirect wholly-owned subsidiary of the Company.

6. Applicants request relief to: (a) permit the Company to consummate the Acquisition by (i) exempting the Company from section 12(d)(3) of the Act to permit the Company to acquire and hold 100 percent of the outstanding common stock of NEW LEVCO, and (ii) exempting the Company and its otherwise non-interested directors from section 2(a)(19) of the Act, permitting them to continue to be non-interested directors of the company despite the Company's ownership of NEW LEVCO; (b) permit NEW LEVCO to implement a performance-based compensation plan; and (c) permit NEW LEVCO to continue to operate the LEVCO Partnerships by (i) exempting the general partner and each LEVCO Partnership from section 17(a) of the Act to permit the general partner to make additional contributions to or withdrawal of capital from a LEVCO Partnership, (ii) exempting the Company, NEW LEVCO and certain limited partners in the LEVCO Partnerships from section 2(a)(3)(D) of the Act so that the Company and such limited partners will not be deemed to be affiliated persons of each other, and (iii) permitting GP Subsidiary under section 17(d) and rule 17d–1 to serve as the general partner of the LEVCO Partnerships and to receive incentive compensation in connection with its services to the partnerships.

7. The Acquisition has been negotiated at arms' length and was approved unanimously by the Company's directors, including all of the non-interested directors. No director of the Company is an affiliated person of LEVCO and none will benefit from the Acquisition except through his/her shareholdings in the Company. The Acquisition also will be subject to approval by the holders of a majority of the Company's outstanding common stock. The Company has retained Lazard Freres & Co. LLC (''Lazard'') as its financial advisor in connection with the Acquisition. Lazard has rendered an oral opinion regarding the fairness of the financial terms of the Acquisition to the Company and its stockholders. Lazards will be asked to provide a written opinion to be included in the Company's proxy materials.

8. The Company intends that NEW LEVCO adopt an incentive compensation plan (the ''Bonus Plan'') through which cash bonuses would be paid to officers and employees of NEW LEVCO if stated performance goals are reached. The Bonus Plan, which will be subject to approval by the Company's stockholders, is intended to meet the requirements of section 162(m) of the Code and thereby preserve NEW LEVCO's ability to deduct all of its compensation expense for federal income tax purposes. The Bonus Plan will be administered by a committee of the Company's board, all of the members of which will be non-interested directors of the Company and who will not be eligible to participate in the plan (the ''Compensation Committee''). The Compensation Committee will consider in its evaluation of the compensation of Company officers any compensation received by them as officers or employees of NEW LEVCO.

9. Upon consummation of the Acquisition, and subject to approval by its stockholders, the Company expects to ''externalize'' the management of its portfolio of publicly-traded securities to NEW LEVCO. Applicants believe that the cost to the Company of the services to be provided by NEW LEVCO is expected to be approximately equal to the cost of such services provided internally, although any element of profit would ultimately benefit the Company and its stockholders.

10. GP Subsidiary will continue to be general partner of each of the LEVCO Partnerships. As general partner, GP Subsidiary may be required from time to time to make additional contributions of

capital to a LEVCO Partnership in order to enable the Partnership to continue to be taxed as a partnership rather than a corporation for federal income tax purposes and may also from time to time desire to withdraw capital no longer required for that purpose. GP Subsidiary may receive from the account of each limited partner in a LEVCO Partnership an incentive allocation which is disproportionate to GP Subsidiary's percentage of the Partnership's capital. The incentive allocation will comply with rule 105–3 under the Advisers Act.

Applicants' Legal Analysis

The Acquisition

1. Section 12(d)(3) generally makes it unlawful for any registered investment company to purchase any security issued by a broker-dealer or an investment adviser. The section was intended to limit the exposure of registered investment companies to entrepreneurial risks peculiar to securities related businesses, and to prevent potential conflicts of interest and reciprocal practices.

2. Section 6(c) provides that the SEC may exempt any transaction from any provision of the Act, or any rule or regulations 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 Act. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit the Company to hold a direct or indirect interest in a company registered as an investment adviser and in a registered broker-dealer.

3. The Company believes that its continued viability as a closed-end investment company is dependent upon its continuing ability to grow by increasing assets under management. The Company also believes that the development of an investment advisory business is a responsible and appropriate means of attaining these objectives. The Company believes that there is no indication that the potential for the type of abuse intended to be eliminated by section 12(d)(3) is presented by the proposed Acquisition. Moreover, absent the limitations imposed by the Code, applicants believe that the Company would be permitted to engage directly in the activities conducted by LEVCO without the need for exemptive relief. The Company believes that the standards set forth in section 6(c) have been met.

4. Section 2(a)(19) defines an ''interested'' person of an investment company as, among other things, one who is an ''affiliated person'' of the investment company's investment adviser. Section 2(a)(3) defines an ''affiliated person'' of an entity as one who controls that entity. Section 10(a) of the Act requires that no more than 60 percent of an investment company's directors be ''interested'' persons of the investment company. The Company requests an exemption under section 6(c) from section 2(a)(19) so that the Company's directors will not be deemed to be ''interested'' persons of the Company solely because of the Company's ownership of NEW LEVCO. Because NEW LEVCO will be a wholly-owned direct or indirect subsidiary of the Company, the directors of the Company may be deemed to control NEW LEVCO, which will be, after the externalization, the Company's investment adviser. Thus, all of the Company's directors would be affiliated with the Company's investment adviser, and, therefore, an ''interested'' person of the Company.

5. The purpose of defining affiliated persons of an investment company's investment adviser as interested persons is that persons with ties to the investment adviser may be presumed to have interests that are diametrically opposed to the interest of the investment company. The Company contends that because NEW LEVCO will be wholly-owned, directly or indirectly, by the Company, that disparity of interests will not be present. The Company therefore believes that the standards for exemptive relief under section 6(c) have been met.

NEW LEVCO's Operations

6. Section 17(d) of the Act and rule 17d–1 thereunder generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any ''joint enterprise or other joint arrangement or profit-sharing plan'' in which the registered investment company or a company controlled by the registered investment company is a participant. Applicants request an order under section 17(d) and rule 17d–1 to permit NEW LEVCO to implement the Bonus Plan pursuant to which performance-based compensation would be paid to officers and employees of NEW LEVCO. NEW LEVCO will be a company controlled by an investment company and will be obligated to make payments pursuant to the Bonus Plan. Participants in the Bonus Plan will include persons who are affiliated persons of the Company, all of whom will be affiliated persons of NEW LEVCO, the Company's investment adviser. Implementation of the Bonus Plan will therefore require relief under rule 17d–1.

7. Rule 17d–1 provides that in passing upon an application concerning a joint transaction, the SEC will consider whether the participation of the controlled company in such profit-sharing plan, on the basis proposed, is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applications contend that permitting controlled companies to implement incentive compensation plans is consistent with the policies and purposes of the Act if appropriate safeguards are in place. The Company believes that NEW LEVCO's participation in the Bonus Plan will not be ''less advantageous'' to NEW LEVCO than participation will be to the participants. The Bonus Plan will be administered by the Compensation Committee of the Company's board of directors, all of the members of which will be non-interested directors of the Company and who will not be eligible to participate in the Bonus Plan. All awards to the officers and employees of NEW LEVCO under the Bonus Plan will be paid in cash, because it is important to the Company that all of the benefits of direct or indirect equity ownership of NEW LEVCO flow to the Company's shareholders. Applicants also believe that the Bonus Plan will enhance the ability of NEW LEVCO to attract and retain highly-qualified personnel. Thus, the Company believes that the requested order permitting implementation of the Bonus Plan would be in the best interests of the Company and its stockholders and meets the standard for an exemptive order under the Act.

The LEVCO Partnerships

8. Section 17(a) of the Act provides that it is unlawful for an affiliated person of a registered investment company, acting as principal, to purchase or sell any security or other property to that registered investment company or to any company controlled by that registered company, with certain exceptions. Section 17(b) of the Act provides that an application for an exemption from section 17(a) shall be granted if the evidence shows that the terms of the proposed transaction, including the consideration to paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of the registered investment company

and with the general purposes of the Act. The Company and the LEVCO Partnerships request an exemption pursuant to section 6(c) and section 17(b) from section 17(a) so that GP Subsidiary may continue to be the general partner of the LEVCO Partnerships after consummation of the Acquisition.[1] If GP Subsidiary's contribution to or withdrawal of capital from a Partnership is deemed to be the sale or purchase by the Partnership (an affiliated person of the Company) of a ''security or other property'' to GP Subsidiary (a company controlled by the Company), the prohibition of section 17(a) would apply.

9. GP Subsidiary, as the general partner of a LEVCO Partnership, generally would be required to maintain a capital contribution with respect to such Partnership in the amount of one percent of that Partnership's aggregate capital to preserve the tax status of the Partnership. Section 17(a) is intended to prevent overreaching by an affiliate to cause an investment company or a controlled company to enter into a transaction with the affiliate which is not fair or reasonable to the investment company or controlled company. The Company and the LEVCO Partnerships believe that those risks are not presented by contributions of additional capital to or withdrawals of capital from a LEVCO Partnership by GP Subsidiary. Contributions and withdrawals of capital will be made at the same time and at the same prices as limited partner interests are issued or redeemed by limited partners in the LEVCO Partnership. Applicants, therefore, submit that the standards set forth in sections 6(c) and 17(b) have been met.

General Partner's Incentive Compensation

10. The Company, the LEVCO Partnerships and the Individual Applicants request an exemption under section 17(d) and rule 17d–1 to permit GP Subsidiary to receive incentive compensation from the limited partners in the LEVCO Partnerships, including limited partners who are affiliated persons of the Company. Certain of the principal stockholders of NEW LEVCO, who will be officers and directors of the Company, are, and will continue to be, investors in each LEVCO Partnership. Other affiliated persons who are limited partners may include persons who are affiliated solely because they have an interest in the Partnership that is sufficiently large to trigger an affiliation. The identifies of limited partners who are affiliated persons of the Company will change over time, as persons invest in or withdraw from a LEVCO Partnership. The relief requested is intended to cover all limited partners in a LEVCO Partnership who are from time to time affiliated persons of the Company.

11. The arrangements by which GP Subsidiary, a company controlled by the Company, will receive allocations of Partnership profit and loss and compensation from a LEVCO Partnership and from the limited partners in the Partnership, including a share in the profits of the LEVCO Partnership that would otherwise be allocated to the limited partners, may be deemed to violate section 17(d) and rule 17d–1.

12. The Company and the LEVCO Partnerships submit that management of private investment companies, including those with incentive compensation arrangements complying with rule 205–3 under the Advisers Act, is common in the investment management business. Applicants state that the inability to offer such a product to suitable potential investors would place NEW LEVCO at a competitive disadvantage. Moreover, applicants believe that the participation of GP Subsidiary in the operation of the LEVCO Partnerships will not be less advantageous to GP Subsidiary than to the Partnerships and the limited partners. GP Subsidiary will be the recipient of the incentive allocation which will provide GP Subsidiary with a significant reward if the investment performance of the Partnership is superior. Limited partners who are affiliated persons of the Company will also have the opportunity to benefit by investing in a LEVCO Partnership, but only on the same terms on which otherwise non-affiliated limited partners participate. The Company believes that the requested relief permitting operation of the LEVCO Partnerships would be in the best interests of the Company and its stockholders and meets the standards set forth in rule 17d–1(b).

Limited Partners of the LEVCO Partnerships

13. Section 2(a)(3)(D) of the Act defines an ''affiliated person'' of another person to include any partner or copartner of such other person. The Company requests an exemption under section 6(c) from section 2(a)(3)(D) so that limited partners in a LEVCO Partnership who have an interest in the Partnership of less than five percent and who are not otherwise affiliated persons of the Company would not, solely by reason of their status as limited partners in a LEVCO Partnership, be deemed to be affiliated persons of the Company.[2] The application of section 2(a)(3)(D), coupled with an analysis of the relationships among the Company, GP Subsidiary, the LEVCO Partnerships, and the limited partners results in the conclusion that the Company and each limited partner may be deemed to be an affiliated person of an affiliated person of each other. If this were the case, the limited partners would be subject to sections 17(a) and 17(d) and rule 17d–1, which would prohibit or severely restrict certain affiliated and joint transactions.

14. The relief requested is intended only to relieve the limited partners (and the Company) of the burden of monitoring for compliance with section 17 of the Act in connection with the separate business or investment transactions of the limited partners individually. The requested relief would not affect the status of the LEVCO Partnerships themselves. Applicants note that if the LEVCO Partnerships were organized as corporations instead of limited partnerships, and if a limited partner acquired less than five percent of the voting securities of that corporation, applicants assert that none of its fellow stockholders, including a stockholder that controlled the corporation, would thereby be deemed affiliated persons of each other under section 2(a)(3). Applicants believe that the requested relief is consistent with purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Acquisition of LEVCO will not be consummated unless the Acquisition has been approved by the holders of a majority of the Company's outstanding common stock.

2. All of the issued and outstanding capital stock of NEW LEVCO will be owned directly or indirectly by the Company. The Company will not dispose of capital stock of NEW LEVCO or any intervening corporate entity if, as a result, the Company would own, directly or indirectly, 50 percent or less of the outstanding capital stock of each

[1] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. *See* Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c), along with section 17(b), frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

[2] The Company acknowledges that any persons who are affiliated persons of the Company for reasons other than their status as limited partners of a LEVCO Partnership will continue to be affiliated persons of the Company, notwithstanding issuance of the requested order.

of NEW LEVCO and any intervening corporate entity unless the Company disposes of 100 percent of its interest in NEW LEVCO.

3. The Company's board of directors will maintain Audit, Compensation and Nominating Committees of the board, none of the members of which will be ''interested persons'' of the Company as defined in the Act, modified by the Order.

4. The board of directors of the Company will review at least annually the investment management business of the Company and NEW LEVCO in order to determine whether the benefits derived by the Company warrant the continuation of the investment management business and the direct or indirect ownership by the Company of NEW LEVCO and, if appropriate, approve (by at least a majority of the directors of the Company who are not ''interested persons'' of the Company as defined by the Act giving effect to persons'' of the Company as defined by the Act giving effect to the request Order) at least annually, such continuation.

5. The Bonus Plan will be approved and administered by the Compensation Committee of the board of directors of the Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–9770 Filed 4–19–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Rockwell International Corporation, Common Stock, $1 Par Value) File No. 1–1035

April 16, 1996.

Rockwell International Corporation (''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 Chicago Stock Exchange, Inc. (''CHX'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security is currently traded on the NYSE, PSE, and CHX. As a result, the Company incurs annual fees for each of the exchanges. Since the Security's volume of trading on the CHX is low, the Company does not believe that it is cost effective to maintain a listing on the CHX. Based on the foregoing reasons, the Company requests that it be permitted to remove its Security from listing on the CHX.

The Company has applied to the Board of Governors of the CHX, pursuant to Rule 3 of that exchange, to remove the Company's Security from listing and has received its approval. The Company has received confirmation from the CHX that no further steps are required to comply with its rules governing the delisting of securities.

Any interested person may, on or before May 7, 1996, 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. 96–9801 Filed 4–19–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Titan Corporation, Common Stock, $.01 Par Value; Cumulative Convertible Preferred Stock, $1.00 Par Value) File No. 1–6035

April 16, 1996.

Titan Corporation (''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 securities (''Securities'') from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the Securities are currently traded on the NYSE and the CHX. As a result, the Company incurs annual fees for each of the exchanges. Since the vast majority of Titan's stock is currently traded on the NYSE, the Company does not believe that it is cost effective to also maintain a listing on the CHX. Therefore, the Company has determined that a single listing on the NYSE will be sufficient to serve the needs of its stockholders. Based on the foregoing reasons, the Company requests that it be permitted to remove its Securities from listing on the CHX.

Any interested persons may, on or before May 7, 1996, 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. 96–9800 Filed 4–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37115; File No. SR–CBOE–96–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options on the CBOE Gold Index

April 15, 1996.

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 March 28, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') 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 self-regulatory organization.[1] The

[1] On April 3, 1996, the CBOE clarified the maintenance standards for the CBOE Gold Index (''Gold Index'' or ''Index''). Specifically, the CBOE indicated that the Exchange will monitor the composition of the Index to determine whether the maintenance criteria are satisfied, including whether any change has occurred to cause fewer than 90% of the stocks by weight, or fewer than 80% of the total number of stocks in the Index, to qualify as stocks eligible for equity options trading

Continued

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 CBOE proposes to list for trading cash-settled, European-style [2] options on the Gold Index, an index comprised of the stocks of 10 companies involved primarily in gold mining and production.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the Index. According to the CBOE, the Index meets all of the generic criteria for listing options on narrow-based indexes as set forth in CBOE Rule 24.2, ''Designation of the Index,'' and in the Commission's order approving CBOE Rule 24.2.[3] In accordance with CBOE Rule 24.2, the CBOE proposes to list and trade options on the Index beginning 30 days from the filing date of the proposed rule change.

The Index consists of the stocks of 10 companies involved primarily in gold mining and production.[4] According to the CBOE, options on the Index will provide investors with a low-cost means to participate in the performance of this sector or hedge against the risk of investing in this sector.

Index Design: All of the stocks currently comprising the Index are U.S. securities that trade on the New York Stock Exchange, Inc. (''NYSE'') or on the American Stock Exchange, Inc. (''Amex''). Additionally, all of the Index's component stocks are ''reported securities'' as defined in Rule 11Aa3–1 under the Act.

According to the CBOE, each of the stocks in the Index has a market capitalization in excess of $580 million. Specifically, as of February 2, 1996, the stocks comprising the Index ranged in capitalization from $589 million to $11.17 billion, and the Index's total capitalization was $34.77 billion. In addition, as of February 2, 1996, the mean capitalization of the Index's component stocks was $3.47 billion and the median capitalization was $2.04 billion.

The CBOE represents that all of the Index's component stocks have had monthly trading volume in excess of 1 million shares over the six-month period through January 1996, and that the average monthly volumes for these stocks over the six-month period ranged from a low of 3.9 million shares to a high of 25.13 million shares. According to the CBOE, all of the Index's component stocks are eligible for options trading.

The Index is an equal dollar-weighted index, with each stock comprising 10% of the total Index weight. The top five stocks in the Index account for 50% of the Index. Accordingly, the Index meets the Exchange's generic listing standards for narrow-based indexes with respect to market capitalization, weighting constraints, options eligibility, and trading volume.

Calculation: The Index will be calculated on a real-time basis using last-sale prices by the CBOE or its designee, and will be disseminated every 15 seconds by the CBOE. If a component stock is not being traded currently, the CBOE will use the most recent price at which the stock traded to calculate the Index. At the close on February 2, 1996, the value of the Index was 146.94.

The Index is equal dollar-weighted and reflects changes in the prices of the component stocks relative to the Index base date, December 16, 1994, when the Index was set at 100.00. Specifically, each of the component securities is initially represented in equal dollar amounts, with the level of the Index equal to the combined market value of the assigned number of shares for each of the Index components divided by the current Index divisor. The Index divisor is adjusted to maintain continuity in the Index at the time of certain types of changes, including, but not limited to, quarterly re-balancing, special dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

Maintenance: The CBOE will maintain the Index. The Index will be re-balanced after the close of business on expiration Fridays on the March quarterly cycle. In addition, the CBOE staff will review the Index on approximately a monthly basis. The CBOE may change the composition of the Index at any time to reflect changes affecting the components of the Index or the gold mining industry generally. If it becomes necessary to remove a stock from the Index (for example, because of a takeover or merger), the CBOE will add only a stock having characteristics that will permit the Index to remain within the maintenance criteria specified in the CBOE's rules and in the Generic Index Approval Order.[5] The CBOE will take into account the capitalization, liquidity, volatility, and name recognition of any proposed replacement stock.

Absent prior Commission approval, the CBOE will not increase to more than 13, or decrease to fewer than 9, the number of stocks in the Index. In addition, the CBOE will monitor the composition of the Index to determine whether the maintenance criteria are satisfied, including whether any change has occurred to cause fewer than 90% of the stocks by weight, or fewer than 80% of the total number of stocks in the Index, to qualify as stocks eligible for equity options trading under CBOE Rule 5.3.[6]

If the Index fails at any time to satisfy the maintenance criteria, the Exchange will notify the Commission of the fact immediately and will not open for trading any additional series of options on the Index unless the CBOE determines that such failure is not significant and the Commission concurs in that determination, or unless the Commission approves the continued listing of options on the Index under Section 19(b)(2) of the Act.

Index Options Trading: The CBOE proposes to base trading in Index options on the full value of the Index.

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under CBOE Rule 5.3, ''Criteria for Underlying Securities.'' *See* Letter from Timothy Thompson, Senior Attorney, CBOE, to Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated April 3, 1996 (''April 3 Letter'').

[2] A European-style option can be exercised only during a specified period immediately prior to the expiration of the option.

[3] See4 Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (''Generic Index Approval Order'').

[4] The components of the Index are: Amax Gold Inc.; Barrick Gold Corporation; Battle Mountain Gold Company; Echo Bay Mines Ltd.; Homestake Mining Company; Newmont Mining Corporation; Placer Dome, Inc.; Pegasus Gold, Inc.; Santa Fe Pacific Gold Corporation; and TVX Gold, Inc.

[5] *See* note 3, *supra.*

[6] *See* April 3 Letter, *supra* note 1.

The CBOE may list full-value long-term index option series (''LEAPS''), as provided in CBOE Rule 24.9, ''Terms of Index Option Contracts.'' The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value LEAP will be rounded to the nearest one-hundredth after the initial calculation.

Exercise and Settlement: Index options will have European-style exercise and will be ''A.M.-settled Index Options'' within the meaning of the rules in Chapter XXIV, ''Index Options,'' of the CBOE's rules, including CBOE Rule 24.9, ''Terms of Index Option Contracts.'' which the CBOE is amending to refer specifically to Index options. The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable: Except as modified herein, the rules in Chapter XXIV of the CBOE's rules will apply to the Index. Options based on the Index will be subject to the position limit requirements of CBOE Rule 24.4A, ''Position Limits for Industry Index Options.'' Currently, the position limit for Index options is 12,000 contracts. Ten reduced-value Index options will equal one full-value Index option for position and exercise limit purposes.

The CBOE represents that the Exchange has the necessary systems capacity to support new series that will result from the introduction of Index options. In addition, the Options Price Reporting Authority (''OPRA'') has the capacity to support the new series.[7]

The CBOE believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it will permit trading in options based on the Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

(b) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE 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 either 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 rule change complies with the standards set forth in the Generic Index Approval Order,[8] it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. Pursuant to the Generic Index Approval Order, the Exchange may not list Index options for trading prior to 30 days after March 28, 1996, the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 13, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9803 Filed 4–19–96; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Memorandum from Joseph P. Corrigan, Executive Director, OPRA, to William Speth, CBOE, dated February 23, 1996.

[8] *See* note 3, *supra.*

[9] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37117; International Series Release No. 968; File No. SR–CBOE–96–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Permits to Trade Options on the Indice de Precios y Cotizaciones

April 16, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 15, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE. 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 proposes to adopt new Exchange Rule 3.26 and related definitions in Rule 1.1 to authorize the issuance of 33 permits (''IPC Permits'')—one to each firm that was a member of the Bolsa Mexicana de Valores (''Bolsa'') as of January 1, 1996 (''Bolsa members'' or ''IPC Permit Holders'')—and to set forth the rights and obligations appurtenant to the IPC Permits. The listing and trading of IPC Options by the Exchange is the subject of a separate rule filing, SR–CBOE–96–09, which was noticed by the Commission in Securities Exchange Act Release No. 34–36920 (March 5, 1996), 61 FR 10043 (March 12, 1996).

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose, of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Exchange 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 Exchange has entered into a license agreement with Bolsa (''License Agreement'') pursuant to which Bolsa has licensed the Exchange to trade options on the IPC (''IPC Options''). In consideration for the grant of this license, CBOE has agreed, among other things, to issue the ipc Permits to the Bolsa members.

The IPC Permits, which will be non-leasable and non-transferable, could be used in one of two alternative ways. First, an IPC Permit Holder who wanted direct access to the CBOE trading floor in respect of IPC Options could exercise its permit on behalf of itself, if it is qualified and approved for membership on CBOE, or on behalf of a subsidiary that is qualified and approved for membership on CBOE. (Qualifications for membership are spelled out in CBOE's rules. Among other things, Rule 3.3(a) requires a member to be organized under the laws of one of the United States or under such other laws as the CBOE Board of Directors shall approve and to be a U.S. registered broker-dealer.) The organization on whose behalf an IPC Permit is exercised is referred to as an ''IPC Permit Exerciser'' under proposed Rule 1.1(yy). Assuming the IPC Permit Exerciser is approved for membership in accordance with CBOE rules, it will have all the rights and privileges of CBOE membership under CBOE's rules with respect to IPC Options—including the right to have a nominee appointed as a market maker or floor broker with respect to IPC Options. The IPC Permit Exerciser will also have all of the limitations and obligations of members, including the obligation to comply with CBOE rules and the federal securities laws, and will be subject fully to CBOE's enforcement jurisdiction. For example, nominees of an IPC Permit Exerciser would be required to complete CBOE member firm orientation and would be required to comply with the requirements set forth in Chapter IX of the Exchange rules in order to conduct a public customer business. IPC Permit Exercisers would also be subject to the Exchange's limitation of liability rules—Rule 6.7, Rule 7.11, and Rule 24.12—to the same extent as regular members.

IPC Permit Exercisers would not have certain rights of membership and would be subject to certain limitations that do not apply to regular Exchange members. IPC Permit Exercisers would not be deemed to be members of CBOE for purposes of the General Corporation Law of Delaware, CBOE's Certificate of Incorporation, or CBOE's Constitution. Thus, IPC Permit Exercisers will have no property interest in the Exchange, no voting rights, and will not be eligible as members for election to the Board of Directors (although they will be eligible for membership on the committees established pursuant to CBOE Rule 2.1). IPC Permit Exercisers would also not be permitted to enter into transactions or to give orders for any CBOE product other than IPC Options while on the floor of the Exchange.[1]

An IPC Permit Holder which does not exercise its permit would not have the rights or obligations of CBOE membership. However, CBOE has agreed, as part of the consideration given by it in order to obtain the license of IPC from Bolsa, that if an IPC Permit Holder traded IPC Options for its own account through a CBOE member (including an IPC Permit Exerciser), that IPC Permit Holder would be charged transaction fees for those trades at the same rates as the transaction fees for CBOE member firm proprietary trades. The Exchange does not believe that this would be an unfair discrimination among non-members or would constitute an inequitable allocation of Exchange fees. First, as mentioned above, this is part of the consideration which Bolsa has required from the Exchange in exchange for Bolsa's grant of a license of IPC. The IPC Index has been built up and has gained recognition and value largely through the efforts of Bolsa, and the reduction in transaction fees is not an inappropriate consideration for Bolsa's efforts. (In this respect, the transaction is not unlike that by which CBOE was originally created through the efforts of the Chicago Board of Trade, in exchange for which CBOE gave Board of Trade members the right to membership on CBOE.) Second, the reduction in transaction fees is extremely limited. It is limited to transactions in IPC Options and will not extend to any other CBOE product. It is limited to the proprietary trades of those Bolsa members who do not exercise their IPC Permits; as a result, it does not give any Bolsa member a competitive advantage in seeking to obtain the business of customers. It is limited to the 33 firms which were Bolsa members as of January 1, 1996, and a number of those 33 firms will either become IPC Permit Execisers or are already members of, or are affiliated with members of, CBOE. Because of these limitations, it is anticipated that the actual amount of money by which CBOE fees will be reduced will be very small.

The proposed rules changes are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'') in general and further the objectives of Section 6(b)(5) in particular in that they will grant special access to the Exchange's floor, subject to the Rules of the Exchange, in respect of IPC Options to a group of persons (*i.e.*, the Bolsa members) who are likely to provide increased liquidity for the market in the IPC Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any inappropriate burden on completion. For the reasons stated above, CBOE believes that there is a reasonable basis for the difference in Exchange fees to be paid by IPC Permit Holders who do not exercise their IPC Permits and other non-members in respect of proprietary trades in IPC Options and that such difference does not impose a 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[1] The Exchange will issue IPC Permit Exercisers with badges of a distinctive color so that the limited authority of these traders will be evident on the floor to other market participants and Floor Officials. The Exchange expects, therefore, that these market participants and Floor Officials will be able to ensure that IPC Permit Exercisers do not engage in activity prohibited by Exchange rules. In addition, the Exchange is contemplating the issuance of distinctive acronyms to IPC Permit Exercisers so that Exchange staff will be able to surveil more effectively and easily for illegal activity through a review of trade reports.

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 25049. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by May 13, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 96–9804 Filed 4–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37116; File No. SR–MSRB–95–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases

April 16, 1996.

I. Introduction

On December 13, 1995 the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to require brokers, dealers and municipal securities dealers (''dealers'') to include time of trade execution when submitting information on inter-dealer transactions to the Board under rule G–14, in order to enhance the Board's transaction reporting pilot program (''the program'').

The proposed rule change was published for comment in Securities Exchange Act Release No. 36827 (February 9, 1996), 61 FR 6276 (''Proposing Release''). The Commission received two comments on the proposal.[1] For the reasons discussed below, this order approves the proposal to amend Board rule G–14, effective July 1, 1996, as requested by the Board in the Proposing Release.

II. Description of the Proposal

a. Purpose

As discussed in the Proposing Release, the proposed rule change is intended to improve the audit trail that is currently available for inter-dealer municipal securities transactions by requiring municipal dealers to include the time of trade execution when submitting information on their trades under Board rule G–14. This would make it possible to reconstruct the time sequence of interdealer transactions. The information would be made available, through the Board's automated transaction reporting system, to the Commission and to organizations charged with inspection for compliance with, and enforcement of, Board rules (''enforcement agencies'').

b. Background

This initiative is one element of an ongoing, multi-phase pilot program to increase price transparency for public use and to create audit trails for market surveillance purposes in the municipal securities markets. In 1994,[2] the Board described its plan to disseminate a daily public report that summarizes market activity for securities traded ''frequently''[3] on the previous day (''T+1''), and to construct a comprehensive ''surveillance database,'' that would include details of each trade (the identity of the parties, the price, par value, etc.). The 1994 plan proposed four phases: inclusion of inter-dealer transactions in Phase I, institutional customer transactions in Phase II,[4] retail customer transactions in Phase III, and intra-day reporting in Phase IV.

The Commission originally approved the pilot program in concept on November 9, 1995.[5] That order initiated the Board's transaction reporting program and operation of the supporting computer system, and was an important first step to increase transparency and market surveillance of the municipal securities market.

Accordingly, Phase I of the transaction reporting system has been operational since January 23, 1995. Each day, the system has produced a report of price and volume of inter-dealer transactions in ''frequently traded'' municipal securities executed on the previous business day. The system also generates a surveillance data base which includes, among other things, the price and volume of each compared trade, the trade date, identification of the security traded, and identification of all parties to each compared interdealer transaction.[6]

The information provided in the surveillance database is intended to enable the enforcement agencies to construct audit trails of inter-dealer transactions. The Board has provided on-line access to the surveillance database to the National Association of Securities Dealers, Inc. (''NASD'') and is making information from the surveillance database available to all the agencies responsible for enforcing Board rules. The proposed amendment to rule G–14 is intended to enhance the surveillance information currently available, and to make it more useful to those responsible agencies.

c. Timing

The Proposing Release notes that changes in the automated comparison system are underway to enable that system to collect time-of-trade

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[1] *See* letter from Joseph W. Sack, Senior Vice President, Public Securities Association, to Secretary, Securities and Exchange Commission, dated March 8, 1996 (''PSA letter''), and from The Executive Committee of the Regional Municipal Operations Association to the MSRB, dated March 22, 1996 (''RMOA letter''). The Commission notes that the RMOA letter was not submitted to the Commission as a comment letter specifically on this filing, but because the letter provides RMOA's comments on the proposed rule to require time of trade reporting, the Commission is considering the pertinent comments in the present order.

[2] *See* letter from Robert Drysdale, MSRB, to Arthur Levitt, SEC, dated November 3, 1994.

[3] Currently, the threshold for ''frequent'' trading is four or more trades in one day.

[4] ''Institutional'' transactions were defined for the purpose of Phase II as customer transactions settled on a delivery *versus* payment/receipt *versus* payment (DVP/RVP) basis. These are transactions in which the customer requires that settlement occur with an exchange of money and securities at the time of settlement. Generally, institutional customers require DVP/RVP settlement and retail customers do not.

[5] *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (order approving Phase I of the MSRB's transaction reporting pilot program). The input stream for inter-dealer transaction reporting under Phase I is transaction information reported by dealers, pursuant to Board rule G–14, to the Board through the automated comparison system. The Board has designated National Securities Clearing Corporation (''NSCC''), the central facilities provider of the automated comparison system, as its agent for receiving inter-dealer transaction information.

[6] The Commission has recently approved the requirement to identify all dealers that are parties to a trade when submitting transaction information to the Board. *See* Securities Exchange Act Release No. 35988 (July 18, 1995), 60 FR 38069.

information, and dealers and service providers must make corresponding changes in order to furnish to the MSRB the information that would be required under the proposal. To provide market participants with sufficient time to make the necessary internal system changes, the Board has requested that the Commission make the proposed rule change effective on July 1, 1996.

The Proposing Release also describes the MSRB's revised plan to delay implementation for Phase II by merging that phase with Phase III of the program.[7] According to the MSRB, notice was to be made available to the Commission and the industry by the end of 1995, outlining the new plan and requesting comment from industry participants. Corresponding proposed amendments to rule G–14 will be filed with the Commission in mid-1996. The Commission notes that the Proposing Release included a discussion of this new schedule, but did not formally propose a revised schedule or rule amendment for Commission review at this time.

d. Comments Received by the MSRB Prior to Filing With the Commission

In its filing with the Commission, the Board stated that it received two comments on the proposal in response to a notice published by the MSRB which, among other things, had described the proposed rule change and requested comment from market participants.[8]

According to the Board, one commentor[9] that responded to the MSRB publication stated that time-of-trade reporting would involve ''major and possibly costly'' system changes to dealer systems. This commentor, according to the Board, believed that time-of-trade reporting should be delayed until retail customer transactions are added to the transaction reporting program, so that dealers and clearing agencies could make the needed changes in conjunction with more extensive changes foreseen for the later phases. The MSRB further explained that the second commentor that responded to the MSRB publication[10] stated that many firms would incur development costs to modify their trading systems to accommodate time-of-trade information.

The Board responded to the above concerns in the Proposing Release. The Board believes that the proposed rule change is essential to facilitating effective surveillance and enforcement activities regarding inter-dealer transactions and should not be delayed until later phases of the transaction reporting program. The Board does not believe that incorporating time-of-trade data into current trade reporting systems represents a major system change. The Board further believes that the proposed rule change would merely add one item of information to an existing reporting requirement. That information item already is required, for record-keeping purposes, to be recorded by the dealer. Finally, the Board has proposed more than six months' lead time from its publication date to the effective date to allow dealers sufficient time to schedule the necessary system changes. In many cases, it would be expected that this change could be made in connection with other minor system adjustments that must be implemented in the ordinary course of business.

III. Comments

As noted above, the Commission received two comments on the proposal.[11] Both commenters opposed approval of the proposed rule change.

The commenters made essentially the same arguments that were made to the MSRB prior to filing discussed above. Specifically, one commenter, noting that it had already commented to the MSRB on the proposed rule change, continues to oppose the proposed rule change because of the costs that it would impose on dealers.[12] The commenter asserts that, in light of other costs currently imposed on municipal dealers, along with the MSRB's plans to require new systems by January 1998 for institutional and customer transaction reporting, implementation of the present proposal should be delayed until the requisite systems changes can be merged with those that will be required for the January 1998 transparency initiatives.

With respect to the present proposed rule change, the second commenter believes that time of trade information will be useful when the Board begins to take trade data beyond the dealer-to-dealer business.[13] The commenter does not see the usefulness of the information now, however. This commenter recommends postponing the proposed rule change ''in favor of a more logical progression toward the desired goals.''[14]

IV. Discussion and Order Approving Proposed Rule Change

The Commission believes the proposed rule change, effective as requested on July 1, 1996, is consistent with Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which requires, in pertinent part, that the Board's rules:

> 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 * * * 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 * * *.

While the Commission is sympathetic to the commenters' concerns regarding implementation costs, the Commission agrees with the MSRB that time of trade will be useful to enforcement agencies in determining the sequence of trades. This, in turn, should improve market surveillance capabilities in identifying dealer trading patterns that warrant further investigation to determine whether potentially violative practices have occurred. These improvements in the audit trail for market surveillance of the municipal securities markets should assist in preventing fraudulent and manipulative acts and practices and, in general, protect investors and the public interest, in furtherance of the above stated statutory objectives.

In this regard, the Commission previously has noted the need to make an ''integrated audit trail'' of transaction information available to the enforcement agencies. The Commission has expressed its belief that an audit trail will ''provide valuable information for market surveillance and inspection purposes to the MSRB, the Commission, the NASD, and the relevant banking agencies.''[15] Time of trade should prove useful as the MSRB moves toward coordinating its increasingly ''integrated'' audit trail.

The Commission also notes that, since its inception, the pilot program for trade reporting has been a multi-phase

[7] In 1994, the MSRB had planned to obtain institutional trade data from the Institutional Delivery (''ID'') System, operated by Depository Trust Corporation (''DTC''). After further research into this matter, however, the MSRB has determined that it is appropriate to merge Phases II and III of the program. Under this modified approach, dealers would be required to report selected information about institutional and retail customer trades to the Board by uploading the data from their own systems to the central system operated by the Board. The Commission has not approved this modified schedule.

[8] *See* ''Transaction Reporting Program for Municipal Securities: Phase II,'' *MSRB Reports*, Vol. 15, No. 1 (April 1995), at 11–15.

[9] The Public Securities Association provided this comment.

[10] Goldman, Sachs & Co provided this comment.

[11] *See* note 1, *supra*.

[12] *See* PSA letter, *supra* note 1.

[13] *See* RMOA letter, *supra* note 1.

[14] *Id*.

[15] Securities Exchange Act Release No. 34955, *supra* note 4, at 19.

program that, as proposed and approved in concept, would require market participants to make numerous systems changes. Thus, the requisite systems changes to report time of trade is one element of the on-going initiative, about which participants have been on notice for more than a year. Time of trade will not only be useful in market surveillance efforts for the present phase of the pilot program, but time of trade will continue to be needed when retail trade reports are required. Moreover, the MSRB has proposed, and the Commission is approving, a delayed effective date so that dealers may attempt to merge these systems enhancements with any others that may be required internally by dealers.

Finally, while the Commission has not yet formally reviewed or approved the MSRB's proposal to delay institutional trade reporting until that phase can be merged with customer trade reporting, the Commission believes that market surveillance efforts and transparency are both essential elements of the overall pilot program and, therefore, one aspect of the program should not be delayed because technical difficulties have slowed progress in another aspect of the program. In this regard, the Commission looks forward to working with the MSRB and market participants toward continued swift improvements in both market surveillance and price transparency in the municipal securities markets.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–MSRB–95–17), effective July 1, 1996, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9802 Filed 4–19–96; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. § 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before June 21, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3d Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629. Copies of these collections can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: Surety Guarantee Graduation Questionnaire.

Type of Request: New Information Collection.

Description of Respondents: Surety Companies participating in SBA's Surety Bond Guarantee Program.

Annual Responses: 43.

Annual Burden: 3½.

Title: Surety Guarantee Loss and Recovery Survey.

Type of Request: New Information Collection.

Description of Respondents: Surety Companies participating in SBA's Surety Bond Guarantee Program.

Annual Responses: 43.

Annual Burden: 2.

Comments: Send all comments regarding these information collections to Robert J. Moffitt, Associate Administrator, Office of Surety Guarantees, Small Business Administration, 409 3d Street, S.W., Washington, D.C. 20416. Phone No.: 202–205–6540. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 96–9852 Filed 4–19–96; 8:45 am]

BILLING CODE 8025–01–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1483).

TIME AND DATE: 10 a.m. (EDT), April 24, 1996.

PLACE: University of North Carolina, Owen Conference Center, Room 302, One University Heights, Asheville, North Carolina.

STATUS: Open.

Agenda

Approval of minutes of meeting held on February 21, 1996.

New Business

C—Energy

C1. Modifications and Supplemental Maintenance Contract with Stone & Webster Construction Company, Inc., for modifications and supplemental maintenance services at Browns Ferry, Sequoyah, and Watts Bar Nuclear Plants.

C2. Supplement to Modification and Supplemental Maintenance Support Contract No. 92PGN–77052E–03 with Gilbert-Commonwealth/Union Boiler/Morrison Knudsen Constructors (G–UB–MK) for TVA's fossil and hydro plants.

E—Real Property Transactions

E1. Abandonment of easement rights over an unused access right-of-way affecting 1.6 acres on the Cherokee-Pigeon Forge 161–kV transmission line in Sevier County, Tennessee (Tract No. CDPE–7AR).

E2. Sale of permanent easements and temporary construction easements affecting approximately 15.6 acres of Allen Fossil Plant property to the City of Memphis, Tennessee, for construction of a highway and railroad to serve an industrial area (Tract Nos. XALSP–2H and XALSP–3RR).

E3. Sale of noncommercial, nonexclusive permanent recreation easements affecting a total of 0.20 acre of Tellico Lake shoreline in Loudon and Monroe Counties, Tennessee (Tract Nos. XTELR–90RE, – 180RE).

E4. Deed modification affecting 0.03 acre of former TVA land on Pickwick Lake in Hardin County, Tennessee (Tract No. XPR–52:33).

E5. Sale of permanent easement to CSX Transportation, Inc., for a railroad bridge replacement project affecting approximately 0.19 acre of land on Guntersville Lake in Jackson County, Alabama (Tract No. XGR–735RR).

E6. Grant of a permanent easement to Hamilton County, Tennessee, for a bridge replacement project and road affecting approximately 0.902 acre of land on Chickamauga Lake in Hamilton County, Tennessee (Tract No. XTCR–189H).

E7. Sale of permanent easements to resolve encroachments affecting a total of 0.09 acre of land on Blue Ridge Lake in Fannin County, Georgia (Tract Nos. XBRR–10E, –11E and –12E).

E8. Sale of a 40-year easement to TIMCO, Inc., for industrial development affecting approximately 17.9 acres of land on Pickwick Lake in Tishomingo County, Mississippi (Tract No. XYECR–81E).

E9. Abandonment of approximately 100 acres of flowage easements rights in exchange for fee ownership of approximately 120 acres of Wilson Lake land in Lawrence County, Alabama (Tract Nos. WDRE–324 and WDRE–4A).

F—Unclassified

F1. Filing of condemnation cases.

Information Items

1. Supplement to Contract No. TV–62311A with Tennessee Emergency Management Agency.

2. Modification to the Economy Surplus Power (ESP) program to allow the temporary extension of existing ESP contracts with

customers whose total power requirements are 5,000 kW or less.

3. Filing of condemnation cases.

4. Delegation of authority to the Chief Administrative Officer to supplement Contract No. TV–92582V with Fitzgerald and Company.

5. Delegation of authority to the Chief Administrative Officer to supplement Contract No. TV–95367V with SCB Computer Technology, Inc.

FOR MORE INFORMATION: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: April 17, 1996.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 96–9921 Filed 4–18–96; 12:08 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–96–20]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 9, 1996.

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 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 April 15, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28493.

Petitioner: Seven Bar Flying Service, Inc., d.b.a. SB Air, Inc.

Sections of the FAR Affected: 14 CFR 135.267(d).

Description of Relief Sought: To permit SB Air, Inc., (SB Air) to assign its flight crewmembers to flight time without providing at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment. Specifically, SB Air requests that the time its flight crewmembers are on ''pager call'' or ''telephone call'' be considered ''rest time.''

Dispositions of Petitions

Docket No.: 17681.

Petitioner: Kenmore Air Harbor, Inc.

Sections of the FAR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought/ Disposition: To extend Exemption No. 2528, as amended, which permits Kenmore Air Harbor, Inc., to conduct seaplane operations under visual flight rules, outside controlled airspace, overwater, at an altitude below 500 feet. *GRANT, March 29, 1996, Exemption No. 2528I.*

Docket No.: 26056.

Petitioner: AVIA Training.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d) (1) and (2) and (e)(1) and (2); 61.191(c); and appendix A, part 61.

Description of Relief Sought/ Disposition: To extend Exemption No. 5169, as amended, which permits AVIA Training to use FAA-approved simulators to meet certain flight experience requirements of part 61. *GRANT, March 28, 1996, Exemption No. 5169C.*

Docket No.: 26163.

Petitioner: USAir, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d) (1) and (2) and (e)(1) and (2); 61.191(c); and appendix A, part 61.

Description of Relief Sought/ Disposition: To extend Exemption No. 5158, as amended, which permits USAir, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61. *GRANT, March 29, 1996, Exemption No. 5158D.*

Docket No.: 26398.

Petitioner: AMR Eagle, Inc.

Sections of the FAR Affected: 14 CFR 135.63(a)(4) and subparts E, G, and H of part 135.

Description of Relief Sought/ Disposition: To extend Exemption No. 5414, as amended, which permits certain AMR Eagle, Inc., subsidiary airlines to train and to check their pilots used in part 135 operations, under the requirements of part 121. *GRANT, March 29, 1996, Exemption No. 5414B.*

Docket No.: 26490.

Petitioner: Delta Air Lines, Inc.

Sections of the FAR Affected: 14 CFR 121.310(m).

Description of Relief Sought/ Disposition: To extend Exemption No. 5301, as amended, which permits Delta Air Lines, Inc., to operate L–1011–385–3 airplanes without conforming to the 60-foot required distance between emergency exits. *GRANT, March 29, 1996, Exemption No. 5301B.*

Docket No.: 26646.

Petitioner: North American Airline Training Group.

Sections of the FAR Affected: 14 CFR paragraph (a)(3)(iv)(a) of appendix C, part 63.

Description of Relief Sought/ Disposition: To extend Exemption No. 5852, which permits North American Airline Training Group to reduce the required 5 hours of flight training in an airplane provided to its flight engineer flight training course students to not less than 2 hours of intensive flight training in an airplane for applicants who do not possess a commercial pilot certificate with an instrument rating. *GRANT, March 28, 1996, Exemption No. 5852A.*

Docket No.: 28382.

Petitioner: United Parcel Service.

Sections of the FAR Affected: 14 CFR 121.583(a).

Description of Relief Sought/ Disposition: To permit maintenance technicians contracted by the United Parcel Service (UPS) to use UPS aircraft jumpseats for travel to gateways located throughout Europe and the Pacific Rim to perform maintenance on UPS aircraft or to obtain required maintenance training. *DENIAL, March 22, 1996, Exemption No. 6417.*

[FR Doc. 96–9744 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Caddo Parish, Louisiana

AGENCY: Federal Highway Administration (FHWA), 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 Caddo Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Sussmann, Division Administrator, Federal Highway Administration, Louisiana Division Office, Post Office Box 3929, Baton Rouge, Louisiana 70821, Telephone: (504) 389–0464, Facsimile: (504) 389–0758; or Mr. Vincent Pizzolato, Environmental Engineer Administrator, Louisiana Department of Transportation and Development, Post Office Box 94245, Baton Rouge, Louisiana 70804–9245, Telephone: (504) 929–9190, Facsimile: (504) 929–9188.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LDOTD), 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. The proposed project, known locally as the North-South Expressway, is generally located in the U.S. Highway 71 (US 71) corridor and extends from the Arkansas state line south to Interstate 220 in Shreveport, Louisiana. The new roadway includes several alternates based on new locations and various interchange access points. The approximate length of the project is 65 kilometers (40 miles).

The proposed improvements would improve capacity of the existing route US 71 and increase regional mobility along a proposed ultimate route extending from Kansas City, Missouri to Shreveport, Louisiana. 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 northwest Louisiana, western Arkansas and northeast Texas and serve as both a short-term and long-term economic stimulus. Major metropolitan areas lying along this ''high priority corridor'' include Kansas City, Kansas-Missouri; Joplin, Missouri; Fayetteville, Arkansas; Fort Smith, Arkansas; Texarkana, Arkansas-Texas; and Shreveport, Louisiana.

The northern terminus of the proposed improvement will be at the Arkansas state line, and its location determined based on new corridor location developed in conjunction with the State of Arkansas. The southern terminus of the proposed improvement will connect to the Interstate 220 loop in Shreveport, Louisiana between the existing interchanges of Interstate 220 with Louisiana Highway 173 (LA 173) and Louisiana Highway 1 (LA 1)/US 71.

Alternatives to be considered are:

(1) The ''Do-Nothing'' Alternative, where roads are constructed according to the regional plan with the exception of the proposed facility; and

(2) The ''Build'' Alternative, considering several different alignments and full control of access.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including conservation groups and groups of individuals who have expressed interest in the project in the past, and to major northwest Louisiana newspapers. A series of public informational meetings will be held in the project areas which will be affected. In addition, a public hearing will be held. Public notice will be given of the time and place of the public informational meetings and the public hearing. The draft Environmental Impact Statement (EIS) will be available for public and agency review and comment prior to the public hearing. An agency scoping meeting will be held at a time and place to be determined at a later date.

To ensure that the full range of issues related to this proposed action 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: April 11, 1996.

William A. Sussmann,

Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc. 96–9763 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a waiver request from Long Island Railroad (LIRR)—in addition to the previously announced CSX Transportation (CSXT), Burlington Northern Santa Fe, New York Air Brake Corporation (NYAB), and National Railroad Passenger Corporation (Amtrak) requests—for a waiver of compliance with a requirement of Federal rail safety standards. The petitions are described below, including the regulatory provisions involved and the nature of the relief being requested;

Long Island Railroad (LIRR);
CSX Transportation (CSXT);
Burlington Northern Santa Fe (BNSF);
New York Air Brake Corporation (NYAB); and
National Railroad Passenger Corporation (Amtrak)

Waiver Petition Docket Number H–95–3

The LIRR, CSXT, BNSF, NYAB and Amtrak individually seek temporary waivers of compliance with Section 229.29 of the Locomotive Safety Regulations (Title 49 CFR Part 229).

Because these petitions apply to the same type of brake equipment and for the same time interval, FRA is combining them under Docket Number H–95–3.

Section 229.29 stipulates that all brake valves must be cleaned, tested and inspected every 736 calendar days. On January 29, 1985, FRA published a notice granting approval for the 26–L type air brake equipment to be cleaned, inspected and tested every 1104 calendar days, (Vol.50, No. 19, Page 3910). The petition requests that the CCB brake valves be maintained on a 5-year test interval.

The CCB brake equipment combines certain pneumatic features of the 26L

brake with microprocessor controls. The CCB pneumatic and electro-pneumatic devices rely on poppet valve and seat technology which has been proven in service in other Knorr brake equipment.

The CCB system consists of a console desk controller, an electronic control system unit and a pneumatic interface unit. The electronic control system unit contains the logic processor (computer), power supply, input/output interfaces, diagnostic program and brake operation programs. The desk console controller contains the standard automatic and independent brake operating handles. The console controller also contains a direct connection to brake pipe which is utilized for emergency brake applications. The pneumatic interface unit contains the connections to the standard train line and locomotive multiple unit pneumatic lines. The pneumatic unit contains all of the devices which are driven by the electronic control system to perform all functions currently carried out by the 26–L brake system.

The brake system includes advanced diagnostics and a self- test program. The manually initiated self-test program tests all electronic and pneumatic interface functions. Detected faults are displayed on the system unit. In-service faults are detected and stored in nonvolatile memory. The railroad states that safety is enhanced by the CCB Equipment in (1) constant vigilance for deviation from performance by the microcomputer, (2) the control of faults to a known safe condition, and (3) the capability of warning the operator of a fault condition. These features are not available in the existing 26–L Brake Equipment. Life of all components are rated in excess of 5-years.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–95–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

Issued in Washington, DC on April 16, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–9737 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–06–P

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–95–17) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received within 45 days of the date of publication of this notice, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practical. All written communications concerning these proceedings are available for examination during regular business hours (9:00a.m.–5:00p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Yolo Shortline Railroad (RSGM–95–17)

The Yolo Shortline Railroad (YSLR) seeks a permanent waiver of compliance with the Safety Glazing Standards [49 CFR Part 223.9(a), certified glazing] for its ALCO locomotive, Number YSLR 101, built in 1949. YSLR is a Class III shortline railroad located in Woodland, California (near Sacramento). The railroad states that this locomotive is planned to be used primarily for operating passenger excursions, in a rural farming land, and performing light freight switching. For historical purposes, the use of this locomotive on the YSLR trackage will be consistent with the type of locomotives that Western Pacific used during its ownership of the trackage. No vandalism has been reported.

Radar Rail Car (Waiver Petition Docket Number RSGM–95–18)

Radar Rail Car seeks a permanent waiver of compliance with the Safety Glazing Standards [49 CFR Part 223.9(c), minimum of four emergency opening windows per passenger car] for eight deluxe sleeper cars. The manufacturer states that the cars are to be used by the Phillip Morris Corporation as a marketing promotion. The configuration of the sleepers consists of 15 deluxe bedrooms. Instead of four emergency opening windows, each of the bedrooms will have an emergency exit, permitting evacuation in the event of an incident. Due to the size and weight of the windows (approximately 250 pounds), the exits are designed to be a panel adjacent to the window. The exit panel will be removable by means of a ''zip strip.''

Issued in Washington, DC on April 16, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–9738 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–06–P

Research and Special Programs Administration

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Each Committee meeting, as well as a joint session of the two Committees, will be held at the

Department of Transportation, Room 2230, 400 Seventh Street, S.W., Washington, DC 20590.

On May 7, 1996, at 9 a.m., the TPSSC will meet. Agenda items include discussion of the Mail Ballot on Docket PS–143, Periodic Updates to Pipeline Safety Regulations (61 FR 8231), published March 4, 1996.

On May 7, 1996, at 1 p.m., the TPSSC will be joined by members of the THLPSSC for a joint session which will include:

1. Welcome by the RSPA Administrator
2. Budget and Reauthorization
3. Regulatory Reinvention Initiative
4. Risk Management
5. State Programs and Grants
6. Damage Prevention Quality Action Team

On May 8, 1996, from 9:00 a.m. to 12:00 noon, the joint TPSSC–THLPSSC session will include:

1. Briefing on Research and Development Contracts
2. Regulatory Reinvention Initiative
3. Regulatory Updates, including
   —Environmentally Sensitive Areas,
   —Excess Flow Valves,
   —Mapping Projects,
   —Increased Inspection Requirements, and
   —Emergency Flow Restricting Devices

At 1 p.m., the THLPSSC will meet. Agenda items include discussion of Mail Ballot on Docket PS–143.

Each meeting will be open to the public. Members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Eben Wyman, Room 2335, Department of Transportation Building, 400 Seventh Street, S.W., Washington, DC 20590, telephone (202) 366–0918, not later than April 30, 1996, on the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any meeting.

Issued in Washington, DC on April 16, 1996.

Richard B. Felder.

Associate Administrator for Pipeline Safety.

[FR Doc. 96–9736 Filed 4–19–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board [1]

[Finance Docket No. 32792]

Wisconsin and Southern Railroad Company—Purchase Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343, et seq., the purchase by Wisconsin and Southern Railroad Company (WSOR) of 1.4 miles of railroad line between milepost 19.1 and milepost 20.5 at Ripon, WI, from the Union Pacific Railroad Company. The exemption is granted subject to standard labor protective conditions.

DATES: This exemption is effective on May 22, 1996. Petitions to stay must be filed by May 7, 1996. Petitions to reopen must be filed by May 17, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32792 to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423, and (2) Petitioner's representative: John D. Heffner, Rea, Cross and Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: April 5, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–9789 Filed 4–19–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

Surface Transportation Board [1]

[STB Docket No. AB–167 (Sub-No. 1160X)]

Consolidated Rail Corporation—Abandonment Exemption—in Erie County, NY

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 1.76 mile portion of its Erie Running Track between milepost 5.54 and milepost 7.30, and a portion of its Black Rock Industrial Track between milepost 392.80 and milepost 393.67 in the City of Buffalo, Erie County, NY.[2]

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted from the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 22,

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The portion of the Black Rock Industrial Track parallels and shares a common right-of-way with the portion of the Erie Running Track.

1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29[5] must be filed by May 2, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 13, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street - 16A, Philadelphia, PA 19101—1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 26, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 15, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–9787 Filed 4–19–96; 8:45 am]

BILLING CODE 4915–00–P

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[5] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96–33]

Recordation of Trade Name: ''Mega Toys''

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

SUMMARY: On Friday, January 26, 1996, a notice of application for the recordation under Section 42 of the Act of July 5, 1946, as a amended (15 U.S.C. 1124), of the trade name ''Mega Toys,'' used by P.C. Woo, dba Mega Toys a corporation organized under the laws of the State of California, located at 905 East Second Street, Los Angeles, California 90012, was published in the Federal Register (61 FR 2573). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 26, 1996. No responses were received in opposition to the notice.

Accordingly, as provided in Section 133.14, Customs Regulations (19 CFR 133.14), the name ''Mega Toys,'' is recorded as the trade name used by P.C. Woo, Inc., dba Mega Toys, located at 905 East Second Street, Los Angeles, California 90012.

The trade name is used in connection with game, dolls, party favors, decorative flags, Halloween items, and plastic, battery-operated and die-cast toys.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229 (202–482–6960).

Dated: April 15, 1996.

John F. Atwood,

Chief Intellectual Property Rights Branch.

[FR Doc. 96–9862 Filed 4–19–96; 8:45 am]

BILLING CODE 4820–02–P

federal register

Monday
April 22, 1996

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1301, 1303, et al.
Head Start Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1301, 1303, 1304, 1305, 1306, and 1308

RIN 0970–AB55

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families is issuing this Notice of Proposed Rulemaking to implement the statutory provisions for establishing program performance standards for Early Head Start grantees and Head Start grantee and delegate agencies providing services to eligible Head Start children from birth to five years and their families as well as pregnant women, and for taking corrective actions when Head Start agencies fail to meet such standards.

DATES: In order to be considered, comments on this proposed rule must be received on or before June 21, 1996.

ADDRESSES: Please address comments to the Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

In order to ensure that public comments have maximum effect in developing the final rule, we urge that each comment clearly identify the specific section or sections of the regulations that comment addresses and that comments be in the same order as the regulations.

Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 2218, 330 C Street, S.W., Washington, D.C. 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of the preamble.

A copy of these comments may also be sent to the Department representative cited above.

FOR FURTHER INFORMATION CONTACT: E. Dollie Wolverton, Head Start Bureau, (202) 944–5450.

Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between the hours of 8:00 a.m. and 7:00 p.m. EDT, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Summary

The Head Start program is authorized under the Head Start Act (the Act), as amended (42 U.S.C. 9801 *et seq.*). Founded in 1965, the program currently offers comprehensive services including high quality early childhood education, nutrition, health, and social services, along with a strong parent involvement focus, to low-income children nationwide. The overall goal of the program is to bring about a greater degree of social competence in preschool children from low-income families. Social competence refers to the child's everyday effectiveness in dealing with both his or her present environment and later responsibilities in school and life. It takes into account the interrelatedness of cognitive, intellectual, and social development; physical and mental health; and nutritional needs.

Since the 1970's, the program performance standards have played a central role in the Head Start program. The program performance standards provide a standard and definition of quality services for the approximately 2,112 community-based organizations nationwide that administer Head Start as grantees or delegate agencies; serve as training guides for staff and parents on the key elements of quality; articulate a vision of service delivery to young children and families that has served as a catalyst for program development and professional education and training in the preschool field; and provide the regulatory structure for the monitoring and enforcement of quality standards in Head Start. Thus, their importance to the Head Start program and to preschool education generally goes far beyond the typical role of Federal regulations.

The authority for this Notice of Proposed Rule Making is sections 641A (a) and (d), 644 (a) and (c), and 645A(h)(2) of the Head Start Act, as amended (42 U.S.C. 9801 *et seq.*). More specifically, the purpose of this NPRM, the first wide-ranging revision of the program performance standards in over 20 years, is to carry out the language in the 1994 amendments to the Head Start Act providing for an update of the Head Start Program Performance Standards.

Key provisions in the 1994 amendments require a review of the performance standards in order to bring them up to date, cover new topics, and include services to low income pregnant women and families with infants and toddlers. In particular:

- The new section 641A provides that the Secretary must establish, by regulation, performance standards covering: (1) A range of services for children and families, including health, education, parental involvement, nutritional, and social services as well as transition activities; (2) financial management and administration; and (3) facilities. Subparagraph (a)(3)(C) of the new section provides that the Secretary must review and revise, as necessary, the performance standards in effect under prior law.
- The amendments further provide that any revisions should not result in an elimination or reduction of requirements regarding the scope or types of health, education, parental involvement, nutritional, social, or other services to a level below that of the requirements in effect on November 2, 1978.
- Section 641A(d) prescribes procedures for corrective actions or termination to be taken with agencies which fail to meet the standards described in subsection (a).
- Section 645A(h)(2) requires that the Secretary develop program guidelines for Early Head Start, the newly authorized program for low-income pregnant women and families with infants and toddlers, and to publish performance standards for such programs.

A fundamental challenge that we addressed in developing this NPRM was to find the right balance among three important goals: (1) Addressing the critically important new areas for regulation identified in the statute; (2) maintaining quality and avoiding any reduction in the level of services prescribed by the regulations, as mandated by the statute; and (3) attempting to streamline the regulations, avoid regulatory burden, and encourage flexibility, and innovation.

Our approach to identifying the right balance included wide-ranging consultation with many different individuals and groups, consistent with the new statutory requirements at Section 641(A)(a)(3) regarding the consultations which the Secretary has to undertake and the factors which the Secretary has to take into consideration in developing the revised program performance standards. Following both the statute and the Administration's regulatory reinvention principles, ACYF offered extensive opportunities for program experts, local agencies, and other interested parties to review and discuss the current program performance standards.

In the late summer of 1994, ACYF formed a 33-member working group composed of Central and Regional

Office staff to draft a plan for the development of these regulations. The group was given responsibility both for developing standards related to the new service expectations of the Early Head Start and Head Start programs—e.g., transition services and services to pregnant women and families with infants and toddlers—and for making appropriate revisions to the existing standards which would support quality services, better meet the individual needs of the diverse population of Head Start children and families, and improve program management. Over the summer, fall, and winter of 1994–1995, this group convened 70 focus groups involving approximately 2,000 individuals. The participants at these meetings were drawn from a cross-section of program practitioners, including local sponsors of Head Start programs as well as subject experts, parents, educators, technical assistance providers, Federal Head Start staff from across the country, and individuals with extensive experience conducting Head Start program monitoring in a variety of settings.

Based on this broad consultation, as well as on the work of two national Advisory Committees (the 1993 Advisory Committee on Head Start Quality and Expansion and the 1994 Advisory Committee on Services to Families with Infants and Toddlers), ACYF developed the following key elements of its approach to this regulation: (1) The current program performance standards should be reorganized to reduce fragmentation and duplication, encourage holistic approaches, and emphasize partnerships with families and communities; (2) a single set of integrated standards for services from birth to age five should be developed; (3) the regulation should focus on requirements that are key to maintaining quality services and meeting new and emerging needs; and (4) the least burdensome approach to maintaining quality and meeting emerging challenges should be sought.

ACYF is particularly interested in receiving comments on the extent to which the proposed rule forms the least burdensome approach to regulation in order to protect grantee flexibility to innovate and achieve quality outcomes in the most effective way possible, while recognizing the statutory mandate to ensure that there is no reduction in services and to provide standards supporting the implementation of a range of new statutory requirements. Further, within this framework, ACYF has consistently sought ways to make the regulation more outcome- focused and less process-oriented. We urge commenters to share their ideas on ways that we can continue to move in this direction.

II. The Head Start Program

The Head Start program served approximately 740,000 low-income children and families in fiscal year 1994 through a network of 1,405 grantees and over 600 delegate agencies. (Delegate agencies have approved written agreements with grantees to operate the program.) Programs are funded through a direct Federal-to-local relationship, and grantees include a wide range of local agencies: community action agencies, single-purpose nonprofit agencies, local governments, and school districts, among others. About 95 percent of the children in Head Start programs are from low-income families (below the Federal poverty line); about 13 percent of the children have disabilities; and about 90 percent of the children served are 3 to 4 years old. As described below, the 1994 Head Start amendments created a new initiative within Head Start to expand and focus on services to infants and toddlers.

Key principles of Head Start since its inception in 1965, and reaffirmed most recently through a thorough review by the bipartisan Advisory Committee on Head Start Quality and Expansion, include the following:

- *Comprehensive services.* To develop fully and achieve social competence, children and their families need a comprehensive, inter-disciplinary approach to services, including education, health, nutrition, social services, and parent involvement. The range of services available must also be responsive and appropriate to each child and family's unique developmental, ethnic, cultural, and linguistic experience and heritage.
- *Parent involvement and family focus.* The Head Start program is family-centered and is designed to foster the parent's role as the principal influence on the child's development and as the child's primary educator, nurturer, and advocate. Local Head Start programs work in close partnerships with parents to develop and utilize parents' individual strengths in order to successfully meet personal and family objectives. In addition, parents are encouraged to become involved in all aspects of Head Start, including direct involvement in policy and program decisions that respond to their interests and needs.
- *Community Partnerships and Community-Based Services.* Head Start programs are intended to be community-based, with different specific models of service provision flowing out of the differing needs of differing communities. In addition, the most effective Head Start programs have always been, in the words of the Advisory Committee on Head Start Quality and Expansion, ''central community institutions'' for low-income families, building linkages and partnerships with other service providers and leaders in the community.

III. Legislative and Programmatic History

In May 1994, the President signed into law the Head Start Reauthorization Act of 1994. This legislation, enacted with bipartisan sponsorship and support, amended the Head Start Act to extend the program authorization period through fiscal year 1998. It also made a number of changes to ensure that all children and families enrolled in Head Start are offered high quality services that are responsive to their needs. The legislation built on the vision and recommendations contained in *Creating A 21st Century Head Start*, the report of the Advisory Committee on Head Start Quality and Expansion, which was issued in December 1993.

The Secretary formed the Advisory Committee in June 1993 to look at Head Start quality and program expansion issues. The Committee worked for six months before issuing its report. The report included numerous recommendations, centered around:

—striving for excellence in staffing, management, oversight, facilities, and research;
—expanding to better meet the needs of children and families; and
—forging new partnerships with communities, schools, the private sector and other national initiatives.

In its report, the Advisory Committee reaffirmed the role and value of the existing Head Start Program Performance Standards. However, it also recommended that the standards be reviewed and revised to reflect the changing nature of the Head Start population, the evolution of best practices, program experience with the existing standards, and the pending program expansion. Reviews in several specific areas were recommended including: business practices and financial management; staff levels and qualifications; developmentally appropriate curricula and emergent literacy; transitional services; mental health; nutritional requirements; family services; parental roles; services for the ''birth-to-three'' population; transportation; and program

coordination. It also recommended the consideration of: (1) Standards and systems in effect in other early childhood programs; (2) work in other fields to establish outcome-based accountability systems; and (3) the guiding principles of the Administration's National Performance Review (i.e., increased responsiveness to clients, and the minimization of regulations and paperwork). As principles for the review effort, it called for the promotion of quality, responsiveness to community needs, and the strengthening and streamlining of the standards. Finally, it advised consideration of the special needs and circumstances of programs serving American Indians and migrant and seasonal farm workers.

In making its general recommendations, the Advisory Committee noted the dramatic changes which had occurred in the world of Head Start families between 1965 and 1993:

- The needs of poor children and families are more complicated and urgent. Violence, substance abuse, homelessness, lack of education, and unemployment are helping to make them so. At the same time, more of the Head Start service population is coming from single-parent families, increasing numbers of parents are working, and family literacy is increasingly being recognized as an important service need.
- Over the past 28 years, the landscape of community services has changed dramatically. There are new roles and enhanced capacities for serving young children and their families. Today, we also have new knowledge about the attributes of services and supports that are effective in changing long-term outcomes for young children, new knowledge about the importance of the first three years of life, and new knowledge and appreciation for the continuum of developmental and comprehensive services often needed before school and into the early years to help children succeed in school.

While the Advisory Committee found that Head Start has succeeded in improving the lives of young children and their families, it cited some areas where further improvements were possible. These include: (1) Consistency in the quality of programs; (2) responsiveness to the diverse needs of Head Start families; (3) addressing the large unmet need for Head Start services; and (4) coordination of Head Start with other early childhood programs and elementary schools.

The 1994 Head Start amendments reflect similar concerns on the part of the Congress. They include a number of provisions designed to improve program quality—including new requirements with respect to quality standards and program monitoring, technical assistance and training, staff qualifications and development, and an allocation for quality improvement activities. They also include a number of provisions to expand the nature and scope of services and to make programs more responsive to the needs of their service populations. For example, they add new requirements with respect to family literacy services and parental involvement, provide for an initiative for pregnant women and families with infants and toddlers (Early Head Start), expand opportunities for parental involvement, add requirements to facilitate the successful transition of Head Start children to elementary school, and mandate a study of the adequacy of full-day/full-year programs.

The amendments further provide that, in revising the current program performance standards and in developing new ones, the Secretary must consult with experts in the fields of child development, early childhood education, family services (including ''linguistically and culturally appropriate services'' to children and families for whom English is not the primary language), and administration and financial management. They also require consultation with individuals with experience operating Head Start programs.

Additionally, the amendments require that the Secretary take several factors into consideration in developing the program performance standards. These include: past experience with the existing standards; changes over time in the Head Start service population; developments in best practices with respect to child development, children with disabilities, family services, program administration, and financial management; projected needs related to Head Start expansions; existing and potential standards and guidelines related to the promotion of child health; the projected needs of expanded Head Start programs; changes in the population of eligible children (including changes in family structures and languages spoken in the home); and local policies and activities designed to ensure the successful transition of Head Start children to elementary school.

The Advisory Committee on Services for Families with Infants and Toddlers was formed by the Secretary of Health and Human Services in July 1994 to advise and inform the Department on the development of program approaches for the new Head Start initiative serving low-income pregnant women and families with infants and toddlers (later named ''Early Head Start''). The Advisory Committee drew upon the experience of a number of different programs (such as the Comprehensive Child Development Program, Parent and Child Centers, and Head Start Migrant Programs), the insights provided by participants in over 30 focus groups, three decades of research on child and family development, and extensive consultations with experts and practitioners in the field.

In September 1994, the Advisory Committee on Services for Families with Infants and Toddlers issued a formal statement setting forth both its vision and goals and its recommendations for program principles and cornerstones. It called for the development of a range of service strategies that would support the growth of the young child within the family and the growth of the family within the community. Thus, it envisioned program approaches that were family-centered and community-based. Its program principles included: (1) A commitment to excellence in the quality of the services provided as well as in program management; (2) the prevention and early detection of and early intervention with problems; (3) the early, proactive, and ongoing promotion of a child's healthy development; (4) the promotion of positive, continuous relationships that nurture the child, parents, family, and caregiving staff; (5) the promotion of parent involvement; (6) the inclusion of children with disabilities and respect for individual children and adults; (7) respect for home language and culture; (8) responsiveness to the unique strengths and abilities of the children, families, and communities served; (9) ensuring smooth transitions; and (10) collaboration and the active pursuit of partnerships with kindred programs.

A local education agency using funds under Title I of the Elementary and Secondary Schools Act to provide early childhood development services to low-income children below the age of compulsory school attendance must comply with the Head Start Program Performance Standards for such services beginning in fiscal year 1997. The proposed performance standards governing early childhood development services are found in Section 1304.21, Education and Early Childhood Development. (Title I preschool programs using the Even Start model or Even Start programs which are expanded through the use of Title I

funds are exempt from this requirement.) We have sought consultation with school officials and education experts, as well as early childhood experts, and have worked closely with the U.S. Department of Education in developing this section of the NPRM.

Local educational agencies, school personnel, and persons affiliated with Title I preschool programs are referred to the Department of Education's Notice of Interpretation regarding the applicability of Head Start performance standards to Title I preschool programs that appears elsewhere in this Federal Register. We encourage comments from local educational agencies, school personnel, and persons affiliated with Title I preschool programs regarding the content of 45 CFR 1304.21 and its impact.

IV. Consultation and the Development of the NPRM

In keeping with the requirements of the statute and the Administration's regulatory reinvention principles, ACYF sought extensive public input prior to the development of these proposed standards. As noted above, over the summer, fall, and winter of 1994–1995, we conducted 70 focus groups involving approximately 2,000 individuals including subject experts, parents, educators, technical assistance providers, local sponsors of Head Start programs, Federal staff, and individuals with extensive program monitoring experience.

Fifteen of the focus groups addressed standards related to specific subject areas such as child development and education; child medical, dental, nutrition and mental health; and parent involvement. Subject-area experts were key participants in those groups. Over 30 of the focus groups addressed standards for pregnant women and families with infants and toddlers. In addition, a focus group was convened with the Department of Education to discuss the compatibility of these standards with the Title I Improving America's Schools Act programs. The parents of Head Start children were present at many focus groups, and one focus group was devoted entirely to Head Start parents. In addition, one group was devoted to obtaining recommendations from long-term leaders of the Head Start movement who could provide unique insights into the program's experience and development over time as well as the program strengths and weaknesses that should be addressed.

Representatives from a wide array of national organizations and agencies with particular interest in child and family issues also were consulted. Among these organizations were the national, State, and Regional Head Start Associations, Zero to Three, the National Center for Learning Disabilities, the Family Impact Seminar, the Family Resource Coalition, the National Black Child Development Institute, the Elementary School Principals Association, the National Association for the Education of Young Children, and the National Committee to Prevent Child Abuse.

The ACYF also undertook a consultation process to draw upon the expertise of Federal agencies and staff responsible for administering related programs and serving related populations. The purpose of these efforts was to promote greater consistency in the service and regulatory approaches taken by various Federal programs and to solicit expert advice on how to promote quality in Early Head Start and Head Start services. Among the critical links in this process were those with health and mental health agencies; the U.S. Public Health Service, including the Health Resources and Services Administration's Maternal and Child Health Bureau, the Indian Health Service and the Centers for Disease Control and Prevention; the Health Care Financing Administration, and the Center for Mental Health Services; the U.S. Department of Education, including the Office of Educational Research and Improvement; and the U.S. Department of Agriculture.

In reviewing and revising the standards, ACYF also carefully reviewed the standards and performance criteria established by national organizations and policy experts in early childhood development, health and safety, child care, and related fields. Key documents reviewed include the National Head Start Association's ''Quality Initiative'' draft report, the National Association for the Education of Young Children's ''Accreditation Criteria and Procedures'' and ''Developmentally Appropriate Practice in Early Childhood Programs,'' the U.S. Public Health Services', Health Resources and Services Administrations' Maternal and Child Health Bureau's ''National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care,'' developed in collaboration with the American Academy of Pediatrics and the American Public Health Association, and produced in collaboration with the Health Care Financing Administrations's Medicaid Bureau ''Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents'' report. The proposed rule also reflects the guidance provided by contemporary academic literature in such fields as early childhood education, child health and safety, family services, and program management.

In addition, ACYF undertook an analysis of the current program performance standards with which grantees have the most and, conversely, the least difficulty in complying, as measured by results from Head Start's monitoring instrument, the ''On-Site Program Review Instrument'' (OSPRI). Finally, ACYF also studied the wealth of non-regulatory material issued by ACYF and the Head Start Bureau since 1978, such as Information Memoranda, reports on demonstration programs, and task force reports, which address key policy issues of possible relevance to the program performance standards.

In drafting the proposed rule, ACYF also considered the recommendations of both the Advisory Committee on Head Start Quality and Expansion and the Advisory Committee on Services for Families with Infants and Toddlers. These two groups included a wide range of distinguished national experts, including practitioners, academics, policy-makers in the Executive and legislative branches, representatives of State government and the foundation community, and parents. In addition, both groups commissioned considerable staff work to support their deliberations. Thus, the collective efforts of these two groups allowed access to a wealth of expertise, program experience, and supporting documentation that would not otherwise have been available.

Findings From the Consultation Process

The consultation process yielded the following major objectives for revising the standards:

- The organization of the standards should be improved to promote a more integrated, holistic approach to service delivery;
- The standards should serve as models for program quality and encourage programs to strive for excellence;
- The standards should achieve a better balance between the clarity and precision of regulatory intent and regulatory flexibility so that programs can be most responsive to local needs, settings, and circumstances;
- The standards should place greater emphasis on family-focused aspects of the program by strengthening links with local community providers, helping families identify and address individualized goals, and ensuring that

the standards address important contemporary issues facing families such as community violence, substance abuse, and literacy;

- The standards regarding health and safety practices need to be updated, with special attention to infant/toddler concerns, current medical best practices, and serious blood-borne diseases, such as HIV and Hepatitis B; and
- New standards addressing financial and administrative management should be added in order to strengthen program accountability and management practices.

V. Approach of The Proposed Rule

Based on this extensive consultation, we sought to achieve a balance among three critical goals: (1) Updating the program performance standards to meet new challenges, as required in the statute; (2) maintaining quality and ensuring no reduction in services, as required in the statute; and (3) streamlining the standards to minimize regulatory burden and encourage grantee innovation and flexibility. We first made decisions about the scope of the proposed rule, since a number of closely related regulations could have been included or not included in a performance standards revision, and then identified key principles regarding the structure and approach of this proposal.

Scope of the Proposed Rule

This proposed rule deals most specifically with implementing the amendments in section 641A(a) and (d) of the Act. It addresses the requirements at: paragraph (a)(1) regarding the establishment of standards; paragraph (a)(2) regarding the specification within the regulations of minimum levels of accomplishment; paragraph (a)(4) regarding the establishment of standards with respect to obligations to delegate agencies; and paragraph (d) regarding the procedures to follow when corrective actions or terminations are necessary. It also responds to Sections 644(a) and (c) that require the issuance of regulations for the organization, management, and administration of Head Start programs. Finally, it addresses Section 645A(h), which requires that the Secretary publish performance standards for programs that serve low-income pregnant women and families with infants and toddlers.

The current Head Start Program Performance Standards are found at 45 CFR Part 1304. Additional regulations which are applicable to Head Start agencies also are found at 45 CFR Parts 1301 (Head Start Grants Administration), 1305 (Eligibility, Recruitment, Selection, Enrollment, and Attendance in Head Start), 1306 (Head Start Staffing Requirements and Program Options), 1308 (Disabilities Services), and Parts 74 and 92 (concerning the administration of grant awards).

As we considered the input from our consultation process, we concluded that we needed to review these additional regulations to find out whether a streamlined, integrated, and customer-friendly set of performance standards in 45 CFR Part 1304 should bring together requirements now included somewhere else. Therefore, in addition to revising 45 CFR Part 1304, we also reviewed the regulations in 45 CFR Parts 1301, 1305, 1306, and 1308 to determine where further technical changes were needed.

In this NPRM, ACYF proposes to revise 45 CFR 1301.31 on personnel policies and to make minimal technical modifications to 45 CFR Parts 1305, 1306, and 1308. A cross-reference will be added in these Parts to ensure that they are used in conjunction with the provisions of Part 1304.

Additionally, as we reviewed the information gathered from our consultations regarding services to infants and toddlers, we revised somewhat our approach to regulations in this area. In the Early Head Start program announcement, published in the Federal Register on March 17, 1995 (60 FR 14548), only 45 CFR Parts 1301, 1304, and 1305 were cited as being applicable to Early Head Start programs. Upon further consideration, we have determined that 45 CFR Parts 1306 and 1308 also are generally applicable to these programs and are indicating this in the proposed rule, with specific exceptions being noted.

Finally, the proposed rule does not address the amendments at section 641A(b) related to the development of Head Start Program Performance Measures or at 641A(c) related to the monitoring of local agencies and programs. The statute does not mandate regulations in these areas, and ACYF does not anticipate issuing regulations to implement these provisions.

However, we are working to ensure that the substantive deliberations and policy development currently underway on the program performance measures and monitoring are effectively linked to the revision of the program performance standards, since the three activities must work in tandem to ensure consistent program quality. In addition to ensuring linkages among the Federal work groups developing these approaches, we will ensure that Early Head Start programs, Head Start programs, and other interested parties receive program issuances related to the development and implementation of the program performance measures and revisions to the monitoring system as they become available.

Briefly, the activities related to performance measures and monitoring are as follows:

- The Head Start Program Performance Measures are designed to assess the quality and effectiveness of the Head Start program nationally by providing program indicators and outcomes for children and families. As such, they will provide a snapshot of how well the Head Start program is performing, nationally and regionally, at a given point in time and a process for the continuous improvement of local programs. However, they will neither be used to evaluate individual programs nor to monitor them for compliance with the Head Start Program Performance Standards.
- The ACYF is currently considering how the Head Start monitoring system as a whole can be revised and improved. This effort needs to mesh with the work on the revision of the program performance standards so that the Head Start monitoring instrument (the Head Start On-Site Program Review Instrument, or OSPRI) remains consistent with the standards, as revised. Each grantee is monitored at least once every three years.

Themes of the Newly Revised 45 CFR Part 1304

In drafting this proposed rule, we sought to achieve the delicate balance described above: addressing new challenges and new statutory areas for regulation, maintaining existing quality and services, and streamlining the regulations to reduce burden and encourage innovation. Our overall approach is built on four key themes.

1. *The Head Start program performance standards should be reorganized to reduce fragmentation and duplication, encourage holistic approaches, and emphasize partnerships with families and communities.* Based on what we heard during the consultation process, we are proposing an organizational structure for the program performance standards that departs considerably from the structure of the current version of the regulation. In particular, the overall structure of the new standards is more holistic and integrated than the current component-based organization, leading to better linkages among related standards and less duplication and fragmentation.

Such an integrated structure was first suggested as part of the work of the Advisory Committee on Services to Families with Infants and Toddlers, which identified four cornerstones of successful programs for very young children: child, family, community, and staff. This recommendation for a broad-based, integrated structure was echoed in the focus groups, where we heard that the most effective grantees attempt to integrate their services across components and train their staff to understand and serve children and families from a broader, more comprehensive perspective. For this reason, previously separate components, such as Parent Involvement and Social Services, and dispersed standards, such as those addressing parent education and program management issues, have been brought together under three broader topical program areas that roughly follow the four cornerstones proposed by the Advisory Committee: Early Childhood Development and Health Services, Family and Community Partnerships, and Program Design and Management.

Under these broad areas, we have proposed some additional consolidations or reorganizations to improve clarity, bring together related standards or emphasize areas of newly emerging or critical importance. For example, the new section on ''Community Partnerships'' is intended to capture one of the most critical recommendations of the Advisory Committee on Head Start Quality and Expansion, which also emerged frequently in our focus group consultations: that, ''as Head Start improves and expands, it must fit into the increasingly complex array of Federal, State, and community level services and resources available to low-income children and families.'' The proposed standards in this area, which are largely new but are also drawn from the earlier component standards for social services, require community collaboration and identify key agencies with which local Early Head Start and Head Start grantees must coordinate.

The standards in Subpart D entitled ''Program Design and Management'' are comprised of four sections on Program Governance; Management Systems and Procedures; Human Resources Management; and Facilities, Materials, and Equipment. This structure brings together requirements which were previously scattered and adds selected new requirements in order to ensure a more intensive focus on program staff and management. This more intensive focus responds to a statutory requirement to develop improved administrative and financial management standards; to a concern about the management of ever-more-complex programs that was frequently heard in the consultation process; and to explicit recommendations of the Advisory Committee on Head Start Quality and Expansion to ''focus on staffing and career development,'' to ''improve the management of local programs,'' and to ''provide for better facilities.''

2. *A single set of integrated standards for services from birth to age 5 should be developed.* Initially, we anticipated issuing separate NPRM's for services to low income pregnant women and families with infants and toddlers (Early Head Start) and for Head Start grantees serving children aged 3 to 5. Through the consultation process, however, we concluded that it would make more sense to issue an integrated set of standards, both for grantees, who might be operating both types of programs, and for children and families, who might be moving from one program to another and deserve continuity of services and requirements to the extent possible. However, we were extremely mindful of another critical point that we heard from both health and child development experts: that infants and toddlers are not just small preschoolers, and that it is critical for children's health, safety, and development to ensure clear standards for quality that are appropriately different for the different ages.

Therefore, our approach was to create a unified, integrated structure, with age-specific standards where appropriate. For example, in areas such as Early Childhood Development and Health Services, and, to a lesser extent, in Family and Community Partnerships, it was necessary to develop discrete standards that are applicable only to grantees serving infants and toddlers (and, by extension, pregnant women).

The decision to develop an integrated set of standards has substantially reduced potential requirements on grantees. The NPRM which was published on June 19, 1990 (55 FR 24899), entitled ''Program Performance Standards for Head Start Programs Serving Infants, Toddlers and Pregnant Women,'' (which was subsequently withdrawn on September 30, 1994, 59 FR 46806) contained 26 sections in all. The current NPRM contains only 16 sections, yet covers services to Head Start eligible children from birth to five years and their families. We believe that this integrated approach saves grantees and delegate agencies significant problems in having to work with two sets of regulations.

3. *The regulation should focus on requirements that are key to maintaining quality services and meeting new and emerging needs.* One of the major goals of the proposed rule is to update expectations for grantees to ensure quality and to meet new and emerging program challenges, with a specific focus on issues identified in the reauthorizing legislation and by the two Advisory Committees. For example, both the Advisory Committees and our own consultations identified health services as being a critical component that needs more attention to ensure quality outcomes for children and their families. We heard that health services require special attention for many reasons: because some Head Start programs have had difficulty with some aspects of quality; because community-wide trends may be endangering children's health and limiting their access to health care; and because of the new program focus of Early Head Start, which serves families with infants and toddlers and pregnant women. Examples of new or revised requirements that emerged from our consultations include a revision of the procedures and schedules for the assessment and identification of child health, nutrition, and developmental concerns, in order to meet current medical best practice; requirements related to child safety in the presence of serious diseases such as cytomegalovirus (CMV) and Human Immunodeficiency Virus (HIV); requirements related to prenatal care for pregnant women; proper procedures for handling child health emergencies; and improved mental health services for troubled children and families.

Similarly, the proposed rule addresses emerging family and community issues identified through consultations and in the statute. One of the most frequently mentioned quality issues in the work of the Advisory Committee on Head Start Quality and Expansion and in our own consultations was the effect of the changing conditions of families—including increased stress, family violence, substance abuse, poverty, and homelessness—on the ability of programs to work effectively with children and parents. These stresses require that programs focus increased staff attention on individualized family support and goal-setting. While we have not chosen the most prescriptive approaches to providing such assistance, such as prescribing a ratio of families to family service workers or specifying academic qualifications for those workers, we have proposed a number of more flexible program

requirements. Programs must ensure that staff managing family service workers have appropriate training and experience; they must carry out the statutory mandate for family literacy services; and they must strengthen their assessments of family needs and goals and provide improved follow-up and coordination of service delivery with community agencies, including elementary schools and Title I Improving America's Schools Act preschool programs. The proposed rule also addresses the other most frequently mentioned issue of emerging family needs: the need to respond to working families, including developing parent involvement approaches that meet the needs of working parents in the Early Head Start and Head Start programs.

The proposed rule also addresses critical issues of program quality related to agency management of increasingly complex programs, such as governance; planning; communication, record-keeping, and reporting systems; human resources management and professional development; and facilities management. These issues were frequently raised throughout the consultation process, including by grantees themselves.

Additionally, the proposed rule also addresses Federal enforcement of minimum quality standards in cases where local agencies are seriously deficient in their provision of program services. This requirement (contained in Subpart E, entitled ''Implementation and Enforcement'') implements specific statutory language in section 641A of the Head Start Act concerning the corrective or termination procedures to be followed when local agencies fail to comply with the Head Start Program Performance Standards. This proposal also carries out a central recommendation of the Advisory Committee on Head Start Quality and Expansion that all programs should provide quality services that live up to the Head Start vision.

4. *The least burdensome approach to maintaining service quality and meeting emerging challenges should be sought.* At the same time that the proposed rule implements a range of new statutory requirements and complies with the statutory mandate to ensure that there is no reduction in services, we have sought the least burdensome approaches to regulation in order to protect grantee flexibility to innovate and achieve quality outcomes in the most effective way possible. Among our key approaches to achieving this balance, where possible, was to identify process requirements in the current standards which could be deleted or replaced with a simpler requirement without reducing the quality of services. For example, we deleted an existing requirement that Head Start programs provide child-sized eating utensils and furniture. We also eliminated considerable duplication as a result of the new organizational structure, and we pruned out-dated material, such as a lengthy appendix related to staff personnel policies. We eliminated a proposed requirement for the ''daily'' recording of progress on each child because it would place a considerable paperwork burden on programs, and because the requirement for the individualization of services and individualized observations would serve the aim of maintaining quality. And, we extended the required time period for the completion of medical and dental assessments from 45 days to 90 days in response to comments, particularly from rural communities, that the shorter timeframe was unrealistic and that service quality can be protected with prompt action, but a more realistic deadline.

The ACYF has consistently sought to design the new requirements in ways that offer grantees flexibility in their implementation of the requirements. For example, although the new transition requirements carry out the specific intent of the statute, they also leave room for local agencies to design their own specific procedures for implementing these new requirements. Likewise, where possible, ACYF has sought to add increased flexibility to the current regulation. For example, on the advice of focus group participants, we have added a provision allowing agencies operating the center-based program option to conduct home visits outside the home when parents request such an arrangement or when visits to the home present safety concerns for staff.

Also to streamline the regulation, we reduced the amount of regulatory text devoted to discussing objectives and setting the context for the program performance standards. While this material is very important, much of it is not regulatory in nature. Therefore, we have included it in this preamble, rather than in the regulatory text.

We also attempted to provide sufficient flexibility in the standards so that they can apply to the wide range of auspices under which individual programs are operated (such as elementary schools, private non-profit agencies, and local governments, to name a few) and to the wide range of program options from which agencies can now choose (such as center-based programs, home-based programs, combinations of center- and home-based programs, and locally designed program options). While most of the standards apply equally to all program options, where necessary we have created separate standards for the home-based program or, alternatively, have indicated where particular standards apply only to the center-based program option.

Finally, we looked for opportunities to make the regulations more outcome-focused and less process-focused. One key example is the regulation in Section E, which implements the new statutory requirement for a corrective action process for deficient grantees leading to prompt termination if services do not improve after the provision of technical assistance. Our proposal is intended to focus monitoring attention on those programs whose deficiencies affect the quality of services and outcomes for children, rather than on those programs that may have areas of non-compliance which need to be corrected but do not seriously compromise their fundamental ability to promote children's healthy development and social competence. ACF solicits comments on additional ways to make the regulations more outcome-based.

VI. Summary of the Proposed Regulation

Objective

The Head Start Program Performance Standards are a means for ensuring that all local agencies maintain the highest possible standards in the provision of Early Head Start and Head Start services. The standards are designed to ensure that the objectives of the Early Head Start and Head Start programs are achieved. To that end, they specify, in concrete terms, the features expected of a quality Early Head Start and Head Start program, and they hold local agencies responsible for meeting specific responsibilities in all program areas.

Just as local grantees and delegate agencies are expected to honor the culture and to maximize the strengths and experiences of each child and family, we recognize the differences and uniqueness of each local program and the community in which it operates. Therefore, while all agencies are expected to comply with the standards in this proposed rule regarding program operations and activities, we will be providing agencies with guidance material designed to suggest best practices for implementing the standards in a manner appropriate to their local circumstances. We also plan a variety of additional technical assistance activities to assist agencies in

understanding and implementing the new standards.

VII. Section by Section Discussion of the NPRM

The following sections in the preamble discuss in more detail the specific provisions in the proposed revisions to 45 CFR Part 1304. We have attempted in our discussion to focus particularly on those standards, or features of the standards, that are new to the proposed rule, rather than provide an exhaustive explanation of every aspect of the standards, some of which are unchanged from the current regulation.

Subpart A—General

Section 1304.1—Purpose and Scope

This section describes the purpose and scope of the proposed rule and references the sections of the Head Start Act upon which the proposed rule is based.

Section 1304.2—Effective Dates

This section provides that the proposed rule applies to all Early Head Start and Head Start grantees and delegate agencies as of the effective date. We welcome comments on whether we should provide for waivers on certain requirements which are believed to be too difficult for all affected agencies to meet by the effective date and which do not compromise the safety or developmental needs of Early Head Start or Head Start children.

Section 1304.3—Definitions

Paragraph (a) of this section provides definitions of the terms used throughout the proposed rule and paragraph (b) cross-references them to other definitions. Key words and phrases defined include: developmentally appropriate, family, infant, toddler, preschooler, assessment, policy group, program attendance, referral, staff, staff caregiver, teacher, and volunteer.

The definitions in this section are consistent with the definitions found in other Parts of this chapter and in other applicable Federal regulations. Among the other sources we consulted in developing these definitions are: the American Academy of Pediatrics, the American Public Health Association and the Health Resources and Services Administration's Maternal and Child Health Bureau's ''National Health and Safety Performance Standards: Guidelines for Out-of-Home-Care'' (1992); the American Heritage Dictionary, Houghton Mifflin Company: Boston (1992); the California Department of Education, Child Development Division's ''Developmental Program for Infants/Toddlers'' (1993); the Department of Public Welfare, Commonwealth of Pennsylvania, Pennsylvania Code (1992); the National Association for the Education of Young Children's ''Accreditation Criteria and Procedures of the National Academy of Early Childhood Programs'' (1991); the Office of Human Development Services, U.S. Department of Health and Human Services, Chapter XIII, Subchapter B—the Administration on Children, Youth and Families, Head Start Program, 45 CFR Parts 1301–1308; the U.S. Department of Education, 34 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities; and the Administration for Children and Families, Child Abuse Prevention and Treatment Act, as amended, November 4, 1992.

Subpart B—Early Childhood Development and Health Services

General Objectives

The objective of this Subpart of the proposed rule is to provide high quality, comprehensive services that foster each child's social competence by supporting and nurturing the child's social, emotional, cognitive, and physical development. Agencies must provide a safe, comforting, stimulating, and secure environment for children that is responsive to their varied ages, developmental levels, and special needs. In addition, they must provide a variety of individualized learning experiences that accommodate each child's unique temperament, cultural and ethnic heritage, personal preferences, and style of social interaction. As the first and primary educators of their children, parents must be integrally involved in educational activities provided both by the program and in the home. The learning experiences also must be multi-dimensional, integrating the educational aspects of medical and dental health, nutrition, and mental health services into program activities.

Head Start services under this Subpart must place a great deal of emphasis on medical, dental, and mental health. Each child's physical and emotional health must be assessed as early in the program year as possible, and strenuous efforts should be made to link each child and family to a ''medical home'' or accessible system of ongoing preventive health care and treatment. To ensure the continued healthy development of children after they leave the Early Head Start or Head Start program, agencies must collaborate actively with parents as partners in their children's health care. Agencies must emphasize the benefits of preventive health care: for instance, they must help parents understand the link between sound nutritional habits and good health, and the importance of creating a nurturing environment that supports the mental well-being of children. Likewise, agencies must emphasize safety, sanitation, and hygienic practices that promote continued good health.

Every aspect of Head Start services under this Subpart must be responsive to children's individual strengths, circumstances and special needs. For example, the nutrition program must be sensitive to individual cultural and ethnic food preferences and accommodate special dietary requirements, while also helping children to broaden their nutritional experiences. Together, parents and staff must ensure that children with special behavioral or other mental health concerns receive appropriate mental health interventions and classroom accommodations that enable them to enjoy the full benefits of Early Head Start and Head Start participation. In addition, agencies must be prepared to handle individual health emergencies, injuries or infectious conditions that children may have in a manner that best promotes the recovery of the affected child and that minimizes any risks to other children, staff, and parents.

Consistent with these objectives, the proposed revisions would place more emphasis than the current regulation on issues such as: (1) The scope and quality of child assessments (including developmental and behavioral assessments); (2) the involvement of parents and families in the delivery of Head Start services and the promotion of healthy child development; (3) the recognition of individual needs and cultural and linguistic differences among children; (4) contemporary practices which promote the child's physical, dental and mental health; and (5) appropriate safety practices and procedures for addressing emergency health problems. The proposed revisions also incorporate requirements specifically related to the special developmental needs of infants and toddlers.

Section 1304.20—Child Health and Developmental Assessment

Objective

The objective of this section of the proposed rule is to ensure that all health and developmental concerns are identified for each enrolled child. Also, agencies must link children and families

to a system of ongoing preventive health care—a ''medical home''—to ensure that health care needs are met, and can continue to be met, by the time the children and families leave the Early Head Start or Head Start program. Therefore, it is vitally important to the healthy development of children that staff actively involve parents as partners in their children's health care so that they can understand the importance of regular, ongoing preventive care and how to obtain it.

The picture of each child's development and physical health obtained during the assessment process must be used to individualize the program for each child to ensure that the child's potential is fully developed. In addition, the process must be used as the basis for further assessment and treatment, as specified in 45 CFR 1304.22.

Proposed Regulatory Provisions

(a) Assessment Process

The proposed rule would require an assessment which gathers and records, to the greatest extent possible, all relevant historical information about each child's health and development to enable a health professional's review of a child's status on established schedules of well child care and immunization no later than 90 calendar days from the first day of each child's enrollment in programs with durations of greater than 90 days. Grantee and delegate agencies operating programs of shorter duration (90 days or less) must gather the information and assure it has been reviewed by a health professional(s) within 30 calendar days after each child's enrollment in the program. Section 1304.20(a) of this Part cites the schedules of diagnostic procedures and immunizations that must be followed for each child and the sources of these schedules. These sources are: the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices and the schedule of well child care used by the Health Care Financing Administration's Medicaid Bureau for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program for the State in which a Head Start program operates. The schedules must be compared with each child's historical health information to determine what, if any, procedures and/or immunizations are required.

When the health professional's review of a child's status on the schedules of well child care and immunization indicates the child's care/immunization are not up-to-date, then the program must work collaboratively with the parents to secure the specific diagnostic procedures and/or immunizations established in these schedules within 90 calendar days of the first day of the child's enrollment in the program. Grantees and delegate agencies operating programs of shorter duration (90 days or less) must implement a plan to secure the needed services/immunizations within 30 calendar days of the first day of enrollment in the program. For children who have received appropriate care, programs must ensure that appropriate care continues. The determination of appropriate care for a child will be based on the recommendations of the child's health care provider.

The new assessment process proposed in the revised standards builds in greater flexibility for local agencies, as they no longer will be required to secure the same set of assessment procedures for each enrolled child, but only those assessments which the review by health professional(s) identifies as not-up-to-date by the established schedules. Similarly, the expanded timeframes, from 45 to 90 days for most programs, provides greater flexibility for programs, and is based on feedback received during the focus groups that 45 days is often insufficient to complete the assessments, particularly in rural areas. The 30-day timeframe for programs operating 90 days or less is based on concerns, also expressed during the focus groups, that a shorter period is needed to assure that assessments are completed on all children before they leave programs of shorter durations, such as migrant programs.

The ACYF invites comments regarding the proposed 90- and 30-day timeframes. The ACYF is particularly interested in whether these timeframes would pose difficulties for grantee and delegate agencies, whether they would allow sufficient time to gather information, and the impact that these timeframes would have on the quality of health care received by children who are enrolled in the program.

(b) Parent Involvement in the Assessment and Treatment Process

Paragraph (b) specifies the procedures that agencies must follow to involve parents in their children's assessments and treatments. It includes provisions on parental education, obtaining authorizations for care (or documenting that such authorization was not obtainable), ensuring that parents are properly informed about assessments and the results of diagnostic and treatment procedures, and properly informing the child of pending procedures.

(c) Medical and Dental Health Assessment

Paragraph (c) specifies an updated list of items which must be included in the medical and dental health portion of the assessment, such as size measurements; blood pressure, urinalysis, tuberculosis, vision, and hearing tests; a check of immunization status; and other appropriate tests based on individual, group and community risks. These items will enable agencies to identify any deficiencies in the child's development or health care history and are in keeping with the recommendations of the major medical authorities previously cited.

(d) Developmental and Behavioral Assessment

Paragraph (d)(1) proposes requirements for the developmental and behavioral assessments which must be performed for all children. Such assessments must cover motor, language, cognitive or thinking, and perceptual skills and must be performed in accordance with the schedule referenced in section 1304.20(a)(2).

Agencies must involve mental health professionals in these assessments either as a full staff member or on a consultant basis. Also, they must consult a variety of information sources, including members of the child's family, teachers, and others, in gathering information on the child's social and emotional development. Further, the assessments must be culturally sensitive and linguistically and age appropriate for each child.

(e) Ongoing Assessment

Paragraph (e) proposes the requirements for ongoing assessments of health and development even when no specific need for follow-up has been identified. They specify the essential elements that must be included in these ongoing assessments, including regular observations of changes in physical appearance (e.g., illness), emotional and behavioral patterns, and developmental progress as well as the regular use of parental, staff, and mental health consultant observations.

(f) Individualization of the Program

Paragraph (f) provides that assessment, medical evaluation, and treatment results, as well as insights from the child's parents, must be used to help Early Head Start or Head Start staff and parent(s) determine how they can best respond to each child's individual characteristics and needs.

Individual Family Service Plans (IFSPs) must also be developed for each infant and toddler with an identified disability, if one has not already been developed, in accordance with Part H of the Individuals with Disabilities Education Act (IDEA).

The development of the IFSPs does not place an additional burden on Early Head Start or Head Start programs because no assessments are required by Head Start beyond what is stipulated in Part H. A seamless set of services can occur for children with disabilities since they can participate in Part H through Early Head Start or Head Start programs.

Section 1304.21—Education and Early Childhood Development

Objectives

The objective of this section of the proposed rule is to provide each child with a safe, nurturing, stimulating, enjoyable, and secure environment in order to help him or her gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities in school and life. The varied experiences provided to each child will help children achieve the overall goal of social competence through the acquisition of social, emotional, intellectual and physical skills in a manner appropriate to each child's age and stage of development. Program learning experiences must be tailored to each child's unique temperament, cultural and ethnic heritage, preferences, and style of interaction.

To provide each child with a comprehensive learning experience, the educational aspects of medical and dental health, nutrition, and mental health services must be integrated into the daily program of activities for children. As the primary educators of their children, parents must be integrally involved in the development of educational activities for the program and the home. Particular attention must be paid to the educational priorities of enrolled families and the local community when providing child development and education services.

Proposed Regulatory Provisions

(a) Child Development and Education Approach for All Children

Paragraph (a)(1) provides the general framework for the agencies' approach to child development and education services in keeping with the recommendations of such organizations as the National Association for the Education of Young Children. The approach must be developmentally and linguistically appropriate. The approach also must recognize individual preferences and individual patterns of development as well as different ability levels, cultures, ages, and learning styles.

Parents must be integrally involved in the development of the program's curriculum and approach to child development and education and must be provided opportunities to increase their child observation skills in order to help plan the learning experiences.

Paragraph (a)(3) specifies the practices that agencies must follow to support each child's social and emotional development. These include new or modified concepts, such as support and respect for home languages and cultures and the provision of an unrushed atmosphere and predictable routines and transitions.

Paragraph (a)(4) specifies the practices agencies must follow to support the development of cognitive and language skills. These include developmentally appropriate activities, the explicit encouragement of play and learning by doing in both indoor and outdoor settings, the provision of opportunities for self-expression through the arts, and support for developmentally appropriate literacy and numeracy development through materials and activities.

Subsection (a)(5) specifies the practices that agencies must follow to promote each child's physical growth. They include a slight modification to an existing standard addressing the provision of adequate time, space, equipment, and materials for active play or movement that support the development of large muscles, and require an appropriate environment for the participation of children with special needs.

(b) Child Development and Education Approach for Infants and Toddlers

Paragraph (b)(1) specifies the special environmental and developmental needs of infants and toddlers. It specifies the additional requirements agencies must meet in serving these youngest children.

Under paragraph (b)(1) agencies must provide an environment which helps infants and toddlers develop secure attachment relationships, develop trust and emotional security, and explore sensory and motor experiences. Paragraph (b)(2) specifies that they must also provide an environment which helps promote the social and emotional development of infants and toddlers. More specifically, the environment must encourage the development of self-knowledge, self-awareness, autonomy, self-expression, and the emergence of communication skills.

Paragraph (b)(3) specifies the environmental conditions which agencies must provide to promote the physical growth of infants and toddlers. They must provide opportunities for small-motor development that encourage the control and coordination of small, specialized motions. The environment also must support the development of the emerging physical skills of infants and toddlers (e.g., grasping, pulling, pushing, crawling, walking, and climbing); and support the appropriate use of toilet facilities (consistent with parental views).

(c) Child Development and Education Approach for Preschoolers

Paragraph (c) specifies the requirements needed to meet the special developmental and educational needs of preschoolers. For the first time, agencies are required to develop or select a curriculum with the parents and apply it consistently, while also recognizing the need for individualized activities that support each child's distinct pattern of growth and development. Likewise, agencies must ensure that the program environment helps children develop emotional security and facility in social relationships. Through different types of indoor and outdoor activities, agencies must promote a child's self-understanding and feelings of competence, self-esteem, and positive attitudes toward learning. We encourage comments on whether these requirements adequately address the developmental and educational needs of preschoolers to enable them to gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities in school and life.

Section 1304.22—Child Health and Safety

Objective

The objective of this section of the proposed rule is to support each child's healthy physical development through a range of medical and dental health treatments and through an emphasis on safety practices. Specifically, agencies must be prepared to handle health-related emergencies as well as any injuries, illnesses, or infectious conditions children may have in a manner that best promotes the recovery of the affected child and that minimizes any risks to other children and staff. In addition, agencies must emphasize the prevention of injuries, illness, and the spread of disease. Finally, agencies must actively involve parents in all aspects of

the medical and dental health area so that the parents understand the importance of regular preventive care and treatment and how to obtain them.

Proposed Regulatory Provisions

(a) Medical and Dental Follow-Up and Treatment

Paragraph (a)(1) proposes requirements for agencies related to referrals for medical and dental care, including further diagnostic testing, examinations, and treatment for each child with an observable, suspected, or known health or developmental problem. It specifies that these referrals must be made as early in the program year as possible unless parental authorization for such services is denied. Such denial must be documented. Paragraph (a)(2), as in the current regulation, sets forth the specific requirements for the treatment of the medical and dental conditions of each enrolled child. Additional standards on parent involvement are in 45 CFR 1304.20(b).

(b) Health Emergency Procedures

The proposed standards in this section have been developed to increase protections for enrolled children and to avoid potential legal liability problems for agencies. Paragraph (b) details the procedures agencies must employ to deal with medical and dental health emergencies. It first requires that agencies have written policies and procedures for responding to health emergencies with which all staff must be familiar and trained. These policies and procedures must include the posting of policies and plans of action for emergency situations where rapid response of the staff or immediate medical attention is required. Likewise, the location and telephone numbers of emergency care facilities and providers must be posted, and information about how to contact responsible family and staff members must be readily available.

Agencies must also post emergency evacuation routes and safety procedures for the handling of other types of emergencies (e.g., fire- or weather-related). (See 45 CFR 1304.53 of the proposed rule, Facilities, Materials, and Equipment, for additional, related requirements.)

In the event of emergencies involving enrolled children, agencies must have written procedures specifying how the parents would be notified. This section also requires that agencies establish methods for handling cases of suspected or known child abuse and neglect that are in compliance with applicable State laws.

(c) Conditions of Short-Term Exclusion and Admittance

The new standards in this section respond to current health practices (e.g., the Centers for Disease Control and Prevention, the Health Resources and Services Administration's Maternal and Child Health Bureau, the American Academy of Pediatrics) regarding ways to safeguard against the spread of serious illness while also protecting the civil rights of individual enrolled children. Paragraph (c) mandates that agencies must not deny program admission to or exclude any child from program attendance in center-based activities solely on the basis of his or her health care needs or medication requirements.

Paragraph (c)(2) specifies the conditions under which agencies must exclude ill, injured, or contagious children from program participation. A child must not be excluded if the program is able to make reasonable modifications in its policies, practices, and procedures which would enable the child to participate without fundamentally altering the nature of the program.

Regarding children with illnesses in center-based settings, paragraph (c)(3) mandates that agencies must use policies and procedures consistent with professionally established guidelines on short-term exclusions and readmittance of children. Agencies must also notify the parent or other authorized person immediately to take the excluded child home.

Paragraph (c)(4) requires grantee and delegate agencies to request that parents inform them of any health risks their child may pose which would require special health or safety precautions. When a child who may pose a health risk is enrolled, the agency must inform responsible staff of the child's condition so that they can take appropriate actions, including precautions. However, the sharing of this information must be consistent with any constraints imposed by the program's confidentiality policy.

(d) Medication Administration

Paragraph (d) specifies the procedures agencies must follow with respect to the administration of medications.

Agencies must establish and maintain written procedures regarding the administration, handling, and storage of medication for every child. These procedures include those specified in 45 CFR 1308.18 as well as the need to label and store all medications safely and to train staff in appropriate techniques for administering, handling, and storing medications and the equipment used to administer them.

(e) Injury Prevention

Paragraph (e) proposes agency responsibilities to promote the prevention of injuries by fostering an awareness of safety concerns and safety practices, and by incorporating safety awareness into the program's regular education activities for children and parents.

(f) Hygiene

Paragraph (f) describes the hygienic practices that agencies must employ to prevent the spread of contagious diseases and to reflect contemporary medical practice and recommendations. We recognize that these requirements are very specific. However, we believe that the level of detail is needed because the regulations for the first time, cover services to infants and toddlers who are especially vulnerable to contagious illnesses and other health threatening conditions. Public Health officials who were consulted in the development of these standards stressed the need for clear requirements on hygiene. We welcome your comments on these requirements.

Paragraphs (f) (1), (2), (3), and (4) specify the minimum circumstances under which staff, volunteers, and children must wash their hands; that latex gloves must be worn by staff when in contact with spills of blood or other bodily fluids; and the additional clean-up and disposal procedures that agencies must follow when bodily fluids are spilled.

Paragraph (f)(5) provides that agencies must adopt diapering procedures that adequately protect the health and safety of children served by the program and staff. Agencies must also ensure that relevant staff are trained to follow these procedures properly.

Paragraph (f)(6) specifies the procedures which agencies must follow when potties are utilized in a center-based setting.

Paragraph (f)(7) specifies that, in programs serving infants and toddlers, agencies must provide space for each child's crib or cot to be at least three feet apart to avoid the spreading of contagious illness. We welcome comments about whether the proposed requirements regarding the spacing of cribs and cots would pose any difficulties for grantees.

(g) First Aid Kits

Under paragraph (g) agencies must maintain, at each site, well-supplied first aid kits that are appropriate for the ages served. They must keep these kits

readily available both at the site and on outings away from the site. Each kit must be accessible to staff members at all times, but must be kept out of the reach of children. Agencies are also responsible for ensuring that the kits are restocked after use and that inventories are conducted at regular intervals.

Section 1304.23—Child Nutrition

Objective

The objective of this section of the proposed rule is to supply nutritional care for enrolled children that supplements and complements that of the home and community. Further, nutrition staff must work collaboratively with parents to help them understand the link between nutrition and health, and must promote sound nutritional habits for each child and family that they will take with them when they leave the program. Agencies must use meal and snack times as social and learning opportunities to help toddlers and preschoolers develop social competence and knowledge about healthy eating. While the nutrition programs must be sensitive to individual cultural and ethnic food preferences and must accommodate special dietary requirements, at the same time, they must also help children broaden their nutritional experiences.

Proposed Regulatory Provisions

(a) Nutritional Assessment

Paragraph (a) of this section proposes requirements for agencies in identifying the nutritional needs of enrolled children. Many of these requirements are similar to existing regulations. Additions include: (1) taking into account information about family cultural preferences and infant and toddler feeding requirements; and (2) assessing detailed information on the feeding patterns and habits of infants and toddlers, updating this information regularly and sharing it daily with parents. This last standard is an important part of quality nutritional services for infants and toddlers and their families.

(b) Nutritional Services

Paragraph (b) specifies the requirements for agency nutritional services and indicates which requirements apply only to center-based programs.

It requires that agencies design and implement nutritional programs that meet the nutritional needs, feeding requirements, and feeding schedules of each child that are responsive to family, community, and cultural eating preferences and dietary choices. As in the current regulation, it specifies the quantities and kinds of food children must receive in center-based settings and the schedule in which they must receive it. However, the revised standards eliminate references to specific required intervals between meals for children aged 3 to 5 to avoid potential conflict with U.S. Department of Agriculture requirements in this area. The nutrition standards have been broadened to include infants and toddlers to ensure that they receive food appropriate to their nutritional needs, developmental readiness, and feeding skills. For example, infants and young toddlers who need it must be fed ''on demand'' to the extent possible or at specifically bounded intervals. In addition, agencies must comply with the more specific nutritional guidelines of the U.S. Department of Agriculture. Food served to preschoolers must use fat, sugar, and salt sparingly, in keeping with contemporary research (e.g., the U.S. Department of Agriculture, the National Center for Education in Maternal and Child Health) concerning proper nutritional guidelines that promote good health.

Finally, grantees must promote effective dental hygiene among children in conjunction with meals.

(c) Meal Service

As in the current standards, paragraph (c) specifies the conditions under which food must be served in center-based settings, with the expectation that nutritional services contribute to the development and socialization of enrolled children. The current standards make it clear that eating should be a communal and socializing experience for preschoolers, and the proposed standard extends this requirement to toddlers. Other additions include requirements that staff hold infants when feeding them and not put infants to bed with a bottle, in keeping with recognized medical authorities regarding infant safety. In addition, agencies must accommodate special medically based diets and other special dietary requirements. The current standard requiring child-sized utensils and furniture has been deleted in response to the recommendations made by staff of local Head Start programs during the focus groups.

Agencies should give children the opportunity to assist in meal preparation and service only when they are developmentally ready.

(d) Family Assistance with Nutrition

Agencies must assist individual families with food preparation and nutrition skills as part of their group socialization and parent education activities.

(e) Food Safety and Sanitation

Paragraph (e) specifies the practices that agencies must employ to ensure that food handling, preparation and consumption do not result in any safety risks.

The new standards require that agencies establish whether the food services with which they contract are properly licensed as an indication that they are in compliance with appropriate food safety and sanitation laws. Paragraph (e)(2) requires that programs serving infants and toddlers provide facilities for the proper storage and handling of breast milk for mothers who choose to breast feed their children.

Section 1304.24—Child Mental Health

Objective

The objective of this section of the proposed rule is to provide parents and staff with a better understanding of the contribution that mental health services can make to the well-being of each child. Specifically, parents and staff must understand the importance of creating a nurturing environment that supports the mental health of all children. Since parents are the primary nurturers of their children, their involvement in mental health services is especially critical in order to enhance their role in their child's mental wellness by the time they leave the Early Head Start and/or Head Start program. Together, parents and staff must ensure that children with special behavioral and mental health concerns receive appropriate mental health interventions that will enable them to enjoy the full benefits of Early Head Start and Head Start participation. Finally, staff must receive the professional guidance they need to design effective program interventions for children with special mental health and behavioral concerns.

Proposed Regulatory Provisions

(a) Mental Health Services

Paragraph (a)(1) describes the specific ways in which agencies must work collaboratively with parents to promote the mental health of their children, such as soliciting parental information, observations, and concerns about their child's mental health, and discussing and identifying with parents appropriate responses to their child's behavior.

Paragraph (a)(2) provides that agencies must secure the services of a mental health professional on a schedule of sufficient frequency to

identify and respond to family and staff concerns about each child's mental health. This standard also addresses the concern of the Advisory Committee on Head Start Quality and Expansion about the need to assist those children who are facing an increasingly complex array of problems and family crises.

Paragraph (a)(3) specifies the topics of the mental health consultations that must take place among the mental health professional, program staff, and parents. New standards include consultation on how to design and implement program practices responsive to identified concerns and how to promote children's mental wellness through staff and parent education.

Subpart C—Family and Community Partnerships

General Objectives

The objective of this Subpart of the proposed rule is to ensure that each enrolled family is supported in fostering their child's development and in attaining their personal family goals. Agencies must create trusting partnerships with parents and families that build on family strengths and competencies and support their culture and language. An essential part of these partnerships is the voluntary involvement of parents in the full range of children's services, including opportunities to serve in the classroom and to assist with the choice of the program curriculum and the child development approach. Parents also must be viewed as integral partners in the processes of program planning, decisionmaking, and governance.

Agencies should work with families as partners to identify the personal goals of participating families, help them overcome barriers which prevent them from leaving poverty and help them gain the skills needed to foster healthy connections with their communities. Support should begin as soon as possible in the program year and should emphasize prevention and early intervention, rather than remediation and treatment. In addition, if families are not already linked to services in the community, agencies should serve as a single point of entry to help families find access to more specialized services and to assist them in establishing support networks in the community and among parents themselves that will promote family self-sufficiency beyond the Early Head Start and Head Start programs. When Head Start families are already working with another community agency to address family goals for self-sufficiency, the grantee or delegate agency must coordinate, to the greatest extent possible, with these other agencies and the family to avoid duplicative, or conflicting, efforts.

To achieve this goal of collaborative, integrated, and comprehensive services for families, agencies must provide the leadership necessary to create a community environment that is supportive of all low-income families and children, and a community network of coordinated, accessible services that is responsive to their needs. Agencies must work proactively to establish community partnerships that engage in collaborative action, including continuous community planning, service coordination, joint staff training, and the joint identification and resolution of service delivery problems. Special efforts must be made to establish fully functioning partnerships with local education agencies, such as coordination with Part H programs and schools providing Title I Improving America's Schools Act services to preschool children.

Section 1304.40—Family Partnerships

Objective

The objective of this section of the proposed rule is to build trusting relationships between grantees and parents that will assist parents in meeting their personal goals and in fostering their child's development. These relationships must be built by working with families in a variety of ways that are responsive to their individual circumstances and issues. Efforts must always be made to communicate and develop relationships with families in their primary language.

Family partnerships must be used by agencies to identify families' personal goals and the manner in which they can best be achieved. These goals may involve the fulfillment of a range of needs, such as housing, transportation, employment, and the development of effective parenting and household management skills. Likewise, each family may be wrestling with special concerns, such as domestic or community violence or substance abuse. Agencies must have the capacity and staff expertise to work intensively with families and link them to appropriate services in the community to address these individual concerns and to accomplish their personal goals.

In developing partnerships with parents, agencies must ensure that parents are included as integral members of the Early Head Start or Head Start team. As the primary educators of their children, agencies must encourage parents to assist in the development of all of their children's services, including the program's curriculum and child development approach. Specifically, staff should provide opportunities for parents to develop knowledge, skills, and experience in child development and education, health promotion and disease prevention, and family nutrition.

Agencies should also involve parents in assessing their children's individual progress and special needs and help them learn to advocate for their children's well-being in the community, including school and child development settings. Agencies must also assist parents in establishing individualized support networks in the community that will promote family self-sufficiency beyond their participation in the Early Head Start and Head Start programs.

While the participation of parents must remain voluntary, agencies should make concerted efforts to encourage such participation by demonstrating the importance of their participation as equal partners in the program and by accommodating the parents' schedules.

Proposed Regulatory Provisions

(a) Assessment and Goal Setting

This section of the proposed rule requires that agencies collaborate with families to build partnerships, establish mutual trust, and identify family goals, strengths, and necessary supports. Agencies must begin the process of building these partnerships as early in the program year as possible. This section responds specifically to the recommendation of the Advisory Committee on Head Start Quality and Expansion to ''strengthen the assessment of family resources and needs.''

As part of this partnership-building process, agencies must work with parents to help them develop and implement, throughout the year, individualized Family Partnership Agreements. These Agreements must describe family goals and responsibilities, timetables and strategies for achieving these goals, as well as progress toward achieving them.

The Family Partnership Agreements must appropriately reflect the information provided by the family and by other community agencies concerning preexisting family plans and goals to assist families toward the goal of self-sufficiency.

Agencies have a responsibility to provide parents with a variety of opportunities throughout the year to discuss their progress and to update the Family Partnership Agreement, as

necessary. In meeting these responsibilities, agencies must respect each family's cultural and ethnic background.

(b) Accessing Community Services and Resources

This section represents only a slight modification of the standards in the current rule under the social services component. Greater emphasis has been placed on referrals to services and resources that address the types of assistance contemporary families may require, such as counseling for problems related to substance abuse and domestic violence and for employment training and location services.

Paragraph (b)(1) requires agencies to collaborate with all participating parents to identify and access appropriate services and resources. These might include emergency or crisis assistance; education and other appropriate interventions regarding issues that place families at risk; and opportunities for continuing education and employment training and other employment services.

Paragraph (b)(2) specifies agency responsibilities to follow-up with parents when referrals are made to determine whether the family receives appropriate services on a timely basis and whether the services meet the family's needs. We welcome comments regarding the capacity of Head Start agencies to meet the requirement for staffing and resources.

(c) Services to Pregnant Women Who Are Enrolled in Programs Serving Pregnant Women, Infants, and Toddlers

In keeping with the mandates of both the Head Start Act, as amended, and the Advisory Committee on Services to Families with Infants and Toddlers that high quality services for infants, toddlers, and pregnant women be established, this section requires that agencies provide assistance to pregnant women in obtaining immediate access, through referrals, to comprehensive prenatal care and postpartum care, including early and continuing risk assessments, health promotion and treatment, and mental health interventions and follow-up, as needed. This set of standards also ensures strong preventive health care for both mothers and their infants.

Paragraph (c) requires that agencies provide pregnant women and other family members with prenatal education on a variety of specified issues. The information will be made available through coordinated efforts with local maternal and child health agencies. Under paragraph (c)(3), they must provide information on the benefits of breast feeding to all pregnant and nursing mothers and must also provide arrangements necessary to accommodate mothers who choose to breast feed in center-based programs.

(d) Parent Involvement—General

This section restates the general requirements of parent involvement contained in the current rule with only slight modifications.

(e) Parent Involvement in Child Development and Education

This section of the proposed rule lays out requirements for parental involvement in child development and education that are very similar to the requirements in the current rule.

Under paragraph (e)(3), agencies must directly or indirectly provide opportunities for children and families to participate in family literacy services by increasing their access to appropriate materials and services and by helping them recognize and address their own literacy goals.

(f) Parent Involvement in Health, Nutrition, and Mental Health Education

The requirements of this section are also similar to those contained in the current rule. Minor changes include requiring agencies to assist parents in understanding how to enroll and participate in a system of ongoing health care. In addition, mental health education must include opportunities for parents to discuss issues related to child mental health and to the mental health of their own child and family in particular.

(g) Parent Involvement in Community Advocacy

This section incorporates a number of standards in the current rule with only minor changes. The most notable addition is that agencies must provide a comprehensive community resource list, if available, to parents as part of the provision of the technical support necessary to enable parents to secure community assistance on their own behalf.

(h) Parent Involvement in Transition Activities

This set of standards responds to the provisions of the Head Start Act, as amended, to carry out specific actions to ''promote the continued involvement of parents of children that participate in Head Start programs in the education of their children upon transition to school.'' Improved transition services are also key recommendations of both Advisory Committees. Agencies must assist parents in becoming their children's advocates as their children transition into Early Head Start or Head Start from the home or other child development settings and from Head Start to elementary school, Title I Improving America's Schools Act preschool programs or other placements.

Staff must work to prepare parents to become their children's advocates through such transition periods. At a minimum, they must meet with parents toward the end of the child's participation in the program to explain their child's progress while enrolled in Early Head Start or Head Start.

In order to promote the continued involvement of parents in the education and development of their children upon transition to school, agencies must give parents information about their rights and responsibilities within the school system and help them learn to communicate with school personnel and to participate in decisions related to their children's education. (See 45 CFR 1304.41(c) for additional standards related to children's transition to and from Early Head Start or Head Start.)

(i) Parent Involvement in Home Visits

This section augments the requirements of 45 CFR Part 1306 regarding home visits in all program options by making home visits as convenient and safe as possible for both parents and staff. As in the current regulation, agencies must not require that parents permit home visits as a condition of their child's participation. However, every effort must be made to explain the advantages of home visits to the parents.

In addition, whenever possible, home visits must be scheduled to permit the participation of both the enrolled child and the parents. Also whenever possible, staff must conduct home visits in all program options at times that are most convenient for the parents or primary caregivers.

Home visits conducted under the center-based program option may now take place outside the home, either at the parent's request or for safety reasons, at an Early Head Start or Head Start site or at another safe location that affords privacy.

Agencies serving infants and toddlers must arrange for health staff to visit newborns and their families within two weeks after the infant's birth to ensure the well-being of both the mother and child.

Section 1304.41—Community Partnerships

Objective

The objective of this section of the proposed rule is to ensure that Early Head Start and Head Start agencies become active partners in their communities, both to advocate for low-income families and to help create a community environment that shares responsibility for the healthy development of all of its children. Successful partnerships require proactive behavior on the part of Early Head Start and Head Start programs, and involve the commitment of significant staff time and agency resources. Grantee and delegate agencies must provide leadership in the community by working with parents and other service providers to promote access to appropriate services that will enhance each family's well-being and their movement toward self-sufficiency. Agencies also must engage in continuous community planning to promote collaborative action with other agencies in order to improve, share and augment services, staff, information and funds. This includes service coordination, joint training, and the joint identification and resolution of service delivery problems.

Proposed Regulatory Provisions

(a) Partnerships

As a way of addressing the Advisory Committee on Head Start Quality and Expansion's concern about local agencies' struggles with planning and the coordination of services, and to promote the Advisory Committee on Services to Families with Infants and Toddler's Program Cornerstone of Community Building, the standards in this section have been augmented to encourage greater collaboration on the part of Early Head Start and Head Start agencies with other community service providers that will enhance family services.

Paragraph (a)(1) requires that agencies take an active role in community planning to ensure strong communication, cooperation, and the sharing of information among grantees and their community partners and to improve the delivery of community services to children and families. (See 45 CFR 1304.51 for additional planning requirements.)

To promote access to community services that are responsive to their clients' needs and to ensure that Early Head Start and Head Start programs respond to community needs, agencies must take affirmative steps to establish collaborative, ongoing relationships with community organizations including health providers; mental health providers; providers of nutritional services; providers of services to children with disabilities and their families; family support and resource organizations; providers of family preservation and support services; children's protective services; educational and cultural institutions; and child care providers. (See the existing regulations at 45 CFR 1308.4 for specific service requirements for children with disabilities and their families.)

Agencies also must perform outreach to encourage appropriate individuals from the community to participate as volunteers in the Early Head Start and Head Start programs.

To enable the effective participation of children with disabilities and their families, agencies must make specific efforts to develop interagency agreements with local educational agencies (LEAs) and other agencies within their service area. (See 45 CFR 1308.4 for specific requirements concerning interagency agreements.)

(b) Advisory Committee

Paragraph (b) requires that agencies establish and maintain a Health Services Advisory Committee which includes professionals and volunteers from the community. Agencies also must establish and maintain other Advisory Committees, as they deem appropriate, to address service issues and to help agencies respond to community needs. While a number of focus group participants strongly recommended that additional Advisory Committees in other areas beyond Health Services be required, these recommendations were not implemented to allow latitude for agencies to establish any additional Advisory Committees that they deem would be appropriate for their local programs.

(c) Transition Services

The following group of standards respond specifically to the new statutory requirements for transition services as well as to the recommendations of both Advisory Committees that program transition activities be addressed in the standards. These new requirements closely parallel the language of the Head Start Act, as amended. Agencies must establish and maintain procedures to support the successful transition of enrolled children and families from previous child care and development programs into Early Head Start or Head Start and from Head Start into elementary school, Title I Improving America's Schools Act preschool programs, or other child care settings. They must coordinate with appropriate agencies, and among migrant programs, on the transfer of records; perform outreach to encourage staff to communicate with their counterparts in the school and other child care settings; initiate meetings involving parents and teachers to discuss the developmental progress and abilities of individual children; and initiate joint transition-related training with school or other child development staff. (See the proposed rules at 45 CFR 1304.40(h) for requirements related to parental participation in their child's transition to and from Early Head Start or Head Start.)

Subpart D—Program Design and Management

General Objective

The objective of this Subpart of the proposed rule is to provide the foundation for quality services to children and families. Strong, committed governing bodies and policy groups that represent Early Head Start and Head Start parents and the larger community must be established to provide effective leadership to and oversight of the program. Effective management systems and procedures must be in place to support the implementation of program services, such as systematic program planning procedures, responsive and smooth communication systems, and efficient record-keeping and reporting systems. In addition, agencies must create processes for program self-assessment and delegate agency monitoring that ensure that progress in meeting program objectives is carefully monitored and that program weaknesses are identified and remedied.

Since the success of local programs depends, in large part, on the quality of its staff, agencies must also implement human resource management systems that ensure that dynamic, highly qualified staff are selected for employment and that staff and volunteers are supported in their work at the Early Head Start and Head Start programs. Agencies must establish effective organizational structures that encourage a coordinated, team approach to service delivery. They also must ensure that staff to child ratios and classroom sizes are small enough to support optimal caregiving relationships and individualized program activities that protect the children's safety. In addition, agencies must set reasonable job expectations for staff that are commensurate with their demonstrated

skills and experience. Finally, agencies must support staff and volunteers in meeting the challenges they face in their jobs by providing adequate and appropriate supervision, regular feedback, and structured opportunities for professional development.

The provisions of this Subpart also ensure that program facilities, materials, and equipment support appropriate child development practices and the program's unique features and design. Facilities, materials, and equipment must be safe, developmentally appropriate, and accessible to all children. In choosing an Early Head Start or Head Start site, agencies must make the selection based on the findings from the Community Needs Assessment and must be responsive to the needs and circumstances of the community, children, and families served and aware of environmental and safety risks that may affect the healthy growth and development of children.

Section 1304.50—Program Governance

Objective

The objective of this section of the proposed rule is to ensure that each local agency establishes governing bodies and policy groups to oversee the implementation of the Head Start legislation, regulations, and policies and to ensure that the program delivers high quality, comprehensive services to enrolled children and families. As stewards of the local program, the members of the local policy groups, including Policy Councils, Policy Committees, and Parent Committees, must adequately represent Early Head Start and Head Start parents as well as individuals and organizations in the larger community who have a concern for low-income families and their children. In order to serve the local program well, members of the policy groups must understand and perform a number of key oversight functions with dedication and care. Performing these responsibilities should be an experience of growth and empowerment for parents.

Proposed Regulatory Provisions

(a) Policy Group Structure

As in the current standards, paragraph (a) sets forth the requirements for a formal structure of governance which enables parental participation in policy-making and program operations. The regulation is unchanged for grantee agency Policy Councils and delegate agency Policy Committees. Center Committees have been renamed Parent Committees, which must be established at the center level for center-based programs. For other program options, a Parent Committee must be established at the local program level.

Furthermore, it states that all policy groups must be established as early in the program year as possible, and that Policy Councils and Policy Committees may not be dissolved until their successors are both elected and seated. It then provides clarification that the governing body (formerly called the ''corporate board'') and the Policy Council or Policy Committee may not have identical memberships and functions. While none of the focus groups expressed any major concerns about the current requirements regarding policy groups, we welcome any comments you may have in this area.

(b) Policy Group Composition and Formation

Proposed regulations as to whether such groups, as defined in the regulation, provide sufficient flexibility to meet local program needs do not differ substantially from the current regulation. Minor changes have been made to provide clarification or to increase agency flexibility.

Paragraph (b)(1) sets forth requirements regarding the composition and procedures by which policy group members are chosen, which must be determined by the governing body of each program and approved by the Policy Council or Policy Committee consistent with the regulations in this Part.

Policy Councils and Policy Committees must include the parents of currently enrolled children and community representatives. At least 51 percent of the members of each of these policy groups must be the parents of currently enrolled children.

All parents of currently enrolled children serving on policy groups must stand for election or re-election annually.

Policy Councils and Policy Committees must establish and maintain procedures for selecting community representatives to serve on the Policy Councils or Policy Committees. Community representatives must be drawn from the local community and from local organizations that have a concern and provide resources and services to low-income children and families. Community representatives may include the parents of formerly enrolled children.

To provide greater flexibility to local agencies, Policy Councils and Policy Committees must determine and establish the terms of membership for their policy groups.

Early Head Start or Head Start staff and agency managers with responsibility for the program (and members of their families) may not serve on the Policy Councils or Policy Committees.

Parent Committees must be comprised exclusively of the parents of currently enrolled children.

The parents of children currently enrolled in all program options must be adequately represented on established policy groups.

Paragraph (c) sets forth the minimum responsibilities for each of the three types of policy groups that are described in Appendix A of Section 1304.50.

(d) The Policy Council or Policy Committee

The responsibilities of Policy Councils and Policy Committees have remained almost exactly the same as in the current regulation. Policy Councils and Policy Committees must help develop, review and approve or disapprove major governance and management policies and procedures connected with local Early Head Start or Head Start programs. These include: (1) Applications for grants and application amendments (including indirect cost rates, program budgets, and operational plans); (2) procedures describing how the governing body and the appropriate policy group will implement shared decision-making; (3) program planning procedures; (4) agency philosophy statements and statements of program objectives; (5) the selection of delegate agencies and their service areas (applies only to Policy Councils); (6) group compositions and procedures by which policy group members are chosen; (7) recruitment, selection and enrollment policies; and (8) procedures for the agency's annual self-assessment of its progress in carrying out the programmatic and fiscal intent of its grant application, including any planning actions that may result from the review of the annual audit and the Federal Performance Monitoring Review.

With respect to personnel administration, Policy Councils and Policy Committees must help to develop, review and approve or disapprove: (1) Program personnel policies and policy changes (including standards of conduct); and (2) decisions to hire and terminate any person paid from Early Head Start or Head Start funds, including the Early Head Start or Head Start director.

Under paragraph (d)(2), Policy Councils and Policy Committees also have responsibility for a number of parent and community outreach

activities. They must: (1) Serve as a link to the Parent Committees, agency governing bodies, public and private organizations, and the community; (2) assist Parent Committees in communicating with parents to ensure that they understand their rights and opportunities as program participants; (3) assist Parent Committees and staff in planning, coordinating, and organizing program activities for parents; (4) assist in recruiting volunteer services and in mobilizing community resources; and (5) establish and maintain procedures for working with the grantee or delegate agency to resolve community complaints about the program.

(e) Parent Committee

Under paragraph (e), the minimum responsibilities of Parent Committees include: (1) Advising Early Head Start and Head Start staff in developing and implementing local program policies, activities and services; (2) planning, conducting, and participating in activities for parents and staff; and (3) consistent with the guidelines established by the governing body, Policy Council, and Policy Committees, participating in staff recruitment and screening.

(f) Policy Group Reimbursement

To enable full participation by low-income individuals in policy group activities, agencies must provide reimbursements for reasonable, activity-related expenses, if necessary.

(g) Governing Body Responsibilities

In response to the many comments received from local Head Start agencies during the focus groups, agencies must have written policies defining the roles and responsibilities of governing body members and informing them of the management procedures and functions necessary to implement a high quality program.

(h) Internal Dispute Resolution

In response to the specific statutory requirement regarding mediation procedures in section 646 of the Head Start Act, as amended, each agency and Policy Council or Policy Committee must jointly establish written procedures for resolving internal disputes, including impasse procedures, resulting from shared decision-making responsibilities. We are developing mediation procedures implementation at the Federal level as required by section 646, when needed.

Section 1304.51—Management Systems and Procedures

Objective

The objective of this section of the proposed rule is to ensure that local agencies are performing the management functions necessary to enhance staff performance; deliver high quality services to children and families; and comply with Federal, State, and local laws. Specifically, they must conduct systematic program planning to guide staff in the accomplishment of program goals and objectives and in the delivery of responsive program services in a timely and fiscally responsible manner. In addition, communications must flow easily among governing bodies, policy groups, staff, families, and the larger community, and must respond rapidly to ongoing informational needs. Record-keeping and reporting systems also must support the program's informational needs in a timely and efficient manner, while ensuring that the privacy of staff and families is protected. Finally, self-assessment and delegate monitoring procedures must ensure that progress in meeting program objectives is carefully and regularly evaluated and that program weaknesses are identified and addressed.

Proposed Regulatory Provisions

The proposed standards in the Management Systems and Procedures area directly respond to Section 641A(a)(1)(B) of the Head Start Act, as amended, which requires the establishment of administrative and financial management standards.

(a) Program Planning

Paragraph (a) sets forth the requirements for agencies in developing and implementing a program planning process. These standards have been strengthened in accordance with the Advisory Committee on Head Start Quality and Expansion's concern about the need to strengthen local program planning and in response to focus group requests for the delineation of a specific planning process in the standards. The process must be systematic and ongoing; and include consultation with the program's governing body, policy groups, program staff, and other community organizations. The program planning activities, per se, must include: (1) An assessment of community strengths, needs and resources, in accordance with the requirements of 45 CFR Part 1305; (2) the formulation of ''long-range'' program goals and short-term program and financial objectives; and (3) the development of written implementation plans for each program area covered by this Part (i.e., Early Childhood Development and Health Services, Family and Community Partnerships, and Program Design and Management).

(b) Communications—General

Standards on communications in this section simply represent a reorganization and compilation of current standards and pre-existing On-Site Program Review Instrument (OSPRI) requirements (which are based on the current standards) regarding communication. No new requirements have been added. Paragraph (b) provides that agencies must establish and implement systems to ensure the timely and accurate provision of information to parents, policy groups, staff, and the general community.

(c) Communication With Families

Paragraph (c) requires that agency systems ensure regular, effective two-way comprehensive communication between staff and parents. Written and oral communications must be carried out in the parents' primary language or through an interpreter, to the extent feasible.

(d) Communication With Governing Bodies and Policy Groups

As in the current regulation, paragraph (d) requires that governing bodies and members of policy groups, including Policy Councils and Policy Committees, regularly receive information, such as policy guidances and other communications.

(e) Communication Among Staff

This section requires that agencies have mechanisms for regular communication among all program staff to facilitate quality outcomes for children and families.

(f) Communication With Delegate Agencies

This section partially fulfills the statutory requirements of Section 641A(a)(4) of the Head Start Act, as amended, regarding the establishment of standards relating to obligations to delegate agencies. Grantees must have procedures for ensuring that the governing bodies, Policy Committees, and all staff of the grantee and delegate agencies receive regulations, policies, and other pertinent communications in a timely manner.

(g) Record-Keeping Systems

The proposed standard requires grantees to establish and maintain record-keeping systems on children,

family and staff under the program. Comments are invited about whether the standards should require that record-keeping systems be supported by appropriate computer technology, and whether such a requirement would pose an unreasonable burden for programs.

(h) Reporting Systems

The proposed standards respond to statutory requirements for administrative and financial management standards. Again, however, ACYF welcomes comments regarding the perceived burden of these standards and whether ACYF should require that reporting systems be supported by appropriate computer technology.

Paragraph (h) specifies the functions the agency reporting systems must perform. Agencies must establish and maintain efficient and effective reporting systems. The systems must generate regular financial and program reports and official reports as required by Federal, State, and local authorities.

(i) Program Self-Assessment and Monitoring

Under paragraph (h), agencies must conduct a self-assessment at least once each program year in consultation with other community agencies to evaluate their effectiveness and progress in meeting their program goals and objectives. Agencies also must consult with their policy groups and secure their participation in the conduct of these self-assessments.

Grantees must also establish and implement procedures for the periodic monitoring of delegate agencies and their compliance with Federal regulations. If grantees identify any deficiencies in delegate agency operations, they must inform the governing bodies of the delegate agency and assist the delegate agency in developing plans, including a timetable, for addressing the problems which were identified. This standard also responds to the statutory requirement to develop standards relating to obligations to delegate agencies.

Section 1304.52—Human Resources Management

Objective

The objective of this section of the proposed rule is to ensure that programs recruit and select dynamic, well-qualified staff who possess the skills and experience needed to provide high quality, comprehensive services to children and families in the program. Staff selected for employment in Early Head Start or Head Start should be knowledgeable about the community served by the program in order to enhance the delivery of services. In addition, they should be assisted by the program to seek out opportunities for the development of new skills and competencies that will improve their job performance. Since no one staff member can possess all of the knowledge and skills necessary to provide the wide-ranging services offered, staff members should be selected for their ability to work as members of a productive, mutually supportive team. Finally, staff must be willing to abide by the program's strict standards of conduct for interacting with children and families and must be of sound physical and emotional health

Another objective of this section is to ensure that local agencies provide an environment that is strongly supportive of program staff and volunteers. First, agencies must establish dynamic and effective organizational structures that encourage a coordinated, team approach to service delivery. Second, agencies must ensure that staff to child ratios and classroom sizes are small enough to support optimal caregiving relationships and individualized program activities. Next, agencies must set reasonable job expectations for staff that are commensurate with their demonstrated skills and experience. Finally, agencies must support staff and volunteers in meeting the challenges they face in their jobs by providing adequate and appropriate supervision, feedback, and opportunities for professional development.

The inclusion of detailed requirements for staff qualifications reflect ACYF's commitment to improving the quality of services and program management as well as a strong consensus among the sources consulted about the need to strengthen requirements in these areas.

Proposed Regulatory Provisions

(a) Organizational Structure

In keeping with the Advisory Committee on Head Start Quality and Expansion's recommendation to focus on staffing plans and personnel policies, and with the statutory requirement to improve administrative and financial management, paragraph (a) provides that agencies must employ (and document) an organizational design that supports the accomplishment of program objectives. The documentation must set forth the major roles and responsibilities of each staff position and demonstrate that adequate mechanisms for staff supervision and support are in place. However, the proposed standard is structured to promote the maximum flexibility possible on the part of local agencies in carrying out its provisions.

At a minimum, agencies must formally assign responsibilities for program management (i.e., to the Early Head Start or Head Start director); for management of the different child development services; and for management of family and community partnerships, including parent activities.

(b) Staff Qualifications—General

Some of the requirements in this section are very similar to those in the current rule. In addition, however, agencies must ensure that staff have the knowledge, skills, and experience needed to perform their assigned roles and functions responsibly. Although this has been a long-standing unstated requirement of local agencies, it is now stated explicitly to respond to the concerns of the Advisory Committee on Head Start Quality and Expansion about staff qualifications and to the mandate of Section 644(a)(2) of the Head Start Act, as amended, to ''assure that only persons capable of discharging their duties with competence and integrity are employed.* * *'' Agencies must also ensure that managers, supervisors, fiscal officers, classroom teachers, staff working with infants and toddlers, home visitors, health staff, mental health professionals, and nutritionists and dieticians meet more specific qualification requirements, as noted below.

(c) Management Staff Qualifications

The proposed standards related to management staff qualifications respond to the Advisory Committee on Head Start Quality and Expansion's concerns about staffing and to statutory requirements that standards for administrative and financial management and staff qualifications be established. The proposed standards, however, broadly require agencies to hire staff with relevant ''training and experience'' to give local agencies as much flexibility as possible in meeting them. The ACYF welcomes comments regarding the perceived burden of these proposed standards.

Paragraph (c) includes specific qualification requirements that apply to staff responsible for agency management.

The Early Head Start or Head Start director must have training and experience relevant to early childhood or human services program management.

Agencies must secure, on a regularly scheduled or ongoing basis, the services

of a Certified Public Accountant (CPA) or an individual with other appropriate credentials to serve as fiscal officer.

Staff managing education services must meet the requirements specified in section 648A(a)(1) of the Head Start Act (and referenced in 45 CFR 1306.21). They must also have training and experience in such areas as the theories and principles of child growth and development, early childhood education, and family support.

Staff managing health services must have training and experience in public health, nursing, health education, prenatal and postpartum care or health administration.

As in the current regulation, a certified or licensed nutritionist or dietician either must manage the nutrition services as a full-time staff person or supervise the nutrition services on a periodic and regularly scheduled basis.

Staff managing family and community partnership services must have training and experience in field(s) related to social, human or family services.

Staff managing parent involvement services must have training, experience and skills in assisting the parents of young children in advocating and decision-making for their families.

Staff managing disability services must have training and experience in securing and individualizing needed services for children with disabilities.

(d) Mental Health Professional Qualifications

In order to respond effectively to the complex contemporary challenges facing many of the families served by Early Head Start and Head Start programs, a licensed or certified mental health professional with experience and expertise in serving young children and their families must provide services to these programs on a regularly scheduled basis. The ACYF welcomes comments about whether this proposed standard places a reasonable burden on local agencies.

(e) Health Staff Qualifications

To the extent that health staff perform health screenings, immunizations, or other health procedures for children, they must have appropriate professional licenses or certification to perform those procedures. The proposed standard simply states this requirement explicitly.

(f) Infant and Toddler Staff Qualifications

A necessary feature of high quality programs for infants and toddlers, supported by research, is that staff working with infants and toddlers have the training and experience necessary to develop consistent, stable, and strongly supportive relationships with very young children. This paragraph cross references the qualifications in section 648A of the Head Start Act which includes as one possible qualification persons who have earned a Child Development Associate (CDA) credential. In addition to the statutory qualifications, they must also have knowledge of infant and toddler development and of methods for communicating effectively with infants and toddlers, their parents, and other staff members. The ACYF welcomes comments, however, on whether the qualifications that are cross-referenced pose implementation problems for grantees and delegate agencies.

(g) Standards of Conduct

The proposed standards on staff standards of conduct respond to the recommendations of focus group participants that specific staff standards of conduct be established to safeguard children, families, and staff themselves from perceived or actual abuse or civil rights violations that may inadvertently occur during program hours as a result of staff actions. In addition, these proposed standards comply with section 644(a)(2) of the Head Start Act, as amended, to ''assure that only persons capable of discharging their duties with competence and integrity are employed...''

Agencies must ensure that all staff, consultants, and volunteers abide by the program's standards of conduct. These standards must protect against stereotyping and abuse and help ensure confidentiality, child safety, and appropriate (positive) disciplining methods.

Agency standards of conduct must also cover the award and administration of contracts or other financial awards for individuals engaged in such activities. Employees may not solicit nor accept personal gratuities, favors or anything of significant monetary value from contractors or potential contractors.

Personnel policies and procedures must include provision for appropriate penalties for violating the standards of conduct.

(h) Staff Performance Appraisals

Agencies must conduct annual performance reviews of each staff member and use the results to assist staff in improving their skills and professional competencies. This proposed standard responds, in part, to section 644(a)(2) of the Head Start Act, as amended, which requires that ''* * * employees are promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness.''

(i) Staff and Volunteer Health

The following proposed standards augment current standards on staff and volunteer health and conform to the latest recommendations of leading health authorities (e.g., the Centers for Disease Control and Prevention) regarding methods for ensuring that, insofar as possible, both staff and child health are protected in local program settings. Staff members must have regular, ongoing health appraisals, including tuberculosis tests, as recommended by their health care provider or as mandated by State and local laws.

Agencies must ensure that volunteers are screened for tuberculosis before having contact with children. In no event may such screenings be conducted less frequently than every two years.

Agencies must provide assistance to staff with mental health and wellness concerns that may affect their job performance.

(j) Staffing Patterns

Agencies must meet the requirements of 45 CFR 1306.20 and current requirements under this Part regarding program staffing patterns and communication with families.

Two proposed standards have been added to ensure proper staff to child ratios for very young children, as recommended by current literature and by the Advisory Committee on Services to Families with Infants and Toddlers. Agencies must ensure that each staff caregiver working with infants and toddlers has responsibility for no more than four infants and toddlers and that no more than eight infants and toddlers are placed in any one room. Agencies serving mixed age groups must ensure that each staff member has responsibility for no more than six children, of which no more than two may be infants or toddlers. We welcome comments on these staff to infant/toddler ratios.

Also, to improve safety protections for children and to guard against legal liability problems for local agencies, the methods used by staff to supervise the outdoor and indoor play areas must ensure that children's safety can be easily monitored.

(k) Training and Development

The proposed standards on training and development have been added to meet the recommendations of the

Advisory Committee on Head Start Quality and Expansion to focus more strongly on staffing, training, and career development. However, in order to protect local agency flexibility, these standards are presented in general terms, and do not specify the particular topical areas in which staff must be trained, as they do in current regulation. The one exception is the specification that management training be provided to governing body and Policy Council and Policy Committee members, since this was a specific recommendation of the Advisory Committee.

Agencies must provide an orientation to all new staff, consultants, and volunteers. This orientation must cover, as required in the current rule, the goals and philosophy of Early Head Start and/or Head Start and the ways in which they are implemented in the local program.

Similar to the requirements of the current rule, agencies must also establish and implement a structured approach to staff training and development for program staff and volunteers that includes academic credit, where possible, so that they will have the knowledge and skills needed to fulfill their job responsibilities in accordance with the requirements of 45 CFR 1306.23.

This approach must include an ongoing education program which is responsive to the needs of relevant staff and volunteers.

Agencies also must provide training to governing body members and Policy Council and Policy Committee members which will enable them to carry out their program governance responsibilities effectively.

Section 1304.53—Facilities, Materials, and Equipment

General Objectives

The objectives of this section of the proposed rule are to ensure that agencies plan carefully to provide facilities, materials, and equipment that support appropriate early child development and education practices and the unique features of the program, such as size, choice of program option, service emphases, local community resources, and the special circumstances of enrolled children and families. The facilities, materials, and equipment must be safe, developmentally appropriate, and accessible to all children. It is important to note that these standards refer exclusively to facilities, materials, and equipment owned and managed by local agencies and not to those owned by enrolled families. In choosing an Early Head Start or Head Start site, agencies must be responsive to the needs and circumstances of the community, children, and families served and aware of environmental and safety risks that may affect the healthy growth and development of children.

Proposed Regulatory Provisions

(a) Head Start Physical Environment and Facilities

The proposed standards in this section augment those contained in the education component of the current regulation (45 CFR Part 1304.2–3) in keeping with the recommendation of the Advisory Committee on Head Start Quality and Expansion that additional regulations on facilities be established and the requirement in Section 641A(a)(1)(C) of the Head Start Act, as amended, for standards addressing the condition and location of facilities. In addition, the proposed standards have been expanded to address safety concerns related to infants and toddlers and to conform with the recommended standards of leading public health authorities (e.g., the Health Resources and Services Administration's Bureau of Maternal and Child Health in the U.S. Department of Health and Human Services and the American Academy of Pediatrics).

As in the current regulation, the Early Head Start or Head Start facility and physical environment must be both conducive to learning and reflective of the different stages of development of each child. To ensure that the standards are applicable to all program options, agencies must strive to achieve such an environment in their respective program settings.

Also as in the current regulation, agencies operating center-based programs must provide appropriate space, organized into functional areas, for program activities. (See 45 CFR 1308.4 for specific access requirements for children with disabilities.)

To provide strong safety protections for infants and toddlers, the indoor and outdoor space in Early Head Start or Head Start centers used by mobile infants and toddlers must be located away from general walkways and from areas used by older children.

As an explicit statement of a traditionally implicit requirement, agencies must provide for the maintenance, repair, and security of all Early Head Start and Head Start facilities, materials and equipment.

Agencies operating center-based programs also must provide an indoor and outdoor environment free of toxins, such as cigarette smoke, pesticides, herbicides, other air pollutants, and soil and water contaminants. No child may be present when pesticide or herbicide spraying is conducted. The inclusion of pesticides and herbicides in the proposed standard responds to the particular concerns of migrant programs.

As in the current regulation, agencies must provide barriers for outdoor play areas at center-based programs which prevent children from wandering away and getting into unsafe and unsupervised areas. To promote child safety and reduce agency liability concerns, children must not be exposed to vehicular traffic without supervision when enroute to play areas.

Agencies must conduct annual safety inspections of their facility's space, light, ventilation, heat, and other physical systems to ensure that they are consistent with the health, safety and developmental needs of children. At a minimum, they must meet specific requirements related to the safety and effectiveness of the facility required by the current regulation. Minor changes include proposed standards regarding a safe and effective cooling as well as heating system; the flammability of furnishings, decorations and materials that emit toxic fumes when burned; appropriate numbers of smoke detectors; the visibility and posting of exits and evacuation routes; protections for electrical outlets and glass doors and windows; and the location of diapering activities.

(b) Head Start Equipment, Toys, Materials, and Furniture

The proposed regulations pertaining to furniture, equipment, and materials owned and operated by grantee or delegate agencies are almost identical to those contained in the current rule. However, in keeping with current public health advice, infant and toddler toys must be made of non-toxic materials that can be sanitized.

Subpart E—Implementation and Enforcement

General Objectives

The objective of this Subpart of the proposed rule is to ensure quality across programs serving children ages 3 to 5 by requiring that areas of non-compliance or deficiencies with the Head Start Program Performance Standards and regulations be remedied as quickly as possible and that poorly performing programs be terminated. These proposed standards are drawn from the specific statutory language of section 641A(d) (1) and (2) of the Head Start Act, as amended, concerning corrective

actions and quality improvement plans for poorly performing agencies. They also respond to the recommendation of the Advisory Committee on Head Start Quality and Expansion that prompt action be taken to address concerns with poorly performing agencies.

Section 1304.60—Compliance

Proposed Regulatory Provisions

Head Start grantees and delegate agencies funded for indefinite project periods as specified in 45 CFR 1304.2 must comply with the requirements of Part 1304 within 6 months after the date of publication of the final rule. The ACYF invites comments about whether the six-month timeframe poses particular difficulties for programs.

The proposed regulations in this section differ from those in the current rule regarding the processes grantee and delegate agencies must follow in eliminating areas of non-compliance with the program performance standards. In accordance with 641A(d) of the Head Start Act, as amended, a new distinction is made between ''non-compliance'' (i.e., a single instance of a grantee's failure to conform to some specific requirement) and ''deficiencies'' which involve a grantee displaying such serious problems in one or more areas of its program that the grantee's ability to provide quality Head Start services is being compromised. Less critical areas of non-compliance must be remedied within 90 days.

Section 1304.61—Quality Improvement Plan

Proposed Regulatory Provisions

Programs with areas of non-compliance that constitute a program deficiency must submit a Quality Improvement Plan to the responsible HHS official. This plan, if approved, must be implemented within a time period not to exceed 12 months.

Other Regulatory Changes

Revisions to 45 CFR 1301.31—Personnel Policies

This section has been revised to reflect clarifications and policy updates (including guidance received from the Advisory Committees and the focus groups) on the requirements governing personnel policies that grantees and delegate agencies must meet to operate a quality Head Start program in accordance with the Head Start Act, as amended and the implementing requirements in 45 CFR Chapter XIII, Subchapter B. For the most part, each paragraph has been expanded or updated depending on the need.

The current regulations at section 1301.31(a), among other things, require Head Start agencies to establish and implement personnel policies for themselves and their delegate agencies and list the minimum areas which the policies must govern. The proposed revisions to this paragraph extends the requirement for setting up personnel policies to grantee and delegate agencies for the purpose of flexibility.

Proposed paragraph (a) requires grantees and delegate agencies to have written policies, which the Policy Council must approve, that govern staff, consultants, and volunteers. The policies must cover: (1) Staff qualifications, paragraph (f) of the current regulation with modifications; (2) procedures for recruitment, selection and termination, paragraph (a) of the current regulation but now expanded; (3) standards of conduct, not in the current regulation; (4) training and development, in paragraph (a) of the current regulation but expanded; and (5) staff performance appraisals, paragraph (a) of the current regulations but expanded. With the exception of the requirement for recruitment, selection, and termination policies, the details for the other policies are cross-referenced to specific sections of the performance standards at 45 CFR Part 1304. The requirement for written standards of conduct is proposed to be added to this paragraph in order to assure that staff and volunteers have a document they can refer to on such matters.

Paragraph (a) also proposes to add requirements for a written policy on employee-management relations which was in current regulation but has been expanded and now contains assurances of non-discrimination. In addition, references to ''volunteers'' have been incorporated throughout this paragraph, as appropriate, to ensure that this important group is covered by the written policy.

Proposed paragraph (b) combines paragraphs (c), (e), and (g) of the current regulation, but with edits and one additional requirement. It sets forth the requirements for staff recruitment and selection procedures and contains requirements related to the conduct of interviews, verifications of personal and employment references, criminal records checks, and signed declarations by all current and prospective employees regarding criminal arrests/charges and convictions related to child abuse and neglect. The new provision in paragraph (b) requires grantee and delegate agencies to perform outreach services to encourage individuals from the community to participate as volunteers in Early Head Start and Head Start programs. Paragraph (c), as proposed, retains the declaration exclusions which are in paragraph (d) of the current regulation. Modifications have been made, as necessary, in order to update the list of items that can be excluded.

Paragraph (d) of the proposed section 1301.31, currently at paragraph (f), is unchanged.

Proposed paragraph (e), the last proposed paragraph in revised 45 CFR 1301.31, corresponds to the last paragraph (h) of the current 45 CFR 1301.31. It retains the requirement that grantees and delegate agencies must develop a plan for responding to suspected or known child abuse or sexual abuse and adds a cross-reference to the definition of child abuse and sexual abuse found in 45 CFR 1340.2(d). The reference to Appendix A, ''Identification and Reporting of Child Abuse and Neglect,'' in the current regulation has been deleted because much of the content contains dated information, and because references to staff responsibilities and training with respect to child abuse and neglect reporting have been updated and inserted in this section at paragraph (e).

Technical and Conforming Amendments

The purpose and scope sections at 45 CFR 1305.1 and 1306.1 are proposed to be amended in order to require that these Parts be used in conjunction with, as applicable, the requirements at 45 CFR Part 1304 on performance standards. For example, some requirements in Part 1304 expand the comparable requirements in either Part 1305 or 1306, and the cross-reference has been added to ensure that grantee and delegate agencies take this into consideration. (Part 1308 already has a cross reference to Part 1304 in its purpose and scope section.) Section 1306.1 also is proposed to be amended in order to include the time frame in which there is an exception for Parent Child Centers as consistent with section 645A(e)(2) of the Head Start Act, as amended.

In sections 45 CFR 1303.14(b) and 1303.15(c) revisions were made to comport with the inclusion of sections 1304.60 and 1304.61 on compliance and Quality Improvement Plans.

In addition, 45 CFR 1306.20, Program staffing patterns, is proposed to be revised by adding a new paragraph (a) and redesignating the other paragraphs. The new paragraph cites, for particular emphasis, the requirement on staffing patterns that are set forth in section 1304.52(j). Section 1306.21, Staff qualification requirements, has been

revised to reflect the amendments in the Head Start Act that redesignates staff qualifications from section 648 to 648A. Section 1306.30, Provisions of comprehensive child development services, paragraph (c) is proposed to be revised to update the cross-reference to Part 1304. For the same reason, the cross-reference in section 1306.33, Home-based program option, to the performance standards has been corrected.

We propose to revise 45 CFR 1308.6(b)(1), Assessment of children, to cross-reference the health and development assessment timeframes in 45 CFR 1304.20 and to retain the statement that screening may start in the spring before program services begin in the fall.

VIII. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that there is consistency with the priorities and principles set forth in this Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking implements the statutory authority to promulgate regulations for Head Start Program Performance Standards. The Head Start Act, as amended, requires the addition of new performance standards in the following areas: administrative and financial management, transition activities, family literacy, a family needs assessment and consultation process, and standards for programs serving pregnant women and families with infants and toddlers. Many of the new standards in this proposed rule are directly related to these specific legislative mandates. Congress made no additional appropriation to fund these new requirements, however, and so any funds spent toward the improvement of services, facilities, infrastructures, or other purposes related to this regulation are funds that would have been otherwise spent by the program or other programs from the same appropriation amount. In addition, new standards have been added in the areas of health and developmental assessments, health emergency and safety procedures, and family and community partnerships which are responsive to the legislative mandates and Advisory Committee recommendations to improve the quality of the Head Start program and to establish the Early Head Start program. We believe that these proposed rules are focused in ways that encourage maximum cost-effectiveness in agency spending decisions.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (Public Law 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. These regulations would affect small entities.

However, it should be noted that all grantees and delegate agencies are currently required to meet a large group of Head Start Program Performance Standards. In keeping with the Head Start Act, as amended, the new standards proposed here have been developed in consultation with individuals who have experience operating Head Start programs. Further, the proposed requirements that are more stringent with regard to paperwork burden than the current requirements are based on the new legislative mandates contained in the Head Start reauthorization, such as the requirement for new infant and toddler standards, the need to respond to changes over time in the kinds of services that the Head Start population requires, the need to reflect best practices in the field of early childhood development, and the need to promote Head Start program quality and to facilitate Head Start expansion. Finally, we believe that meeting these proposed requirements would not be burdensome to grantee and delegate agencies because we are providing a six-month phase-in period for compliance. We also believe that, as grantee and delegate agencies implement these requirements, there will be no ongoing burden.

For these reasons, the Secretary certifies that these rules will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This NPRM contains information collection requirements in certain sections which the Department has submitted to OMB for its review.

The sections that contain information collection are 1304.20, 22, 23, 40, 50, 51, 52, 60, and 61 which respectively pertain to: child health and developmental assessment; child health and safety; child nutrition; family partnerships; program governance; management systems and procedures; human resources management; compliance; and quality improvement plan.

The respondents to the information collection requirements in the rule are Early Head Start and Head Start grantee and delegate agencies which may be State or local non-profit agencies or organizations. The Department needs to require this collection of information in order to assure that, Early Head Start and Head Start programs are operating quality programs in accordance with the mandate of the Head Start Act, as amended, and the recommendation of the Advisory Committee on Head Start Quality and Expansion that Head Start programs be operated as quality programs. Also, in order to monitor the programs, the Department needs information on Early Head Start and Head Start programs' efforts to provide and maintain quality services.

The frequency of grantee and delegate agency responses are generally annual with the exception of start up activities for Early Head Start and new Head Start programs. We estimate the annual average burden hours per each grantee or delegate agency to be 787.46 hours. Currently, there are a total of 2,112 agencies (1,433 grantees and 679 delegates) operating Early Head Start and or Head Start programs. The total annual estimated information collection is 1,663,116 hours (787.46 hours×2112 agencies=1,663,116). It is important to note, however, that most of the information collection requirements reflected in the proposed revisions to Part 1304 are currently being implemented by existing Head Start programs.

The Administration for Children and Families (ACF) will consider comments by the public on these proposed collection of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

List of Subjects

45 CFR Part 1301

Administrative practice and procedure, Education of the disadvantaged, Grant program/social programs, Selection of grantees.

45 CFR Part 1303

Administrative practice and procedure, Education of disadvantaged, Grant programs—social programs, Reporting and recordkeeping requirements

45 CFR Part 1304

Dental health, Education of the disadvantaged, Grant programs/social programs, Health care, Mental health programs, Nutrition, Reporting and recordkeeping requirements.

45 CFR Part 1305

Education of the disadvantaged, Grant programs/social programs, Individuals with disabilities.

45 CFR Part 1306

Education of the disadvantaged, Grant program/social programs.

45 CFR Part 1308

Education of the disadvantaged, Grant programs/social programs, Health care, Individuals with disabilities, Nutrition, Reporting and recordkeeping.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: April 10, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: April 10, 1996.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR Chapter XIII, Subchapter B is proposed to be amended as follows:

1. Part 1304 is revised to read as follows:

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEE AND DELEGATE AGENCIES

Subpart A—General

Sec.
1304.1 Purpose and scope.
1304.2 Effective dates.
1304.3 Definitions.

Subpart B—Early Childhood Development and Health Services

1304.20 Child health and developmental assessment.
1304.21 Education and early childhood development.
1304.22 Child health and safety.
1304.23 Child nutrition.
1304.24 Child mental health.

Subpart C—Family and Community Partnerships

1304.40 Family partnerships.
1304.41 Community partnerships.

Subpart D—Program Design and Management

1304.50 Program governance
1304.51 Management systems and procedures.
1304.52 Human resources management.
1304.53 Facilities, materials, and equipment.

Subpart E—Implementation and Enforcement

1304.60 Compliance.
1304.61 Quality improvement plan.

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—General

§ 1304.1 Purpose and scope.

This part prescribes regulations implementing sections 641A, 644 (a) and (c), and 645A (h) of the Head Start Act, as amended (42 U.S.C. 9801 *et seq.*). Section 641A, paragraph (a)(3)(C) directs the Secretary of Health and Human Services to review and revise, as necessary, the Head Start Program Performance Standards in effect under prior law. This paragraph further provides that any revisions should not result in an elimination or reduction of requirements regarding the scope or types of Head Start services to a level below that of the requirements in effect on November 2, 1978. Section 641A(a) directs the Secretary to issue regulations establishing performance standards and minimum requirements with respect to health, education, parent involvement, nutrition, social, transition, and other Head Start services as well as administrative and financial management, facilities, and other appropriate program areas. Section 644 (a) and (c) requires the issuance of regulations setting standards for the organization, management, and administration of Head Start programs. Section 645A(h) requires that the Secretary develop and publish performance standards for the newly authorized program for low-income pregnant women and families with infants and toddlers, entitled ''Early Head Start.'' The regulations in this part respond to these provisions in the Head Start Act, as amended, for new and/or revised Head Start Program Performance Standards. These regulations define standards and minimum requirements for the entire range of Head Start services, including those specified in the authorizing legislation. They are applicable to both Head Start and Early Head Start programs, with the exceptions noted, and are to be used in conjunction with the regulations at 45 CFR Parts 1301, 1302, 1303, 1305, 1306, and 1308.

§ 1304.2 Effective dates.

Head Start grantee and delegate agencies funded or refunded after [six months after final publication] must comply with these requirements on the date that new groups of children begin receiving services, or one year from [the date of publication of the final rule], whichever occurs first. Nothing in this part prohibits grantee or delegate agencies from voluntarily complying with these regulations prior to the effective date.

§ 1304.3 Definitions.

(a) As used in this part: (1) *Assessment* means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify:

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(2) *Children with disabilities* means, for children ages 3 to 5, those with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who, by reason thereof, need special education and related services. The term ''children with disabilities'' for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate

diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services. Infants and toddlers with disabilities are those from birth to three years, as identified under the Part H Program (Individuals with Disabilities Education Act) in their State.

(3) *Collaboration and collaborative relationships:* (i) With other agencies, means planning and working with them in order to improve, share and augment services, staff, information and funds; and

(ii) With parents, means working in partnership with them.

(4) *Contagious* means capable of being transmitted from one person to another.

(5)(i) *Deficiencies* means a failure by a grantee or a delegate agency to comply: (A) With one or more of the provisions of the regulations in this part or in 45 CFR Parts 1301, 1305, 1306, and 1308 of this Title which apply to health, education, parental involvement, nutritional, social, and transition activities described in section 642(d) of the Act, and other services, administrative and financial management activities, the condition and location of facilities for such agencies, programs and projects and other matters;

(B) With program design and management requirements;

(C) With applicable laws, regulations, policies, instructions, assurances, terms and conditions;

(D) With the required fiscal or program reporting requirements applicable to Head Start grantees; or

(E) With requirements of the Head Start Act.

(ii) *Deficiencies* also means, in accordance with part 1302 of this chapter, the loss of legal status, permits or financial viability, debarment from receiving Federal grants or contracts and the improper use of Federal funds.

(6) *Developmentally appropriate* means any behavior or experience that is appropriate for the age span of the children and is implemented with attention to the different needs, interests, and developmental levels and cultural backgrounds of individual children.

(7) *Early Head Start* program means a program that provides families with children under 3 years of age and pregnant women with family-centered services which facilitate child development, support parental roles, and promote self-sufficiency.

(8) *Family* means for the purposes of the regulations in this part all persons:

(i) Living in the same household who are:

(A) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program; or

(B) Related to the child by blood, marriage, or adoption; or

(ii) Related to the child enrolling or participating in the program as parents or siblings, by blood, marriage, or adoption.

(9) *Guardian* means a person legally responsible for a child.

(10) *Health* means medical, dental, and mental well-being.

(11) *Home visitor* means the staff member assigned to work with parents to provide comprehensive services to children and their families children's home through home visits. The home visitor is the infant and toddler caregiver in an Early Head Start program and the classroom teacher in a center-based or combination option Head Start program. In a home-based Head Start program, the staff person with responsibility for conducting home visits and group socialization activities is termed the ''home-visitor''.

(12) *Individual Family Service Plan (IFSP)* means a written plan for providing early intervention services to a child eligible under Part H of the Individuals with Disabilities Act (IDEA). See 34 CFR 303.340 through 303.346 for regulations concerning IFSP's.

(13) *Infant* means a child from birth through 12 months of age.

(14) *Minimum requirements* means that each Head Start grantee must demonstrate a level of compliance with the regulations in this part, as well as in 45 CFR Parts 1301, 1305, 1306, and 1308 of this Title, such that no deficiency, as defined in this part, exists in its program.

(15) *Non-compliance* means any instance in which the Head Start grantee is failing to comply with a specific statutory, regulatory or policy requirement.

(16) *Policy group* means the formal group of parents and community representatives required to be established by the agency to assist in decisions about the planning and operation of the program.

(17) *Preschooler* means a child from 37 months of age through the date that kindergarten or first grade is available for the child in the child's community.

(18) *Program attendance* means the actual presence and participation in the program of a child enrolled in an Early Head Start or Head Start program.

(19) *Referral* means directing an Early Head Start or Head Start child or family member(s) to an appropriate source or resource for help, treatment or information.

(20) *Staff* means paid adults who have responsibilities related to children and their families who are enrolled in Early Head Start or Head Start programs.

(21) *Staff caregiver* means an adult who has direct responsibility for the care and development of children from birth to 3 years of age in a center-based setting.

(22) *Teacher* means an adult who has direct responsibility for the care and development of children aged 3 to 5 years in a center-based setting.

(23) *Toddler* means a child from 13 through 36 months of age.

(24) *Volunteer* means an unpaid person 16 years of age or older who is trained to assist in implementing ongoing program activities under the supervision of a staff person in areas such as health, education, transportation, nutrition, and management.

(b) In addition to the definitions in this section, the definitions as set forth in 45 CFR 1301.2, 1302.2, 1303.2, 1305.2, 1306.3, and 1308.3 also apply, as used in this part.

Subpart B—Early Childhood Development and Health Services

§ 1304.20 Child health and developmental assessment.

(a) *Initial assessment process.* (1) Grantee and delegate agencies must gather and record, to the greatest extent possible, all relevant historical information on each enrolled child's physical health and emotional and cognitive development as early in the program year as possible. Within 90 calendar days from the child's enrollment in the program (with the exception noted in paragraph (a)(3) of this section, they must assure that this current history of preventive care and immunizations has been reviewed by a qualified health professional who has determined whether the child is up-to-date according to established schedules which incorporate the latest recommendations of the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices and the requirements for a schedule of well child care employed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program for the State in which they operate.

(2) Grantee and delegate agencies must work collaboratively, with the parents of each child whose preventive

care is determined not to be up-to-date with these established schedules, to secure the specific tests, examinations, and assessments recommended by the health care professional(s), and assist them in obtaining needed immunizations. A follow-up plan to bring the child up-to-date, as quickly as possible, but no later than 90 calendar days from the child's enrollment in the program (with the exception noted in paragraph (a)(3) of this section), must be implemented.

(3) Grantee and delegate agencies operating programs of shorter durations (90 days or less) must gather the historical health information and must assure that this current history of preventive care and immunizations has been reviewed by a qualified health professional(s) to determine the child's status on the established schedules (referenced in 45 CFR 1304.21(a)(1)) no later than 30 calendar days after the child enrolls in the program. For any children determined not to be up-to-date, these programs must implement a follow-up plan to bring them up-to-date, as quickly as possible, but no later than 30 calendar days after the child's enrollment in the program.

(b) *Parent involvement in the assessment and treatment processes.* In conducting the assessment process, as described in paragraph (a) of this section, and in making all possible efforts to ensure that each child receives appropriate health assessment, care and treatment, grantee and delegate agencies must: (1) Inform parents immediately when child health or developmental problems are suspected or identified;

(2) Familiarize parents with the use of and rationale for all health-related procedures administered through the program or by contract or agreement, and obtain advance parent or guardian authorization for such procedures. Grantee and delegate agencies must document when parental authorization for such procedures is denied. Grantee and delegate agencies also must ensure that the results of diagnostic and treatment procedures and ongoing assessments are shared with and understood by the parents; and

(3) Inform the parents on how to familiarize their children in a developmentally appropriate way and in advance about all of the procedures they will receive while enrolled in the program.

(c) *Medical and dental health assessment.* Grantee and delegate agencies must assure that medical and dental health assessments are conducted by licensed and qualified professionals. These assessments must include, as age appropriate:

(1) Measures for head circumference; height, weight, and blood pressure; procedures including lead screening and urinalysis; hereditary/metabolic screening; hematocrit or hemoglobin screening; tuberculosis screenings; hearing and vision screenings; and physical and dental examinations, as prescribed in professionally established schedules of preventive care (i.e., the EPSDT schedule) cited in § 1304.20 (a)(1) of this part;

(2) Assessment of current immunization status as prescribed in the professionally established schedules of immunizations cited in § 1304.20(a)(2) of this part; and

(3) Selected medical and developmental tests appropriate to the community, population, and age group and the prevalent health problems identified.

(d) *Developmental and behavioral assessment.* (1) Grantee and delegate agencies must perform linguistically and age appropriate developmental and behavioral assessments, that are also sensitive to the child's culture, to the greatest extent possible, for each child as prescribed in professionally established schedules of preventive care cited in § 1304.20 of (a)(2) of this part, including the assessment of motor, language, social, cognitive, perceptual, and emotional skills.

(2) Grantee and delegate agencies must obtain direct guidance from the mental health professional on how to select and perform procedures that assess the developmental and behavioral needs of children, including guidance on how to use assessment findings to address identified needs.

(3) The assessments must tap multiple sources of information on all aspects of each child's development and behavior, including input from family members, teachers, and other relevant staff who are familiar with the child's typical behavior.

(e) *Ongoing assessment.* In addition to the periodic assessments conducted by health professionals according to the schedule of well child care described in § 1304.20(a)(1) of this part, grantees and delegate agencies must implement ongoing assessment procedures by which Head Start and Early Head Start staff can identify any new or reoccurring health or developmental concerns so that they may quickly make appropriate referrals for further professional assessment. At a minimum, ongoing assessment procedures include: periodic observations and recordings, as appropriate, of individual children's developmental progress, changes in physical appearance (e.g., signs of injury or illness) and emotional and behavioral patterns. In addition, ongoing assessments must include the periodic use of parental, staff, and mental health consultant observations about each child.

(f) *Individualization of the program.* (1) Grantee and delegate agencies must use the information from the health and developmental assessments, the ongoing assessments, medical evaluations and treatments, and insights from the child's parents to help staff and parents determine how the program can best respond to each child's individual characteristics, strengths and needs.

(2) In cases where an Individual Family Service Plan (IFSP) has not already been developed for enrolled infants and toddlers with disabilities, grantee and delegate agencies must develop such a plan in accordance with part H of the Individuals with Disabilities Education Act (IDEA).

§ 1304.21 Education and early childhood development.

(a) *Child development and education approach for all children.* (1) In order to help children gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities in school and life, grantee and delegate agencies' approach to child development and education must:

(i) Be developmentally and linguistically appropriate, recognizing that children have individual preferences and individual patterns of development as well as different ability levels, cultures, ages, and learning styles;

(ii) Provide an environment of acceptance that supports and respects each child's gender, culture, language, and ethnicity; and

(iii) In center-based settings, provide a balanced daily program of staff-directed and child-initiated activities, including individual and small group activities.

(2) Parents must be:

(i) Invited to become integrally involved in the development of the program's curriculum and approach to child development and education; and

(ii) Provided opportunities to increase their child observation skills and to share assessments with staff that will help plan the learning experiences.

(3) Grantee and delegate agencies must support social and emotional development by:

(i) Encouraging development which enhances each child's strengths by:

(A) Building trust;

(B) Fostering independence;

(C) Setting consistent limits and realistic expectations;

(D) Encouraging respect for the feelings and rights of others; and

(E) Supporting and respecting the home language and culture of each child in ways that support the child's health and well-being.

(ii) Allowing routines and transitions to occur in a timely, predictable and unrushed manner according to each child's needs.

(4) Grantee and delegate agencies must provide for the development of each child's cognitive and language skills by:

(i) Supporting each child's learning, using various strategies, including experimentation, inquiry, observation, play and exploration;

(ii) Providing opportunities for creative self-expression through activities such as art, music, movement, and dialogue;

(iii) Promoting interaction and language use among children and between children and adults; and

(iv) Supporting emerging literacy and numeracy development through materials and activities according to the developmental level of each child.

(5) In center-based settings, grantee and delegate agencies must promote each child's physical growth by:

(i) Providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play or movement that support the development of large muscle skills;

(ii) Providing appropriate time, space, equipment, materials and adult guidance for the development of small-motor skills according to each child's developmental level; and

(iii) Providing an appropriate environment and adult guidance for the participation of children with special needs.

(b) *Child development and education approach for infants and toddlers.* (1) Grantee and delegate agencies must provide an environment for infants and toddlers which encourages:

(i) The development of secure relationships in out-of-home care settings for infants and toddlers by having a limited number of consistent caregivers over as extended a period of time as possible. Staff caregivers must be able to understand the child's family's culture and, whenever possible, speak the child's language;

(ii) Trust and emotional security so that each child can explore the environment according to his or her developmental level; and

(iii) Opportunities for each child to explore a variety of sensory and motor experiences with support and stimulation from staff caregivers or family members.

(2) Grantee and delegate agencies must support the social and emotional development of infants and toddlers by providing an environment that:

(i) Encourages the development of self-knowledge, self-awareness, autonomy, and self-expression; and

(ii) Supports the emerging communication skills of infants and toddlers by providing daily opportunities for each child to listen and express himself or herself freely.

(3) Grantee and delegate agencies must provide an environment that promotes the physical development of infants and toddlers by:

(i) Providing opportunities for small-motor development that encourage the control and coordination of small, specialized motions, using the eyes, mouth, hands, and feet;

(ii) Supporting the development of the new-found physical skills of infants and toddlers such as grasping, pulling, pushing, crawling, walking, and climbing; and

(iii) Allowing and enabling children to independently use toilet facilities when it is developmentally appropriate and when efforts to encourage toilet training are supported by the parents.

(c) *Child development and education approach for preschoolers.* (1) Grantee and delegate agencies, in collaboration with the parents, must develop or select a curriculum that is adapted for each group and applied consistently in the program and that:

(i) Supports each child's individual pattern of development and learning;

(ii) Provides for the development of cognitive skills by encouraging each child to organize his or her experiences, to understand concepts, and to develop age appropriate literacy, numeracy, reasoning, problem solving and decision-making skills, which form a foundation for school readiness and later school success.

(iii) Integrates all educational aspects of the health, nutrition, and mental health services into program activities;

(iv) Ensures that the program environment helps children develop emotional security and facility in social relationships;

(v) Enhances each child's understanding of self as an individual and as a member of a group;

(vi) Provides each child with opportunities for success to help develop feelings of competence, self-esteem, and positive attitudes toward learning; and

(vii) Provides individual, small group and large group activities both indoors and outdoors.

(2) Staff must use a variety of strategies to promote and support children's learning and developmental progress based on the assessment of each child's individual strengths and needs.

§ 1304.22 Child health and safety.

(a) *Medical and dental follow-up and treatment.* (1) In collaboration with the parents, to the greatest extent possible, efforts must be made to obtain or arrange further diagnostic testing, examinations, and treatment for each child with an observable or known health or developmental problem, or one made suspect by the diagnostic procedures performed in accordance with § 1304.20(a)(1) of this part, from an appropriate licensed or certified professional as early in the program year as possible, unless the agency can document that parental authorization for such services was denied. (See 45 CFR 1304.20(b) for additional standards on parent involvement.)

(2) For each enrolled child, medical follow-up and treatment must include:

(i) Further examination, diagnostic testing and treatment if necessary, of all concerns that are identified either during or subsequent to the assessment process;

(ii) The identification and treatment, if appropriate, of any underlying sensory or physical bases for any developmental problems observed; and

(iii) Assistance to the parents as needed to learn how to obtain any necessary prescription medications.

(3) For each enrolled child, dental follow-up and treatment must include:

(i) Fluoride supplements and topical fluoride treatments as recommended by dental professionals in communities where a lack of adequate fluoride levels has been determined or for every child with moderate to severe dental bone or tooth decay;

(ii) Other necessary preventive measures, such as dental sealants and further dental treatment, as recommended by the dental professional; and

(iii) Assistance to the parents as needed to learn how to obtain any necessary prescriptions.

(4) Grantee and delegate agencies must provide or arrange for any medical related services in accordance with the Individual Education plan required under 45 CFR 1308.4, for each child with disabilities that enable his or her optimal participation in the Early Head Start and Head Start programs.

(5) Early Head Start and Head Start funds may be used for professional medical and dental assessments and treatment only when no other source of funding is available. When Early Head Start or Head Start funds are used for

such services, there must be written documentation of the lack of available funds from other sources.

(b) *Health emergency procedures.* Grantee and delegate agencies operating center-based programs must establish and implement policies and procedures to respond to medical and dental health emergencies, with which all staff are familiar and trained. At a minimum, these policies and procedures must include:

(1) Posted policies and plans of action for emergencies that require rapid response on the part of staff (e.g., a child choking) or immediate medical attention;

(2) Posted locations and telephone numbers of emergency care facilities and providers. Up-to-date family contact information and authorization for emergency care for each child and staff member must be readily available;

(3) Posted emergency evacuation routes and other safety procedures for emergencies (e.g., fire or weather-related) (See 45 CFR 1304.53 for additional information);

(4) Methods of notifying parents in the event of an emergency involving their child; and

(5) Established methods for handling cases of suspected or known child abuse and neglect that are in compliance with applicable State laws.

(c) *Conditions of short-term exclusion and admittance.* (1) Grantee and delegate agencies must not deny program admission to or exclude any child from program attendance solely on the basis of his or her health care needs or medication requirements.

(2) Grantee and delegate agencies must exclude an ill, injured, or contagious child from program participation in center-based activities if:

(i) The child's illness, injury or contagious condition prevents the child from participating in routine activities;

(ii) The illness, injury or contagious condition requires more care than the program staff are able to provide without compromising the needs of the other children in the group; and

(iii) Keeping the child in care poses a significant risk to health or safety of the child and/or anyone in contact with the child.

(3) With regard to the implementation of paragraphs (c)(2) (i), (ii), and (iii) of this section a child must not be excluded if the program is able to make reasonable modifications in its policies, practices and procedures or to provide appropriate auxiliary aids or services which would enable the child to participate without fundamentally altering the nature of the program. A child must not be excluded if the program is able to eliminate the significant risk to health or safety posed by the child's illness, injury or contagious condition or to reduce the risk to an acceptable level.

(4) Policies and procedures regarding the short-term exclusion of children with illnesses must be consistent with current professionally established guidelines on short-term exclusion and readmittance (e.g., the U.S. Public Health Services's National Health and Safety Performance Standards; Health Resources and Services Administration/ Maternal and Child Health Bureau). Agencies may not exclude a child when his or her readmittance has been approved by a physician, local health officer, or licensed nurse practitioner. Conditions of readmittance for infectious diseases are under the control of the State/local health department. When a child is excluded, the child's parents or other authorized person must be notified immediately and asked to take the child home.

(5) Grantee and delegate agencies must request parents to inform them of any health risks their child may pose that require special health or safety precautions. Programs must share information regarding the health condition of a child with appropriate program staff, as necessary, to allow for proper precautions in accordance with the program's confidentiality policy.

(d) *Medication administration.* Grantee and delegate agencies must establish and maintain written procedures regarding the administration, handling, and storage of medication for every child (except when the Head Start grantee or delegate is a school and as such is legally prohibited from administering prescription medication), that include:

(1) Labeling and storing, under lock and key, and refrigerating, if necessary, all medications, including those required for staff and volunteers;

(2) Designating a staff member(s) or school nurse to administer, handle and store child medications, including prescription and over-the-counter drugs;

(3) Obtaining physicians' instructions and written parent or guardian authorizations for all medications administered by staff;

(4) Maintaining an individual record of all medications dispensed, and reviewing the record regularly with the child's parents;

(5) Recording changes in a child's behavior that have implications for drug dosage or type, and sharing this information with the staff, parents, and physicians; and

(6) Training appropriate staff members in proper techniques for administering, handling, and storing medication, including the use of any necessary equipment to administer medication.

(e) *Injury prevention.* Grantee and delegate agencies must foster an awareness of safety concerns and safety practices among staff, volunteers, children, and parents by incorporating safety awareness in child and parent education activities.

(f) *Hygiene.* (1) Staff, volunteers, and children must wash their hands with soap and running water at least at the following times:

(i) After diapering or toilet use;

(ii) Before food preparation, handling, consumption, or any other food-related activity (e.g., setting the table);

(iii) Whenever hands are contaminated with blood or other bodily fluids; and

(iv) After handling pets or other animals.

(2) Staff and volunteers must also wash their hands with soap and running water:

(i) Before and after giving medications;

(ii) Before and after treating or bandaging a wound (nonporous gloves should be worn if there is contact with blood or blood-containing body fluids); and

(iii) After assisting a child with toilet use.

(3) Nonporous (e.g., latex) gloves must be worn by staff when they are in contact with spills of blood or other bodily fluids.

(4) Spills of bodily fluids (e.g., urine, feces, blood, saliva, nasal discharge, eye discharge or any fluid discharge) must be cleaned and disinfected immediately in keeping with professionally established guidelines (e.g., standards of the Occupational Safety Health Administration, U.S. Department of Labor). Any tools and equipment used to clean spills of bodily fluids must be cleaned and disinfected immediately. Other blood-contaminated materials must be disposed of in a plastic bag with a secure tie.

(5) Grantee and delegate agencies must adopt sanitation and hygiene procedures for diapering that adequately protect the health and safety of children served by the program and staff. Grantee and delegate agencies also must ensure that relevant staff are trained to conduct these procedures properly.

(6) Potties that are utilized in a center-based program must be emptied into the toilet and cleaned and disinfected after each use in a utility sink used for this purpose.

(7) Grantee and delegate agencies operating programs for infants and toddlers must space cribs and cots at least three feet apart to avoid spreading contagious illness.

(g) *First aid kits*. (1) Readily available, well-supplied first aid kits appropriate for the ages and the program size served must be maintained at each facility and available on outings away from the site. Each kit must be accessible to staff members at all times, but must be kept out of the reach of children.

(2) First aid kits must be restocked after use, and an inventory must be conducted at regular intervals.

§ 1304.23 Child nutrition.

(a) *Nutritional assessment*. Staff and families must work together to identify each child's nutritional needs, taking into account staff and family discussions concerning:

(1) The nutrition-related assessment data (height, weight, hemoglobin/hematocrit) obtained for each child as described in 45 CFR 1304.20(a);

(2) Information about family eating patterns, including cultural preferences, special dietary requirements for each child with nutrition-related health problems, and the feeding requirements of infants and toddlers and each child with disabilities;

(3) For infants and toddlers, current feeding schedules, and amounts and types of food provided, including whether breast milk or formula and baby food is used; meal patterns; new foods introduced; food intolerances and preferences; voiding patterns; and observations related to developmental changes in feeding and nutrition. This information must be shared with parents and updated regularly; and

(4) Information about major community nutritional issues, as identified through the Community Needs Assessment and by the local health department.

(b) *Nutritional services*. (1) Grantee and delegate agencies must design and implement a nutrition program that meets the nutritional needs, feeding requirements, and feeding schedules of each child, including those with disabilities. Also, the nutrition program must serve a variety of foods which broaden the child's food experience and which consider cultural and ethnic preferences.

(i) Each child in a part-day center-based setting must receive meals and snacks that provide at least ⅓ of the child's daily nutritional needs. Each child in a center-based full-day program must receive snack(s), lunch, and other meals, as appropriate, that provide ½ to ⅔ of the child's daily nutritional needs, depending upon the length of the program day.

(ii) All children in morning center-based settings who have not received breakfast at the time they arrive at the Early Head Start or Head Start program must be served a nourishing breakfast;

(iii) Each infant and toddler in center-based settings must receive food appropriate to his or her nutritional needs, developmental readiness, and feeding skills, as recommended in the USDA meal pattern or nutrient standard menu planning requirements outlined in 7 CFR parts 210, 220, and 226;

(iv) For 3- to 5-year-olds in center-based settings, the quantities and kinds of food served must conform to recommended serving sizes and minimum standards for meal patterns recommended in the USDA meal pattern or nutrient standard menu planning requirements outlined in 7 CFR parts 210, 220, and 226;

(v) For 3- to 5-year-olds in center-based settings, foods high in fat, sugar, and salt must be used sparingly;

(vi) Meal and snack periods in center-based settings must be appropriately scheduled and adjusted, where necessary, to ensure that individual needs are met. Infants and young toddlers who need it must be fed ''on demand'' to the extent possible, or at appropriate intervals.

(2) Grantee and delegate agencies operating home-based program options must provide appropriate snacks and meals to each child during group socialization activities.

(3) Staff must promote effective dental hygiene among children in conjunction with meals.

(4) Parents and appropriate community agencies must be involved in planning, implementing, and evaluating the agencies' nutritional services.

(c) *Meal service*. Grantee and delegate agencies must ensure that nutritional services in center-based settings contribute to the development and socialization of enrolled children by providing that:

(1) A variety of food is served which broadens each child's food experiences;

(2) Food is not used as punishment or reward, and that each child is encouraged, but not forced, to eat or taste his or her food;

(3) Sufficient time is allowed for each child to eat;

(4) All toddlers and preschool children and their caregivers, including volunteers, eat together family style:

(5) Infants are held while being fed and are not laid down to sleep with a bottle;

(6) Medically based diets or other dietary requirements are accommodated; and

(7) As developmentally appropriate, opportunity is provided for the involvement of children in activities related to the preparation and serving of meals.

(d) *Family assistance with nutrition*. Parent education activities must include opportunities to assist individual families with food preparation and nutritional skills. In the home-based program option, these opportunities must be provided to parents through group socialization activities.

(e) *Food safety and sanitation*. (1) Grantee and delegate agencies must post evidence of compliance with all applicable Federal, State, and local food safety and sanitation laws, including those related to the storage, preparation and service of food and the health of food handlers. In addition, agencies must contract only with food service that are properly licensed.

(2) For programs serving infants and toddlers, facilities must be available for the proper storage and handling of breast milk.

§ 1304.24 Child mental health.

(a) *Mental health services*. (1) Grantee and delegate agencies must work collaboratively with parents (See 45 CFR 1304.40(f) for issues related to parent education) by:

(i) Soliciting parental information, observations, and concerns about their child's mental health;

(ii) Sharing staff observations of their child and discussing and anticipating with parents their child's behavior and development, including separation and attachment issues;

(iii) Discussing and identifying with parents appropriate responses to their child's behaviors;

(iv) Discussing the creation of nurturing, supportive environments and relationships in the home and at the program;

(v) Helping parents to better understand mental health issues; and

(vi) Supporting parents' participation in any needed mental health interventions.

(2) Grantee and delegate agencies must secure the services of a mental health professional on a schedule of sufficient frequency to enable the timely and effective identification of and intervention in family and staff concerns about each child's mental health.

(3) Mental health program services must include a regular schedule of on-site mental health consultation involving the mental health

professional, program staff, and parents on how to:

(i) Design and implement program practices responsive to the identified behavioral and mental health concerns of an individual child or group of children;

(ii) Promote children's mental wellness by providing group and individual staff and parent education on mental health issues;

(iii) Assist in providing special help for children with atypical behavior or development; and

(iv) Utilize other community mental health resources, as needed.

Subpart C—Family and Community Partnerships

§ 1304.40 Family partnerships.

(a) *Assessment and goal setting.* (1) Grantee and delegate agencies must engage in a process of collaborative partnership-building with parents to establish mutual trust and to identify family goals, strengths, and necessary services and other supports. This process must be initiated as early in the program year as possible.

(2) As part of this process, grantee and delegate agencies must assist parents to develop and implement, throughout the year, individualized Family Partnership Agreements that describe family goals, responsibilities, timetables and strategies for achieving these goals as well as progress in achieving them.

(3) To avoid duplication of effort, or conflict with, any preexisting family plans developed between other programs and the Head Start family, the Family Partnership Agreement, staff and parents must take into account, and build upon as appropriate, information obtained from the family and other community agencies concerning preexisting family plans and goals to assist families toward the goal of self-sufficiency. To the greatest extent possible, grantee and delegate agencies must coordinate with other agencies and families to support accomplishment of goals in the preexisting plans.

(4) A variety of opportunities must be created by grantee and delegate agencies for interaction with parents throughout the year.

(5) Meetings and interactions with families must be respectful of families' cultural and ethnic backgrounds.

(b) *Accessing community services and resources.* (1) Grantee and delegate agencies must work collaboratively with all participating parents to identify and continually access, either directly or through referrals, services and resources that are responsive to each family's interests and goals, including:

(i) Emergency or crisis assistance, including such direct interventions as the provision of food, housing, clothing, and transportation;

(ii) Education and other appropriate interventions, including opportunities for parents to participate in counseling programs or to receive information on mental health issues that place families at risk, such as substance abuse, child abuse and neglect, and domestic violence; and

(iii) Opportunities for continuing education and employment training and other employment services through formal and informal networks in the community.

(2) Grantee and delegate agencies must follow-up with each family to determine whether the kind, quality, and timeliness of the services received through referrals met the families' expectations and circumstances.

(c) *Services to pregnant women who are enrolled in programs serving pregnant women, infants, and toddlers.* (1) Grantee and delegate agencies must assist pregnant women to access comprehensive prenatal and postpartum care, through referrals, immediately after enrollment in the program. This care must include:

(i) Early and continuing risk assessments, which includes an assessment of nutritional status as well as nutrition counseling and food assistance, if necessary;

(ii) Health promotion and treatment, including medical and dental examinations on a schedule deemed appropriate by the attending health care providers as early in the pregnancy as possible; and

(iii) Mental health interventions and followup, including substance abuse prevention and treatment services, as needed.

(2) Grantee and delegate agencies must provide pregnant women and other family members, as appropriate, with prenatal education on fetal development (including risks from smoking and alcohol), labor and delivery, and post-partum recovery (including maternal depression).

(3) Grantee and delegate agencies must provide information on the benefits of breast feeding to all pregnant and nursing mothers. For those who choose to breast feed in center-based programs, arrangements must be provided as necessary.

(d) *Parent involvement—general.* (1) In addition to involving parents in program policy-making and operations (see 45 CFR 1304.50), grantee and delegate agencies must provide parent involvement and education activities that are responsive to the ongoing and expressed needs of the parents themselves. Other community agencies should be encouraged to assist in the planning and implementation of such programs.

(2) Early Head Start and Head Start settings must be open to parents during all program hours. Parents must be welcomed as visitors and encouraged to observe children as often as possible during the program year and to participate with children in group activities outside the classroom or home such as children's field trips. However, the participation of parents in any program activity must be voluntary and must not be required as a condition of the child's enrollment.

(3) Grantee and delegate agencies must provide parents with opportunities to participate in the program as employees or volunteers.

(e) *Parent involvement in child development and education.* (1) Grantee and delegate agencies must provide opportunities to include parents in the selection, adaption, and development of the program's curriculum and approach to child development and education.

(2) Grantee and delegate agencies must provide opportunities for parents to enhance their parenting skills, knowledge, and understanding of the educational and developmental needs and activities of their children and to share concerns about their children with program staff. See 45 CFR 1304.21 for additional requirements related to parent involvement.

(3) Grantee and delegate agencies must provide, either directly or through referrals to other local agencies, opportunities for children and families to participate in family literacy services by:

(i) Increasing family access to materials, services, and activities essential to family literacy development; and

(ii) Assisting parents as adult learners to recognize and address their own literacy goals.

(4) Teachers or staff caregivers in center-based programs must conduct staff-parent conferences, as needed, but no less than two per year, to enhance the knowledge and understanding of both staff and parents of the educational and developmental needs and activities of children in the program.

(f) *Parent involvement in health, nutrition, and mental health education.* (1) Grantee and delegate agencies must provide an organized medical, dental, nutrition, and mental health education program for program staff, parents, and families.

(2) Grantee and delegate agencies must ensure that, at a minimum, the

medical and dental health education program:

(i) Assists parents in understanding how to enroll and participate in a system of ongoing family health care.

(ii) Encourages parents to become active partners in their children's medical and dental health care process and to accompany their child to medical and dental examinations and appointments; and

(iii) Provides parents with the opportunity to learn the principles of preventive medical and dental health, emergency first-aid, and safety practices for use in the classroom and in the home. In addition to the information on general topics (e.g. the prevention of Sudden Infant Death Syndrome), information specific to health needs of individual children must also be made available to the extent possible.

(3) Grantee and delegate agencies must ensure that the nutrition education program includes, at a minimum:

(i) Nutrition education in the selection and preparation of foods to meet family needs and in the management of food budgets; and

(ii) Parent discussions with program staff about the nutritional status of their child.

(4) Grantee and delegate agencies must ensure that the mental health education program provides, at a minimum (see 45 CFR 1304.24 for issues related to mental health education):

(i) A variety of group opportunities for parents and program staff to identify and discuss issues related to child mental health;

(ii) Individual opportunities for parents to discuss mental health issues related to their child and family with program staff; and

(iii) The active involvement of parents in planning and implementing any mental health interventions for their children.

(g) *Parent involvement in community advocacy.* (1) Grantee and delegate agencies must:

(i) Support and encourage parents to influence the character and goals of community services in order to make them more responsive to their interests and needs; and

(ii) Provide the technical and other support, including an existing comprehensive community resource list, if available, needed to enable parents to secure, on their own behalf, available assistance from public and private sources.

(2) Parents must be provided opportunities to work together, and with other area residents, on activities that they have helped develop and in which they have expressed an interest.

(h) *Parent involvement in transition activities.* (1) Grantee and delegate agencies must assist parents in becoming their children's advocate as they transition both into Early Head Start or Head Start from the home or other child care setting, and from Head Start to elementary school, a Title I Improving America's Schools Act preschool program, or a child care setting.

(2) Staff must work to prepare parents to become their children's advocate through transition periods by providing that, at a minimum, a staff-parent meeting is held toward the end of the child's participation in the program to enable parents to understand the child's progress while enrolled at Head Start.

(3) To promote the continued involvement of Head Start parents in the education and development of their children upon transition to school, grantee and delegate agencies must:

(i) Provide education and training to parents to prepare them to exercise their rights and responsibilities concerning the education of their children in the school setting; and

(ii) Assist parents to communicate with teachers and other school personnel so that parents can participate in decisions related to their children's education.

(4) See 45 CFR 1304.41(c) for additional standards related to children's transition to and from Early Head Start or Head Start.

(i) *Parent involvement in home visits.* (1) For center-based programs, grantee and delegate agencies must not require that parents permit home visits as a condition of the child's participation in Early Head Start or Head Start. However, every effort must be made to explain the advantages of home visits to the parents.

(2) In center-based programs, the child's teacher or staff caregiver must conduct no less than two home visits per year to the home of each enrolled child, unless the parents expressly forbid such visits, in accordance with the requirements of 45 CFR 1306.32(b)(8).

(3) Grantee and delegate agencies must schedule home visits whenever possible to permit the participation of both the enrolled child and the parents and at times that are most convenient for the parents or primary caregivers.

(4) In cases where parents whose children are enrolled in the center-based program option ask that the home visits be conducted outside the home, or in cases where a visit to the home presents significant safety hazards for staff, the home visit may take place at an Early Head Start or Head Start site or at another safe location that affords privacy.

(5) In addition, grantee and delegate agencies operating home-based program options must meet the requirements of 45 CFR 1306.33(a)(1) regarding home visits.

(6) Grantee and delegate agencies serving infants and toddlers must arrange for health staff to visit each newborn within two weeks after the infant's birth to ensure the well-being of both the mother and the child.

§ 1304.41 Community partnerships.

(a) *Partnerships.* (1) Grantee and delegate agencies must take an active role in community planning to encourage strong communication, cooperation, and the sharing of information among grantees and their community partners and to improve the delivery of community services to children and families. (See 45 CFR 1304.51 for additional planning requirements.)

(2) Grantee and delegate agencies must take affirmative steps to establish ongoing collaborative relationships with community organizations, to promote the access of children and families to community services that are responsive to their needs, and to ensure that the Early Head Start and Head Start programs respond to community needs, including:

(i) Health providers, such as clinics, doctors, dentists, and other health professionals;

(ii) Mental health providers;

(iii) Nutritional service providers;

(iv) Individuals and agencies that provide services to children with disabilities and their families. (See 45 CFR 1308.4 for specific service requirements);

(v) Family preservation and support services;

(vi) Child protective services and any other agency to which child abuse must be reported under State law;

(vii) Local elementary schools and other educational and cultural institutions, such as libraries and museums, for both children and families;

(viii) Providers of child care services; and

(ix) And any other organizations that may provide support and resources to families.

(3) Grantee and delegate agencies must perform outreach to encourage volunteers from the community to participate in the Early Head Start and Head Start programs.

(4) To enable the effective participation of children with

disabilities and their families, grantee and delegate agencies must make specific efforts to develop interagency agreements with local education agencies (LEAs) and other agencies within the grantee's service area. (See 45 CFR 1308.4 (l) for specific requirements concerning interagency agreements.)

(b) *Advisory committees.* Each grantee directly operating an Early Head Start or Head Start program, and each delegate agency, must establish and maintain a Health Services Advisory Committee which includes professionals and volunteers from the community. Grantee and delegate agencies also must establish and maintain such other service Advisory Committees as they deem appropriate to address program service issues such as community partnerships and to help agencies respond to community needs.

(c) *Transition services.* (1) Grantee and delegate agencies must establish and maintain procedures to support successful transitions for enrolled children and families from previous child care programs into Early Head Start or Head Start and from Head Start into elementary school, Title I Improving America's Schools Act preschool programs, or other child care settings. These procedures must include:

(i) Coordinating with the schools or other agencies to ensure that individual Early Head Start or Head Start children's relevant records are transferred to the school or next placement in which a child will enroll or from earlier placements to Early Head Start or Head Start;

(ii) Outreach to encourage communication between Early Head Start or Head Start staff and their counterparts in the schools and other child care settings including principals, teachers, social workers and health staff to facilitate continuity of programming;

(iii) Initiating meetings involving Head Start teachers and parents and kindergarten or elementary school teachers to discuss the developmental progress and abilities of individual children; and

(iv) Initiating joint transition-related training of Early Head Start or Head Start staff and school or other child development staff.

(2) See 45 CFR 1304.40(h) for additional requirements related to parental participation in their child's transition to and from Early Head Start or Head Start.

Subpart D—Program Design and Management

§ 1304.50 Program governance.

(a) *Policy group structure.* (1) Grantee and delegate agencies must establish and maintain a formal structure of governance through which parents can participate in policy making and in the operation of the program. This structure must consist of the following policy groups, as appropriate:

(i) Policy Council. This Council must be established at the grantee level.

(ii) Policy Committee. This Committee must be established at the delegate agency level when the program is administered in whole or in part by such agencies.

(iii) Parent Committee. For center-based programs, this committee must be established at the center level. For other program options, an equivalent committee must be established at the local program level.

(2) All policy groups must be established as early in the program year as possible and grantee Policy Councils and delegate agency Policy Committees may not be dissolved until successor Councils or Committees are elected and seated.

(3) When a grantee has delegated the entire Head Start program to one delegate agency, it is not necessary to have a Policy Council in addition to a delegate agency Policy Committee. Instead, the Policy Council must represent both the grantee and the delegate agency.

(4) The governing body (the group with legal and fiscal responsibility for administering the Head Start program) and the Policy Council or Policy Committee must not have identical memberships and functions.

(b) *Policy group composition and formation.* (1) Each grantee and delegate agency governing body operating an Early Head Start or Head Start program must (except where such authority is ceded to the Policy Council or Policy Committee) propose, within the framework of the regulations in this part, the total size of their respective policy groups (based on the number of centers, classrooms, and children served by their Early Head Start or Head Start program), the procedures for the election of parent members, and the procedure for the selection of community representatives. These proposals must be approved by the Policy Council or Committee.

(2) Policy Councils and Policy Committees must be comprised of two types of representatives: parents of currently enrolled children and community representatives. At least 51 percent of the members of these policy groups must be the parents of currently enrolled children.

(3) All parents of currently enrolled children serving on policy groups must stand for election or re-election annually.

(4) Community representatives must be drawn from the local community and from local public or private community, civic, and professional organizations that have a concern for and provide resources and services to low-income children and families. Community representatives may include the parents of formerly enrolled children.

(5) Policy Councils and Policy Committees may limit the number of terms any individual may serve on either body.

(6) Early Head Start or Head Start staff members and grantee and delegate agency managers with responsibility for the Early Head Start or Head Start program (or members of their families) may not serve on Policy Councils or Policy Committees.

(7) Parent Committees must be comprised exclusively of parents of children currently enrolled at the center level (for center-based programs) or at the equivalent level (for other program options).

(8) Parents of children currently enrolled in all program options must be adequately represented on established policy groups.

(c) *Policy group responsibilities—general.* Policy groups must be charged with the minimum responsibilities described in paragraphs (d) and (e) of this section and repeated in Appendix A of this section.

(d) *The policy council or policy committee.* (1) Policy Councils and Policy Committees must help to develop, review, and approve or disapprove the following policies and procedures:

(i) Applications and amendments to applications for Early Head Start and Head Start funding, including indirect cost rates, program budgets, and operational plans, prior to the submission of such applications to the grantee (in the case of Policy Committees) or to HHS (in the case of Policy Councils);

(ii) Procedures describing how the governing body and the appropriate policy group will implement shared decision-making;

(iii) Procedures for program planning in accordance with this part and the requirements of 45 CFR part 1305 (this paragraph (d)(1)(iii) is binding on Policy Councils exclusively);

(iv) The agency's program philosophy and long- and short-range program objectives;

(v) The selection of delegate agencies and their service areas (this paragraph (d)(1)(v) is binding on Policy Councils exclusively);

(vi) The composition of the Policy Council or the Policy Committee and the procedures by which policy group members are chosen;

(vii) Criteria for defining recruitment, selection, and enrollment priorities, in accordance with the requirements of 45 CFR part 1305;

(viii) Procedures for the annual self-assessment of the grantee or delegate agency's progress in carrying out the programmatic and fiscal intent of its grant application, including any planning actions that may result from the review of the annual audit and the Federal performance monitoring review;

(ix) Program personnel policies and subsequent changes to those policies, in accordance with 45 CFR 1301.31(a), including standards of conduct for program staff, consultants, and volunteers; and

(x) Decisions to hire and terminate any person paid from Early Head Start or Head Start funds, including the Early Head Start or Head Start director.

(2) In addition, Policy Councils and Policy Committees must perform the following functions directly:

(i) Serve as a link to the Parent Committees, grantee and delegate agency governing bodies, public and private organizations, and the communities they serve;

(ii) Assist Parent Committees in communicating with parents enrolled in all program options to ensure that they understand their rights and opportunities in Early Head Start and Head Start and to encourage their participation in the program;

(iii) Assist Parent Committees in planning, coordinating, and organizing program activities for parents with the assistance of staff, and ensuring that funds set aside from program budgets are used to support parent activities;

(iv) Assist in recruiting volunteer services from parents, community residents, and community organizations, and assist in the mobilization of community resources to meet identified needs; and

(v) Establish and maintain procedures for hearing and working with the grantee or delegate agency to resolve community complaints about the program.

(e) *Parent committee.* The Parent Committee shall carry out at least the following minimum responsibilities:

(1) Advise staff in developing and implementing local program policies, activities, and services;

(2) Plan, conduct, and participate in informal as well as formal programs and activities for parents and staff; and

(3) Within the guidelines established by the Governing Board, Policy Council, or Policy Committee, participate in the recruitment and screening of Early Head Start and Head Start employees.

(f) *Policy group reimbursement.* Grantee and delegate agencies must enable low-income policy group members to participate fully in their policy group responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the members in fulfillment of their responsibilities.

(g) *Governing body responsibilities.* Grantee and delegate agencies must have written policies that define the roles and responsibilities of the governing body members and that inform them of the management procedures and functions necessary to implement a high quality program.

(h) *Internal dispute resolution.* Each grantee and delegate agency and Policy Council or Policy Committee jointly must establish written procedures for resolving internal disputes, including impasse procedures, among the governing body, policy groups, the Early Head Start or Head Start director and executive director of the agency, and staff.

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§1304.50 Appendix A: Policy group responsibilities

A=General responsibility B=Operating responsibility C=Must approve or disapprove	Grantee Agency		Delegate Agency	
Function	Governing Body	Policy Council	Governing Body	Policy Committee
I. Planning				
(a) Establish a procedure for Early Head Start and/or Head Start planning in accordance with 45 CFR Part 1305.	C	C		
(b) Determine agency's philosophy for child development programs and establish long and short-range objectives.	C	C	C	C
(c) Select delegate agencies and determine their service areas.	C	C		
(d) Determine the recruitment area(s) that will be served within the service area.	C	C		
(e) Set criteria that define who will be given priority for recruitment, selection, and enrollment	B	C	B	C
(f) Determine location of centers, classes, or home-based services.	B	C	B	C
(g) Establish a plan for the recruitment and selection of children.	B	C	B	C
(h) Prepare application for funds: - prior to sending to grantee - prior to sending to HHS.	A&C	C	A&C	C
(i) Make major changes, as defined locally, in the approved program (budget and work plan).	A	C	A	C
(j) Develop and implement a method for self-assessment of the agency's Early Head Start or Head Start program.	A	C	A	C
II. General Administration:				
(a) Determine the composition of the Early Head Start and/or Head Start policy group and the method for its establishment. - Policy Council - Policy Committee	A&C A	C	A&C	C
(b) Establish written procedures that describe how the governing entity and the appropriate policy group will implement shared decision-making.	C	C	C	C
(c) Establish methods for resolving internal disputes, including impassé procedures.	A&C	A&C		
(d) Determine the administrative services that will be provided by the agency's central office (as direct and/or indirect costs) to the Early Head Start or Head Start program.	C	C	C	C
(e) Establish a method for hearing and resolving community complaints about the Early Head Start or Head Start program.	A&B	A&C	A&B	A&C

A=General responsibility B=Operating responsibility C=Must approve or disapprove	Grantee Agency		Delegate Agency	
Function	Governing Body	Policy Council	Governing Body	Policy Committee
(f) Ensure that there is a financial management system that ensures budget/management control over current operations and the timely and accurate disclosure of fiscal matters.	A	B	A	B
(g) Ensure that an independent audit, which includes Early Head Start or Head Start operations, is conducted and its findings are reported to the governing entity and policy groups.	A		A	
III. Personnel Administration:				
(a) Determine grantee personnel policies that include the provisions of 45 CFR 1301.31 and a code or standards of conduct for all staff, consultants, and volunteers.	A&C	C		
(b) Hire and fire the Early Head Start or Head Start director of the grantee agency.	A	C		
(c) Hire and fire the Early Head Start or Head Start staff of the grantee agency.	A	C		
(d) Determine delegate agency personnel policies that include the provisions of 45 CFR 1301.31 and a code or standards of conduct for all staff, consultants, and volunteers.	A		A	C
(e) Hire and fire the Early Head Start or Head Start director of the delegate agency.			A	C
(f) Hire and fire the Early Head Start or Head Start staff of the delegate agency.			A	C

Definitions as Used in Chart

A. *General Responsibility.* The individual or group with legal and fiscal responsibility guides and directs the carrying out of the function described through the person or group given operating responsibility.

B.. *Operating Responsibility.* The individual or group that is directly responsible for carrying out or performing the function consistent with the general guidance and direction of the individual or group holding general responsibility.

C. *Must Approve or Disapprove.* The individual or group (other than persons or groups holding general and operating responsibilities, A and B above) must approve before the decision is finalized or action taken. The group must also have been consulted in the decision-making process prior to the point of seeking approval. If they do not approve, the proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups or individuals.

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§ 1304.51 Management systems and procedures.

(a) *Program planning.* (1) Grantee and delegate agencies must develop and implement a systematic, ongoing process of program planning that includes consultation with the program's governing body, policy groups, and program staff, and with other community organizations that serve Early Head Start and Head Start or other low-income families with young children. Program planning must include:

(i) An assessment of community strengths, needs and resources through completion of the Community Needs Assessment, in accordance with the requirements of 45 CFR part 1305;

(ii) The formulation of both multi-year (''long-range'') program goals and short-term program and financial objectives that address the findings of the Community Needs Assessment, are consistent with the philosophy of Early Head Start and Head Start, and reflect the findings of the program's annual self-assessment; and

(iii) The development of written plans for implementing services in each of the program areas covered by this part (e.g., Early Childhood Development and Health Services, Family and Community Partnerships, and Program Design and Management).

(2) All program plans, and progress in meeting them, must be reviewed by the grantee or delegate agency staff and reviewed and approved by the Policy Council or Policy Committee at least annually, and must be revised and updated as needed.

(b) *Communications—general.* Grantee and delegate agencies must establish and implement systems to ensure that timely and accurate information is provided to parents, policy groups, staff, and the general community.

(c) *Communication with families.* (1) Grantee and delegate agencies must ensure that effective two-way comprehensive communications between staff and parents are carried out on a regular basis throughout the program year.

(2) Communication with parents must be carried out in the parents' primary language or through an interpreter, to the extent feasible.

(d) *Communication with governing bodies and policy groups.* Grantee and delegate agency communication systems must ensure that the following information is provided regularly to the grantee and delegate governing bodies and to members of the policy groups:

(1) Procedures and timetables for program planning;

(2) Policies, guidelines, and other communications from HHS;

(3) Program and financial reports; and

(4) Program plans, policies, procedures, and Early Head Start and Head Start grant applications.

(e) *Communication among staff.* Programs must have mechanisms for regular communication among all program staff to facilitate quality outcomes for children and families.

(f) *Communication with delegate agencies.* Grantees must have a procedure for ensuring that delegate agency governing bodies, Policy Committees, and all staff receive all regulations, policies, and other pertinent communications in a timely manner.

(g) *Record-keeping systems.* Grantee and delegate agencies must establish and maintain efficient and effective record-keeping systems to provide accurate and timely information regarding children, families, and staff.

(h) *Reporting systems.* Grantee and delegate agencies must establish and maintain efficient and effective reporting systems that:

(1) Generate periodic reports of financial status and program operations in order to control program quality, maintain program accountability, and advise governing bodies, policy groups, and staff of program progress; and

(2) Generate official reports for Federal, State, and local authorities, as required by applicable law.

(i) *Program self-assessment and monitoring.* (1) At least once each program year, and with the consultation and participation of the policy groups, grantee and delegate agencies must conduct a self-assessment of their effectiveness and progress in meeting program goals and objectives in consultation with other community agencies.

(2) Grantees must establish and implement procedures for the periodic monitoring of the Early Head Start and Head Start operations of each of its delegate agencies and their compliance with Federal regulations.

(3) Grantees must inform delegate agency governing bodies of any deficiencies in delegate agency operations identified in the monitoring review and must help them develop plans, including timetables, for addressing identified problems.

§ 1304.52 Human resources management.

(a) *Organizational structure.* (1) Grantee and delegate agencies must establish and maintain an organizational structure that supports the accomplishment of program objectives. This structure must address the major roles and responsibilities assigned to each staff position and must provide evidence of adequate mechanisms for staff supervision and support.

(2) At a minimum, grantee and delegate agencies must ensure that the following program management roles are formally assigned to and adopted by staff within the program:

(i) Program management (the Early Head Start or Head Start director);

(ii) Management of early childhood development and health services, including child development and education; child medical, dental, and mental health; child nutrition; and, services for children with disabilities; and

(iii) Management of family and community partnerships, including parent activities.

(b) *Staff qualifications—general.* (1) Grantee and delegate agencies must ensure that staff have the knowledge, skills, and experience they need to perform their assigned roles and functions responsibly.

(2) In addition, grantee and delegate agencies must ensure that only candidates with the qualifications specified in this Part and in 45 CFR 1306.21 are hired for the following positions:

(i) Managers, supervisors, and fiscal officer;

(ii) Classroom teachers;

(iii)Infant and toddler staff caregivers;

(iv) Home visitors;

(v) Health staff;

(vi) Mental health professionals; and

(vii) Nutritionists or dieticians.

(3) Current and former Head Start parents must receive preference for employment vacancies if they are well qualified.

(4) Staff and program consultants must be familiar with the ethnic background and heritage of families in the program and must be able to serve and effectively communicate, to the extent feasible, with children and families with no or limited English proficiency .

(c) *Management staff qualifications.* (1) The Early Head Start or Head Start director must have training and experience relevant to early childhood or human services program management.

(2) Grantee and delegate agencies must secure the regularly scheduled or ongoing services of a qualified fiscal officer with Certified Public Accountant (CPA) or other appropriate credentials.

(3) In addition to meeting the minimum qualifications for classroom teachers, as specified in section 648A of the Head Start Act staff managing education services must have training

and experience in areas that include: the theories and principles of child growth and development, early childhood education, and family support.

(4) Health services must be managed by staff with training and experience in public health, nursing, health education, prenatal and postpartum care, or health administration.

(5) Nutrition services must be managed by a certified or licensed, full-time staff nutritionist or dietician. Alternatively, nutrition services must be supervised on a regularly scheduled basis by such a qualified nutritionist or dietitian.

(6) Family and community partnership services must be managed by staff with training and experience in field(s) related to social, human, or family services.

(7) Parent involvement services must be managed by staff with training, experience, and skills in assisting the parents of young children in advocating and decision-making for their families.

(8) Disability services must be managed by staff with training and experience in securing and individualizing needed services for children with disabilities.

(d) *Mental health professional qualifications.* A licensed or certified mental health professional with experience and expertise in serving young children and their families must provide services to the Early Head Start and Head Start programs on a regularly scheduled basis.

(e) *Health staff qualifications.* To the extent that health staff are performing health screenings, immunizations, or other health procedures for children, they must have appropriate professional licenses or certification to perform those procedures.

(f) *Infant and toddler staff qualifications.* Staff working with infants and toddlers must have the training and experience necessary to develop consistent, stable, and supportive relationships with very young children. Head Start programs must comply with section 648A of the Head Start Act and any subsequent amendments regarding the qualifications of caregivers. The training must develop knowledge of infant and toddler development, safety issues in infant and toddler care (e.g., reducing the risk of Sudden Infant Death Syndrome), and methods for communicating effectively with infants and toddlers, their parents, and other staff members.

(g) *Standards of conduct.* (1) Grantee and delegate agencies must ensure that all staff, consultants, and volunteers abide by the program's standards of conduct. These standards must specify that:

(i) They will respect and promote the unique identity of each child and family and refrain from stereotyping on the basis of gender, race, ethnicity, culture, religion, or disability;

(ii) They will follow program confidentiality policies concerning information about children, families, and other staff members;

(iii) No child will be left alone or unsupervised while under their care; and

(iv) They will use positive methods of child guidance and will not engage in corporal punishment, emotional or physical abuse, or humiliation. In addition, they will not employ methods of discipline that involve isolation, the use of food as punishment or reward, or the denial of basic needs.

(2) Grantee and delegate agencies must ensure that all employees engaged in the award and administration of contracts or other financial awards sign statements that they will not solicit or accept personal gratuities, favors, or anything of significant monetary value from contractors or potential contractors.

(3) Personnel policies and procedures must include provision for appropriate penalties for violating the standards of conduct.

(h) *Staff performance appraisals.* Grantee and delegate agencies must perform annual performance reviews of each Head Start staff member and use the results of these reviews to identify staff training and professional development needs, modify staff performance agreements, as necessary, and assist each staff member in improving his or her skills and professional competencies.

(i) *Staff and volunteer health.* (1) Grantee and delegate agencies must assure that each staff member has an initial health examination and a periodic re-examination (as recommended by their health care provider or as mandated by State or local laws) so as to assure that they do not, because of communicable diseases, pose a significant risk to the health or safety of others in the Head Start program that cannot be eliminated or reduced by reasonable accommodation. This requirement must be implemented consistent with the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

(2) Volunteers must be screened for tuberculosis before beginning service that involves contact with children.

(3) Grantee and delegate agencies must assist staff with mental health and wellness concerns that may affect their job performance.

(j) *Staffing patterns.* (1) Grantee and delegate agencies must meet the requirements of 45 CFR 1306.20 regarding program staffing patterns.

(2) When a majority of children speak the same language, at least one teacher or paid aide interacting regularly with the children must speak their language.

(3) For center-based programs, the class size requirements specified in 45 CFR 1306.32 must be maintained through the provision of substitutes when regular classroom staff are absent.

(4) Grantee and delegate agencies must ensure that each staff caregiver working exclusively with infants and toddlers has responsibility for no more than four infants and toddlers and that no more than eight infants and toddlers are placed in any one room.

(5) Grantees and delegate agencies serving infants and toddlers as well as preschoolers must ensure that each staff member has responsibility for no more than six children, of which no more than two may be infants or toddlers.

(6) Staff must supervise the outdoor and indoor play areas in such a way that children's safety can be easily monitored and ensured.

(k) *Training and development.* (1) Grantee and delegate agencies must provide an orientation to all new staff, consultants, and volunteers that includes, at a minimum, the goals and underlying philosophy of Early Head Start and/or Head Start and the ways in which they are implemented by the program.

(2) Grantee and delegate agencies must establish and implement a structured approach to staff training and development, attaching academic credit whenever possible, for staff and volunteers. This system should be designed to help build relationships among staff and to assist staff in acquiring or increasing the knowledge and skills needed to fulfill their job responsibilities, in accordance with the requirements of 45 CFR 1306.23.

(3) At a minimum, this system must include an ongoing education program for relevant staff and volunteers which include, among other things,:

(i) Methods for identifying and reporting child abuse and neglect that comply with applicable State and local laws using so far as possible, a helpful, rather than a punitive attitude toward abusing or neglecting parents and other care takers; and

(ii) Methods for planning for successful child and family transitions to and from the Early Head Start or Head Start program.

(4) Grantee and delegate agencies must provide training to Early Head Start and Head Start governing body members and to Head Start Policy Council and Policy Committee members to enable them to carry out their program governance responsibilities effectively.

§ 1304.53 Facilities, materials, and equipment.

(a) *Head Start physical environment and facilities.* (1) Grantee and delegate agencies operating center-based programs must provide a physical environment and facilities conducive to learning and reflective of the different stages of development of each child. Grantee and delegate agencies must strive to achieve this environment in settings for other program options as well.

(2) Grantee and delegate agencies must provide appropriate center space for the conduct of all program activities. (See 45 CFR 1308.4 for specific access requirements for children with disabilities.)

(3) The center space provided by grantees and delegate agencies must be organized into functional areas that can be recognized by the children and that allow for individual activities and social interactions.

(4) The indoor and outdoor space in Early Head Start or Head Start centers used by mobile infants and toddlers must be located away from general walkways and from areas used by older children.

(5) Centers must have at least 35 square feet of usable indoor space per child available for the care and use of children (i.e., exclusive of bathrooms, halls, kitchen, staff rooms, and storage places) and at least 75 square feet of usable outdoor play space per child.

(6) Facilities owned or operated by Early Head Start and Head Start grantee or delegate agencies must meet the licensing requirements of 45 CFR 1306.30.

(7) Grantee and delegate agencies must provide for the maintenance, repair, and security of all Early Head Start and Head Start facilities, materials and equipment.

(8) Grantee and delegate agencies must provide a center-based environment free of toxins, such as cigarette smoke, pesticides, herbicides, and other air pollutants as well as soil and water contaminants. Programs must ensure that no child is present when the spraying of pesticides or herbicides is conducted.

(9) Outdoor play areas at center-based programs must be arranged so as to prevent any child from leaving the premises and getting into unsafe and unsupervised areas. Enroute to play areas, children must not be exposed to vehicular traffic without supervision.

(10) Grantee and delegate agencies must conduct an annual safety inspection to ensure that each facility's space, light, ventilation, heat, and other physical arrangements are consistent with the health, safety and developmental needs of children. At a minimum, agencies must ensure that:

(i) In climates where such systems are necessary, there is a safe and effective heating and cooling system that is insulated to protect children and staff from potential burns;

(ii) No highly flammable furnishings, decorations, or materials that emit highly toxic fumes when burned are used;

(iii) Flammable and other dangerous materials and potential poisons are stored in locked cabinets or storage facilities separate from stored medications and food and are accessible only to authorized persons. All medications, including those required for staff and volunteers, are labeled, stored under lock and key, refrigerated if necessary, and kept out of the reach of children;

(iv) Rooms are well lit and provide emergency lighting in the case of power failure;

(v) Approved, working fire extinguishers are readily available;

(vi) An appropriate number of smoke detectors are installed and tested regularly;

(vii) Exits are clearly visible and evacuation routes are clearly marked and posted so that the path to safety outside is unmistakable. (See 45 CFR 1304.22 for additional emergency procedures);

(viii) Indoor and outdoor premises are cleaned daily and kept free of undesirable and hazardous materials and conditions;

(ix) Paint coatings on both interior and exterior premises used for the care of children do not contain hazardous quantities of lead;

(x) Electrical outlets accessible to children prevent shock through the use of child-resistant covers, the installation of child-protection outlets, or the use of safety plugs;

(xi) Windows and glass doors are constructed, adapted, or adjusted to prevent injury to children;

(xii) Only sources of water approved by the local or State health authority are used;

(xiii) Toilets and handwashing facilities are adequate, clean, in good repair, and easily reached by children. Toileting and diapering areas must be separated from areas used for cooking, eating, or children's activities;

(xiv) Toilet training equipment is provided for children being toilet trained;

(xv) All sewage and liquid waste is disposed of through a locally approved sewer system, and garbage and trash are is stored in a safe and sanitary manner; and

(xvi) Adequate provisions are made for children with disabilities to ensure their safety, comfort, and participation.

(b) *Head Start equipment, toys, materials, and furniture.* (1) Grantee and delegate agencies must provide and arrange sufficient equipment, toys, materials, and furniture to meet the needs and facilitate the participation of children and adults. Equipment, toys, materials, and furniture owned or operated by the grantee or delegate agency must be:

(i) Supportive of the specific educational objectives of the local program;

(ii) Supportive of the cultural and ethnic backgrounds of the children;

(iii) Age-appropriate and supportive of the abilities and developmental needs of each child served, with special consideration for the needs of children with disabilities;

(iv) Accessible, attractive, and inviting to children;

(v) Designed to provide a variety of learning experiences and to encourage each child to experiment and explore; and

(vi) Stored in a safe and orderly fashion when not in use.

(2) Infant and toddler toys must be made of non-toxic materials that can be sanitized.

(3) To reduce the risk of Sudden Infant Death Syndrome (SIDS), all sleeping arrangements for infants must use firm mattresses and avoid soft bedding materials such as comforters, pillows, fluffy blankets or stuffed toys.

Subpart E—Implementation and Enforcement

§ 1304.60 Compliance.

(a) Head Start grantee and delegate agencies funded for indefinite project periods must comply with the requirements of this part in accordance with the effective dates set forth in 45 CFR 1304.2.

(b) If the responsible HHS official, as a result of information obtained from a review of a Head Start program, determines a program to have one or more deficiencies, he or she must notify the grantee promptly in writing of the finding, identifying the deficiencies which constitute a violation of the

minimum requirements, and informing the grantee that it must correct them either immediately, effective on a specified date or pursuant to an approved Quality Improvement Plan.

(c) If the responsible HHS official, as a result of information obtained on the basis of a review of a Head Start program, determines a program to be out of compliance with the Program Performance Standards, other requirements of the Head Start regulations, the Act or the terms and conditions of the grant and further determines that those areas of non-compliance are not, judged individually or in the aggregate, of the scope and magnitude that constitute a program deficiency, he or she must notify the grantee promptly in writing of those areas of non-compliance and inform the grantee that it has the period stated in the notice, not to exceed 90 days, to come into compliance.

(d) The Head Start program must certify to the responsible HHS official at such time that it has remedied the specified areas of non-compliance, providing whatever documentation is requested by the responsible HHS official to confirm such compliance.

(e) If the Head Start program cannot satisfactorily document that it has remedied the specified areas of non-compliance, the non-compliance will then constitute a deficiency; and the responsible HHS official shall require the grantee to correct the areas of non-compliance either immediately, effective on a specific date, or pursuant to an approved Quality Improvement plan. The Head Start program shall have no more than one year under a Quality Improvement plan from the date of the initial notification of the existence of the areas of deficiency to remedy the deficiency.

§ 1304.61 Quality improvement plan.

(a) Upon being designated as a program with one or more deficiencies to be corrected pursuant to a Quality Improvement Plan, the Head Start program must submit to the responsible HHS official a Quality Improvement plan which specifies the actions that the grantee will take, within a specified period of time, to remedy the deficiencies identified under § 1304.60.

(b) The responsible HHS official, within 30 days of receipt of the Quality Improvement Plan, will inform the program, in writing, of the plan's approval or specify the reasons that the plan is disapproved.

(c) If the Quality Improvement Plan is disapproved, the Head Start grantee must submit a revised Quality Improvement Plan, making the changes necessary to address the reasons that the initial plan was disapproved.

(d) The Quality Improvement Plan must indicate the time frames in which the grantee will remedy its deficiencies; in no case can this period of time exceed 12 months from the time the grantee is notified of its deficiencies.

(e) At such time as has been specified in the approved Quality Improvement Plan for the correction of all deficiencies, or after such date fixed for immediate resolution in a letter, if the identified deficiencies have not been corrected, the responsible HHS official will issue a letter of termination or denial of refunding under 45 CFR part 1303.

PART 1301—HEAD START GRANTS ADMINISTRATION

2. The authority citation for Part 1301 is revised to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

3. Section 1301.31 is revised to read as follows:

§ 1301.31 Personnel policies.

(a) *Written policies.* Grantees and delegate agencies must establish and implement written personnel policies for staff, consultants, and volunteers that are approved by the Policy Council and that are made available to all grantee and delegate agencies. At a minimum, such policies must include:

(1) Descriptions of each staff, consultant, and volunteer position, addressing, as appropriate, roles and responsibilities, relevant qualifications, salary, and employee benefits. (See 45 CFR 1304.52(b), Staff qualifications.)

(2) A description of the procedures for recruitment, selection and termination. (See paragraph (b) of this Section, Staff recruitment and selection procedures.)

(3) Standards of conduct. (See 45 CFR 1304.52(g), Standards of conduct.)

(4) Descriptions of methods for providing staff and volunteers with opportunities for training, development, and advancement. (See 45 CFR 1304.52(k), Training and development.)

(5) A description of the procedures for conducting staff performance appraisals. (See 45 CFR 1304.52 (h), Staff performance appraisals.)

(6) Assurances that the program is an equal opportunity employer and does not discriminate on the basis of gender, race, ethnicity, religion or disability; and

(7) A description of employee-management relation procedures, including those for managing employee grievances and adverse actions.

(b) *Staff recruitment and selection procedures.* (1) Before an employee is hired, grantee or delegate agencies must conduct:

(i) An interview with the applicant;

(ii) A verification of personal and employment references; and

(iii) A State or national criminal record check, as required by State law or administrative requirement.

(2) Grantee and delegate agencies must require that all current and prospective employees and volunteers sign a declaration prior to employment or volunteer work that lists:

(i) All pending and prior criminal arrests and charges related to child sexual abuse and their disposition;

(ii) Convictions related to other forms of child abuse and neglect; and

(iii) All convictions of violent felonies.

(3) Grantee and delegate agencies must review each application for employment individually in order to assess the relevancy of an arrest, a pending criminal charge, or a conviction.

(4) Grantee and delegate agencies must perform outreach to encourage individuals from the community to participate as volunteers in the Head Start program.

(c) *Declaration exclusions.* The declaration required by paragraph (b)(2) of this section may exclude:

(1) Traffic fines of $200.00 or less;

(2) Any offense, other than any offense related to child abuse and/or child sexual abuse or violent felonies, committed before the prospective employee's 18th birthday which was finally adjudicated in a juvenile court or under a youth offender law;

(3) Any conviction the record of which has been expunged under Federal or State law; and

(4) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(d) *Probationary period.* The policies governing the recruitment and selection of staff must provide for a probationary period for all new employees that allows time to monitor employee performance and to examine and act on the results of the criminal record checks discussed in paragraph (b) (1) of this section.

(e) *Reporting child abuse or sexual abuse.* Grantee and delegate agencies must develop a plan for responding to suspected or known child abuse or sexual abuse as defined in 45 CFR 1340.2(d) whether it occurs inside or outside of the program.

(Approved by the Office of Management and Budget under control number 0980–0173)

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

3. The authority citation for Part 1303 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

4. Section 1303.14 is amended by revising paragraph (b) introductory text and paragraph (b)(4) to read as follows:

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

* * * * *

(b) Financial assistance may be terminated for any or all of the following reasons:

* * * * *

(4) The grantee has in existence one or more deficiencies as defined in 45 CFR part 1304;

* * * * *

5. Section 1303.15 is amended by revising paragraph (c) to read as follows:

§ 1303.15 Appeal by a grantee from a denial of refunding.

* * * * *

(c) Refunding of a grant may be denied for existence of one or more deficiencies as defined in 45 CFR part 1304.

PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT AND ATTENDANCE IN HEAD START

6. The authority citation for Part 1305 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

7. Section 1305.1 is amended by adding a sentence at the end to read as follows:

§ 1305.1 Purpose and scope.

* * * * *

These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304, as applicable.

PART 1306—HEAD START STAFFING REQUIREMENTS AND PROGRAM OPTIONS

8. The authority citation for Part 1306 is revised to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

9. Section 1306.1 is revised to read as follows:

§ 1306.1 Purpose and scope.

This part sets forth requirements for Head Start program staffing and program options that all Head Start grantees, with the exception of Parent Child Center programs must meet. The exception for Parent Child Centers is for fiscal years 1995, 1996, and 1997 as consistent with section 645A(e)(2) of the Head Start Act, as amended. These requirements including those pertaining to staffing patterns, the choice of the program options to be implemented and the acceptable ranges in the implementation of those options, have been developed to help maintain and improve the quality of Head Start and to help promote lasting benefits to the children and families being served. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304, as applicable.

10. Section 1306.20 is amended by redesignating paragraphs (a) through (e) as (b) through (f) and adding a new paragraph (a) to read as follows:

§ 1306.20 Program staffing patterns.

(a) Grantees must meet the requirements of 45 CFR 1304.52 (j), Staffing patterns, in addition to the requirements of this section.

* * * * *

11. Section 1306.21 is revised to read as follows:

§ 1306.21 Staff qualification requirements.

Head Start programs must comply with section 648A of the Head Start Act and any subsequent amendments, regarding the qualifications of classroom teachers.

12. Section 1306.30 is amended by revising paragraph (c) to read as follows:

§ 1306.30 Provisions of comprehensive child development services.

* * * * *

(c) The facilities used by Head Start grantees for regularly scheduled center-based and combination program option classroom activities or home-based group socialization activities must comply with State and local requirements concerning licensing. In cases where these licensing standards are less comprehensive or less stringent than the Head Start regulations, or where no State or local licensing standards are applicable, grantee and delegate agencies are, at a minimum, required to assure that their facilities are in compliance with the Head Start Program Performance Standards related to the safety of facilities found in 45 CFR 1304.53(a), Physical environment and facilities.

* * * * *

13. Section 1306.33 is amended by revising paragraph (c)(3) to read as follows:

§ 1306.33 Home-based program option.

* * * * *

(c) * * *

(3) Grantees must follow the nutrition requirements specified in 45 CFR 1304.23(b)(2) and provide appropriate snacks and meals to the children during group socialization activities.

PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES FOR CHILDREN WITH DISABILITIES

14. The authority citation for Part 1308 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

15. Section 1308.6 is amended by revising paragraph (b)(1) to read as follows:

§ 1308.6 Assessment of children.

* * * * *

(b) * * *

(1) Grantees must provide for health and developmental assessments of all Head Start children in accordance with the requirements of 45 CFR 1304.20. This does not preclude starting assessment in the spring, before program services begin in the fall.

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[FR Doc. 96–9358 Filed 4–19–96; 8:45 am]

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federal register

Monday
April 22, 1996

Part III

Department of Education

Part A of Title I of the Elementary and Secondary Education Act of 1965; Notice

DEPARTMENT OF EDUCATION

Part A of Title I of the Elementary and Secondary Education Act of 1965

AGENCY: Department of Education.

ACTION: Notice of Interpretation.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) interprets section 1112(c)(1)(H) of Title I of the Elementary and Secondary Education Act of 1965 to require, beginning in fiscal year 1997, that local educational agencies (LEAs) choosing to use Title I, Part A funds to provide early childhood development services to low-income, preschool children comply with the proposed Head Start performance standards in 45 CFR 1304.21—Education and Early Childhood Development. The U.S. Department of Health and Human Services has published these standards, among others, in a Notice of Proposed Rulemaking elsewhere in this issue of the Federal Register. Section 1112(c)(3) of Title I exempts an LEA from complying with these performance standards if it is using Title I, Part A funds to operate a preschool program using the Even Start model or to expand its Even Start program.

DATES: In order to be considered, comments on proposed 45 CFR 1304.21 must be received on or before June 21, 1996.

ADDRESSES: All comments on the substance of the performance standards in 45 CFR 1304.21 should be addressed to the Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: For information on the applicability of Head Start performance standards to Title I preschool programs, contact Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW (Portals Building, Room 4000), Washington, D.C. 20202–6132. Telephone (202) 260–0826. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: A number of Federal programs—most notably, Head Start, Even Start, and Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA)—provide education and other services to preschool children. Federal legislation increasingly has linked services under these programs to expand the number of children who can be served, reduce duplication of effort, and provide smooth transitions from preschool to elementary school. For example, under Part A of Title I, a local educational agency (LEA) must describe in its plan how it will coordinate and integrate services under Part A with other educational services such as Even Start, Head Start, and other preschool programs, including plans for the transition of children in those programs to elementary school programs. An LEA must also describe, if appropriate, how it will use Part A funds to support preschool programs for children, particularly children participating in a Head Start or Even Start program. If an LEA chooses to use Title I, Part A funds to provide early childhood development services, the LEA must assure in its plan that, beginning in fiscal year 1997, it will comply with performance standards established under section 641A(a) of the Head Start Act. It is this requirement that is the subject of this notice.

Since the 1970's, program performance standards have played a central role in the Head Start program. These standards provide a definition of quality services for approximately 2,112 community-based organizations nationwide that administer Head Start; serve as training guides for staff and parents on the key elements of quality; provide a vision of service delivery to young children and families that has served as a catalyst for program development and professional education and training in the preschool field; and provide the regulatory structure for the monitoring and enforcement of quality standards in Head Start. The Head Start Act Amendments of 1994 required the U.S. Department of Health and Human Services (HHS) to update the Head Start performance standards. As a result, elsewhere in this issue of the Federal Register, the Associate Commissioner of the Head Start Bureau, Administration for Children, Youth and Families, has published a Notice of Proposed Rulemaking revising those standards.

Section 1112(c)(1)(H) of Title I requires an LEA to assure in its Title I plan that, beginning in fiscal year 1997, if the LEA ''chooses to use [Part A funds] to provide early childhood development services to low-income children below the age of compulsory school attendance, [the LEA will] ensure that such services comply with the performance standards established under section 641A(a) of the Head Start Act * * *'' The proposed performance standards governing early childhood development services are found in 45 CFR 1304.21—Education and Early Childhood Development. These proposed standards would ensure that the varied experiences provided in Title I preschool programs would help each child achieve social, emotional, intellectual, and physical skills in a manner appropriate to the child's age and stage of development. For example, the proposed standards would require an LEA to use an approach to child development and education that is developmentally and linguistically appropriate, recognizing that children have individual preferences and individual patterns of development as well as different ability levels, cultures, and learning styles. The LEA would be required to develop or select, in consultation with parents, a curriculum that, for example, supports each child's individual pattern of development and learning, provides for the development of cognitive skills, and integrates all educational aspects of health, nutrition, and mental health services into its program activities. The LEA would also be required to support the social and emotional development of preschool children by building trust, setting limits and realistic expectations, and encouraging respect. Finally, the LEA would be required to provide for the development of each child's cognitive and language skills and promote each child's physical growth by providing sufficient time, space, materials, and equipment for the development of large and small motor skills. We note that section 1112(c)(3) of Title I exempts an LEA from complying with these performance standards if it is using Title I, Part A funds to operate a preschool program using the Even Start model or to expand its Even Start program.

Because section 1112(c)(1)(H) of Title I requires an LEA to comply with the performance standards relating to early childhood development services, it is our interpretation that the LEA must comply only with the standards in 45 CFR 1304.21. As the title of that section—''Education and Early Childhood Development''—suggests, those are the standards that govern early childhood development services. Moreover, those standards support the primary purpose of Title I: To improve the capacity of schools to provide educational services to assist educationally disadvantaged children, including preschool children, to achieve the same high academic standards expected of all children. This interpretation is consistent with the flexibility the Title I statute provides

LEAs in implementing Title I programs and takes into account that other Title I provisions address many of the remaining topics covered by HHS' proposed performance standards applicable to Head Start grantees, such as parent involvement, program improvement, fiscal management, and recordkeeping.

To assist LEAs operating Title I preschool programs to understand and comment on the proposed Head Start performance standards that would apply to their programs, we have included the text of proposed § 1304.21 following this paragraph. Please note that any comments on the substance of these proposed standards as they impact Title I preschool programs should be sent to the Associate Commissioner of the Head Start Bureau at the address at the beginning of this notice. For information on the applicability of the Head Start Performance Standards to Title I preschool programs, please contact the Director of Compensatory Education Programs at the address at the beginning of this notice.

The following is the text of § 1304.21 of the proposed Head Start Performance Standards:

§ 1304.21 Education and Early Childhood Development.

(a) *Child development and education approach for all children.* (1) In order to help children gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities in school and life, grantee and delegate agencies' approach to child development and education must—

(i) Be developmentally and linguistically appropriate, recognizing that children have individual preferences and individual patterns of development as well as different ability levels, cultures, ages, and learning styles;

(ii) Provide an environment of acceptance that supports and respects each child's gender, culture, language, and ethnicity; and

(iii) In center-based settings, provide a balanced daily program of staff-directed and child-initiated activities, including individual and small group activities.

(2) Parents must be—

(i) Invited to become integrally involved in the development of the program's curriculum and approach to child development and education; and

(ii) Provided opportunities to increase their child observation skills and to share assessments with staff that will help plan the learning experiences.

(3) Grantee and delegate agencies must support social and emotional development by—

(i) Encouraging development which enhances each child's strengths by—

(A) Building trust;

(B) Fostering independence;

(C) Setting consistent limits and realistic expectations;

(D) Encouraging respect for the feelings and rights of others; and

(E) Supporting and respecting the home language and culture of each child in ways that support the child's health and well-being; and

(ii) Allowing routines and transitions to occur in a timely, predictable and unrushed manner according to each child's needs.

(4) Grantee and delegate agencies must provide for the development of each child's cognitive and language skills by—

(i) Supporting each child's learning, using various strategies, including experimentation, inquiry, observation, play and exploration;

(ii) Providing opportunities for creative self-expression through activities such as art, music, movement, and dialogue;

(iii) Promoting interaction and language use among children and between children and adults; and

(iv) Supporting emerging literacy and numeracy development through materials and activities according to the developmental level of each child.

(5) In center-based settings, grantee and delegate agencies must promote each child's physical growth by—

(i) Providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play or movement that support the development of large muscle skills;

(ii) Providing appropriate time, space, equipment, materials and adult guidance for the development of small-motor skills according to each child's developmental level; and

(iii) Providing an appropriate environment and adult guidance for the participation of children with special needs.

(b) *Child development and education approach for infants and toddlers.* (1) Grantee and delegate agencies must provide an environment for infants and toddlers which encourages—

(i) The development of secure relationships in out-of-home care settings for infants and toddlers by having a limited number of consistent caregivers over as extended a period of time as possible. Staff caregivers must be able to understand the child's family's culture and, whenever possible, speak the child's language;

(ii) Trust and emotional security so that each child can explore his or her environment according to his or her developmental level; and

(iii) Opportunities for each child to explore a variety of sensory and motor experiences with support and stimulation from staff caregivers or family members.

(2) Grantee and delegate agencies must support the social and emotional development of infants and toddlers by providing an environment that—

(i) Encourages the development of self-knowledge, self-awareness, autonomy, and self-expression; and

(ii) Supports the emerging communication skills of infants and toddlers by providing daily opportunities for each child to listen and express himself or herself freely.

(3) Grantee and delegate agencies must provide an environment that promotes the physical development of infants and toddlers by—

(i) Providing opportunities for small-motor development that encourage the control and coordination of small, specialized motions, using the eyes, mouth, hands, and feet;

(ii) Supporting the development of the new-found physical skills of infants and toddlers such as grasping, pulling, pushing, crawling, walking, and climbing; and

(iii) Allowing and enabling children to independently use toilet facilities when it is developmentally appropriate and when efforts to encourage toilet training are supported by the parents.

(c) *Child development and education approach for preschoolers.* (1) Grantee and delegate agencies, in collaboration with the parents, must develop or select a curriculum that is adapted for each group and applied consistently in the program and that—

(i) Supports each child's individual pattern of development and learning;

(ii) Provides for the development of cognitive skills by encouraging each child to organize his or her experiences, to understand concepts, and to develop age appropriate skills in literacy, numeracy, reasoning, problem solving and decision-making, which form a foundation for school success.

(iii) Integrates all educational aspects of the health, nutrition, and mental health services into program activities;

(iv) Ensures that the program environment helps children develop emotional security and facility in social relationships;

(v) Enhances each child's understanding of self as an individual and as a member of a group;

(vi) Provides each child with opportunities for success to help develop feelings of competence, self-esteem, and positive attitudes toward learning; and

(vii) Provides individual, small group and large group activities both indoors and outdoors.

(2) Staff must use a variety of strategies to promote and support children's learning and developmental progress based on the assessment of each child's individual strengths and needs.

Waiver of Rulemaking

In accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rules. However, under section 553(b)(A) of the APA, the Department is not required to offer the public an opportunity to comment on an interpretive rule that merely advises the public of the Department's construction of a statute that it administers. Because this notice sets forth the Assistant Secretary's interpretation of section 1112(c)(1)(H) of Title I, public comment, pursuant to 5 U.S.C. 553(b)(A), is unnecessary.

(Catalog of Federal Domestic Assistance Number 84.010, Improving Programs Operated by Local Educational Agencies)

Dated: April 11, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

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federal register

Monday
April 22, 1996

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201 and 331

Sodium Labeling for Over-the-Counter Drugs and Labeling of Orally Ingested Over-the-Counter Drug Products Containing Calcium, Magnesium, and Potassium; Final and Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 331

[Docket No. 90N–0309]

RIN 0910–AA63

Drug Labeling; Sodium Labeling for Over-the-Counter Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule with opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is amending the general labeling provisions for over-the-counter (OTC) drug products to require that the sodium content of all OTC drug products intended for oral ingestion be included in labeling when the product contains 5 milligrams (mg) or more sodium per a single dose; require that all OTC drug products intended for oral ingestion containing more than 140 mg sodium in the labeled maximum daily dose bear a general warning that persons who are on a sodium-restricted diet should not take the product unless directed by a doctor; and provide for the voluntary use of certain terms (''sodium free,'' ''very low sodium,'' and ''low sodium'') relating to an OTC drug product's sodium content per labeled maximum daily dose. FDA is issuing this final rule in order to provide uniform sodium content labeling for all OTC drug products intended for oral ingestion (whether marketed under an OTC drug monograph, an approved application, or no application), and to provide for the voluntary use in OTC drug labeling of the same terms used to describe sodium content in food labeling.

DATES: This final rule is effective April 22, 1997; written comments by July 22, 1996.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of April 25, 1991 (56 FR 19222), FDA proposed to amend the general labeling provisions for OTC drug products to: (1) Require that the sodium content of all orally administered OTC drug products be included in labeling when the product contains 5 mg or more sodium per a single recommended dose; (2) require that orally administered OTC drug products containing more than 140 mg sodium in the maximum recommended daily dose be labeled with a general warning that persons who are on a sodium-restricted diet should not take the product unless directed by a doctor; and (3) provide for the voluntary use of certain descriptive terms relating to the OTC drug product's sodium content. FDA issued the notice of proposed rulemaking in order to provide uniform sodium content labeling for all orally administered OTC drug products, and to provide for the voluntary use in OTC drug labeling of the same descriptive terms as those used to describe sodium content in food labeling. To promote uniformity, the agency also proposed to delete the existing sodium labeling requirements in the final monograph for OTC antacid drug products (21 CFR part 331).

Interested persons were invited to file written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs (the Commissioner) and to file comments on the agency's economic impact determination by June 24, 1991. In the Federal Register of June 12, 1991 (56 FR 26946), FDA published a notice extending the comment period until July 24, 1991.

In response to the proposed rule, comments were received from five state governments, five manufacturers, two trade associations, one health professional association, one consumer organization, and FDA employees. No comments were received on the agency's economic impact determination.

Based on comments received, the agency is seeking comments from interested individuals on whether this final rule should be amended to include sodium content labeling for OTC rectal laxative, vaginal, dentifrice, mouthwash, and mouth rinse drug products. (See section I.B., comment 6 of this document.) Comments should be sent to the Dockets Management Branch (address above) by July 22, 1996.

II. The Agency's Conclusions on the Comments

A. General Comments

1. Most comments generally supported the proposal to include sodium content in OTC drug product labeling. A number of the comments stated that this labeling would be especially helpful to those individuals who must restrict their sodium intake, specifically the elderly. Several comments were opposed to the warning statement (see section II.D., comment 12 of this document).

2. Several comments supported uniform sodium labeling for foods and OTC drug products. One comment favored use of the descriptive terms ''sodium free,'' ''very low sodium,'' and ''low sodium'' for OTC drug products because food labeling has made these terms familiar to consumers on a low-sodium diet. However, the comment strongly opposed sodium warning labeling for OTC drug products, which it considered unnecessary and counterproductive (see also section II.D., comment 12 of this document). Another comment noted that the proposed sodium warning requirement for those OTC drugs containing over 140 mg sodium per maximum recommended daily dose is consistent with the labeling of foods. The comment noted that consumers are familiar with food labeling where a serving containing 140 mg or less sodium is considered ''low sodium.''

Another comment acknowledged the value of the proposed terms, provided they are consistent with those used in food labeling. However, the comment contended that basing drug labeling on ''per maximum daily dosage'' is inconsistent with food labeling which is based on ''per serving.'' The comment indicated that ''per dose'' labeling for drugs would be more consistent with the food labeling. The comment also noted that sodium labeling for foods has no warning threshold, while the proposed sodium labeling for OTC drug products does have a warning threshold. Another comment stated that drugs are not produced, consumed, or regulated like foods and thus should not be treated like foods for warning purposes.

FDA does not consider sodium labeling for OTC drug products to be either unnecessary or counterproductive. The agency has determined that such labeling is important and, wherever possible, should be comparable to that used for foods because consumers are already familiar with that labeling. While consumption patterns for drugs are not the same as those for foods, a substantial portion of daily sodium intake can come from OTC drugs, especially those used frequently, such as antacids, internal analgesics, and laxatives. Thus, the agency concludes that consumers

should be informed about the sodium content of drugs as well as foods.

The agency believes that ''maximum daily dose'' is the most appropriate basis for sodium descriptor labeling of OTC drug products, even though this basis differs from that for food labeling. Consumers may use multiple doses per day of many OTC drug products, and OTC drug product labeling informs consumers how much of a drug can be safely consumed daily. On the other hand, in many cases only a single serving of many different foods containing sodium is likely to be consumed in 1 day, although there is no upper limit on the number of servings that could be consumed. Thus, the consumption patterns vary for foods and for drugs. Because of food consumption patterns, nutritional labeling, including the descriptive terms used, is based on ''per serving,'' and the consumer must determine the total daily intake of each food. By contrast, OTC drugs have a safe consumption limit, and sodium labeling is more appropriately based on the labeled maximum daily dosage. The agency is using the term ''labeled maximum daily dosage'' in place of ''maximum recommended daily dosage'' to indicate that this dosage appears in the product's labeling.

Although the use of descriptive terms for sodium in the labeling of foods is based on the sodium content ''per serving'' rather than on a ''maximum daily intake,'' physicians usually monitor a patient's total daily sodium intake, not how much is consumed at each meal. When physicians instruct people to maintain a low-sodium diet, the physicians and individuals determine what foods to avoid to keep the daily sodium intake at an acceptable level. If an antacid is needed, total daily sodium intake can be reduced by using a calcium antacid rather than a sodium antacid.

The agency acknowledges that the basis for the descriptive terms for sodium labeling of OTC drug products is not the same as for food labeling. Nonetheless, the agency considers the two to be consistent. In general, the amount of sodium derived from a given OTC drug in 1 day is limited to the amount contained in the labeled maximum daily dosage, while that derived from a given food is often the amount of sodium in a single daily serving. Therefore, in this final rule for OTC drug product labeling the agency is providing for the voluntary use of descriptive terms for sodium that are based on the labeled maximum daily dose. (See also section II.E., comment 15 of this document.)

3. One comment expressed concern that descriptive terms based on sodium content using rounded-off numbers could be different from descriptive terms based on sodium content using actual numbers. The comment stated that potential compliance problems could arise if an FDA inspector examined the label of an affected product, multiplied the rounded-off, approximated sodium content number by the maximum recommended daily dose, and arrived at a number that did not fall within the range that correlates to the descriptive term on the label. The comment contended that calculations for descriptive terms should be done using actual sodium content numbers. The comment suggested that if discrepancies between actual and rounded-off numbers occur, reasonable documentation showing the method of calculation using the actual sodium content numbers should be accepted as sufficient to resolve the matter.

Another comment supported the first comment's position on the rounding-off rules. The comment mentioned the sodium content labeling regulation for food in § 101.9(g)(5) (21 CFR 101.9(g)(5)), which states: ''A food with a label declaration of calories, sugars, total fat, saturated fat, cholesterol, or sodium shall be deemed to be misbranded under section 403(a) of the act if the nutrient content of the composite is greater than 20 percent in excess of the value for that nutrient declared on the label.'' This regulation, referred to as the ''120 percent rule,'' provides an upper limit to the amount that sodium content may vary in food, above which a product would be deemed misbranded. The comment suggested that such a rule for the upper limit of variation for sodium labeling for OTC drugs, without an accompanying lower limit, would be reasonable because manufacturers will tend to declare as low a sodium content as is reasonable for the product. The comment contended that applying the ''120 percent rule'' to sodium labeling of OTC drugs would alleviate many of the compliance issues associated with providing a sodium content on the label that is different from the actual sodium content.

The agency has reconsidered the ''rounding-off'' provision and concludes that rounding-off could result in potential discrepancies between the actual and apparent sodium content, and may lead to consumer confusion. For instance, if the actual sodium content of a product is 8 mg per dosage unit and the product is to be taken four times daily, the labeled maximum daily dose is 32 mg. Because the sodium content is less than 35 mg (per labeled maximum daily dose), the term ''very low sodium'' could be used. However, if the actual dosage unit (8 mg) is rounded-off to 10 mg, the apparent labeled maximum daily dose for that product would be 40 mg and the descriptive term would be ''low sodium.''

Food labeling regulations provide for rounding-off the sodium content to the nearest 5 or 10 mg sodium per serving. Because most food products contain naturally occurring sodium, at least in small amounts, some variation in sodium content is expected. On the other hand, most OTC drug products are manufactured and the amount of sodium in products can be strictly controlled. Thus, the sodium content of OTC drug products is expected to be less variable than that of foods. The agency concludes that the sodium content of OTC drug products can readily be disclosed in mg per dosage unit, without rounding-off. As a result, the agency considers the ''120 percent rule'' provided for in § 101.9(g) of the food regulations unnecessary for OTC drug products. Therefore, the agency is revising proposed § 201.64(b) in this final rule (21 CFR 201.64(b)) to eliminate the 5 mg and 10 mg rounding-off provision. The final rule requires that the sodium content be rounded-off to the nearest whole number, whatever the content per dosage unit.

B. Comments on the Scope of Sodium Labeling

4. Three comments disagreed with the agency's ''across-the-board'' sodium warning requirement for OTC drugs, stating that this method ignores the OTC drug review's category-by-category mechanism for considering warnings. One comment added that if a warning statement is required, the agency should consider the product's pharmacologic class, its use patterns, and the currently required labeling of particular active ingredients. Another comment contended that sodium warnings should only be required where a need has been shown for a particular category of OTC drugs.

FDA disagrees with the comments, which provided no scientific basis for their concerns. Although the agency generally considers OTC drug labeling on a category-by-category basis, FDA has required certain ''across-the-board'' labeling during the course of the OTC drug review, such as the pregnancy-nursing warning in § 201.63 (21 CFR 201.63). Thus, an ''across the board'' approach is consistent with past agency regulatory actions. FDA has determined that a certain level (140 mg) of sodium

may present a potential safety problem, regardless of the source of the sodium. Therefore, the agency sees no reason to consider the warning on a category-by-category basis, which would result in a lack of uniformity in product labeling until the agency's evaluation of each drug category is completed. The agency's ''across-the-board'' approach to sodium labeling is not based on various drug categories; it is based on sodium being present in any OTC drug product.

5. Two comments agreed with the proposal to include both active and inactive ingredients when labeling/calculating total sodium content in an OTC drug product. One comment added that all recommended diluents should also be included in the sodium content labeling.

FDA appreciates the comments' concurrence. Including all sources of sodium in the total sodium content labeling enables consumers to determine the total amount of sodium consumed, regardless of the source. Diluents in OTC drug products are inactive ingredients and would be covered by this rulemaking. Under § 201.64(b) of this final rule, the agency is requiring the sodium content labeling of OTC drug products to include both active and inactive ingredients, which would include any diluents used in these products.

6. Several comments contended that the scope of covered products should be limited to products intended for ingestion rather than orally administered products. The comments argued that ''orally administered'' OTC drug products include dentifrices and mouthwashes that are not ingested, but rather expectorated. The comments pointed out any absorption of sodium from these products is minuscule.

The agency agrees that certain OTC drug products, such as dentifrices and mouthwashes, although orally administered, need not be covered by this rulemaking. These products are not intended to be ingested by the user, and the agency does not have sufficient information on the absorption of sodium when these products are used to warrant a labeling requirement at this time. However, orally administered gum or lozenge forms of OTC drug products intended for either partial or complete ingestion are covered by this rule. Therefore, in this final rule the agency is changing the language in § 201.64(a), (c), and (d) from ''orally administered OTC drug products'' to ''OTC drug products intended for oral ingestion,'' and is adding the following sentence to § 201.64(a): ''OTC drug products intended for oral ingestion include gum and lozenge dosage forms, but do not include dentifrices, mouthwashes, or mouth rinses.''

The agency notes that some OTC laxative and vaginal drug products intended for rectal or vaginal administration can contain very high levels of sodium from both active and inactive ingredients. Significant amounts of some of these products may be absorbed. At this time, the agency does not have sufficient information on the absorption of sodium from these products to warrant a labeling requirement.

The agency is seeking comments from interested individuals on whether this final rule should be amended to include sodium content labeling for OTC rectal laxative, vaginal, dentifrice, mouthwash, and mouth rinse drug products. Comments should be sent to the Dockets Management Branch (address above) by July 22, 1996.

7. Two comments suggested requiring sodium content labeling for prescription drugs as well as OTC drug products. The comments stated that this information was important for the elderly and for patients receiving more than one drug product. One comment added that physicians treating patients on sodium restricted diets need to be aware of the amount of sodium in prescription products.

The agency agrees that sodium content labeling of prescription drugs would be beneficial. This information would be helpful to physicians, pharmacists, and consumers so they can make informed decisions. However, prescription drug labeling is outside the scope of this rulemaking for OTC drug products. Currently, the agency is actively considering the comments' recommendation for prescription drug labeling and is appraising whether the problem can best be dealt with via a regulation, guidance document, or another approach. At this time, the agency encourages sodium content labeling of prescription drugs on a voluntary basis.

C. Comments on Sodium Content Labeling

8. One comment recommended that any level of sodium in OTC drug products be listed on the label to enable consumers to make their own decision as to what is an insignificant amount of sodium in relation to their diet. Another comment suggested that the minimum level of sodium requiring labeling be increased from greater than 5 mg per maximum recommended dose to greater than 70 mg per maximum recommended daily dose. The comment mentioned that data generated by the Food and Nutrient Board indicate that 4,000 to 5,800 mg sodium are consumed per capita per day. Therefore, the sodium consumed in medications provides only a minimal amount and does not pose the same potential risk as food. The comment reasoned that 70 mg is only 5 percent of the Food and Nutrient Board's recommended daily intake of 1.4 grams (g) sodium for people on sodium restricted diets. The comment contended that this amount of sodium would not pose a risk to consumers on a low-sodium diet because 70 mg does not contribute a significant amount to their daily intake.

The agency has considered the comments' suggestions and has decided to use 5 mg of sodium per maximum recommended dose as the basis for including sodium content in the labeling of OTC drug products. As discussed in section II.E., comment 13 of this document, the agency considers a sodium level below 5 mg per dose to be physiologically insignificant. Thus, the agency is not requiring any labeling if the amount of sodium in the product is below 5 mg.

The agency considers a 5 mg maximum recommended dose standard a reasonable approach, based in part on experience with OTC antacid drug product labeling. Although the agency believes a 70 mg labeled maximum daily dose standard is not unreasonable, a 5 mg maximum labeled dose is consistent with the antacid monograph, which has been in effect since 1974. As discussed in the proposed rule, the existing requirement for OTC antacid drug products in § 331.30(f) (21 CFR 331.30(f)) provides that the labeling include sodium content per dosage unit if it contains 5 mg or more. This labeling requirement for OTC antacids has been in effect for over 20 years, and consumers are familiar with that approach. The sodium labeling requirements in this final rule, based on sodium content per dose, are similar to those in the antacid monograph.

The 5 mg approach will also result in more informative labeling than the 70 mg approach, because more products will be labeled with sodium content. More than 14 doses per day of a product containing less than 5 mg sodium per dose would be required to exceed 70 mg sodium per labeled maximum daily dose. Almost all OTC drug products are not taken that often. Thus, more products will likely require sodium content labeling based on 5 mg per dose than would result using 70 mg per labeled maximum daily dose as the basis. (See also section I.E., comment 13. of this document)

9. Three comments endorsed the agency's proposal to express the sodium

content of an OTC drug product in mg per dosage unit. The first comment suggested that those monographs now stating sodium labeling in milliequivalents (mEq) could be amended to mg. The comment stated that sodium declaration is more useful when provided in terms of dosage units (such as a teaspoonful or a tablet) than in terms of the recommended dosage amount, because the recommended dosage amount can vary. The second comment considered the option of having the sodium content declaration based on the recommended daily dose, but rejected that option because studies have shown that consumers frequently take more than the recommended daily dosage for OTC drug products. The third comment stated that the sodium content declaration should include the total sodium in both mg and mEq per dosage unit, average daily intake, and maximum recommended daily intake, if applicable.

The agency appreciates the comments' endorsements of the requirement that sodium content be listed in mg per dosage unit. The agency does not believe that listing some or all of the options (e.g., in both mg and mEq per dosage unit, per average daily intake, and per maximum daily intake) would be useful, because these multiple numbers would tend to confuse consumers and would unnecessarily clutter the label. Further, the agency believes consumers are more familiar with the term ''mg'' as used in food labeling than the term ''mEq.'' Therefore, in this final rule the agency is using only mg per dosage unit for declaring the sodium content of OTC drug products.

As one comment noted, other OTC drug monographs address sodium labeling. These monographs will be amended to delete specific sodium labeling requirements so that the sodium labeling of all OTC drug products will appear in a single regulation. In the proposed rule for sodium labeling, the agency proposed to delete the existing requirements for OTC antacid drug products that appear in § 331.30(c)(5) and (f) (56 FR 19224 to 19225). The agency is finalizing that in this final rule. The sodium labeling requirements proposed in § 334.50(b)(5) and (b)(8) of the tentative final monograph for OTC laxative drug products (50 FR 2124 at 2153, January 15, 1985) and proposed in § 343.50(c)(1)(viii)(A) and (c)(1)(viii)(B) and § 343.50(c)(2)(viii)(A) and (c)(2)(viii)(B) of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (53 FR 46204 at 46256 to 46257, November 16, 1988) will be deleted when the final monographs for those drug classes are issued in a future issue of the Federal Register.

10. One comment requested that the agency require sodium content information to be presented in a predetermined place on the OTC drug product label, such as the ingredients list. The comment gave an example of a product containing a level of sodium requiring a warning while, at the same time, its label prominently displayed ''75% less sodium than (a comparable product)'' under active ingredients. The actual sodium content was listed at the end of a long paragraph of warnings and would make the product off-limits to an individual on a sodium-restricted diet. The comment contended that such labeling could potentially mislead consumers.

FDA agrees that the sodium content of an OTC drug product should be expressed at a specific location on the product label. By designating a specific location, consumers can find the sodium content of the product more quickly and with less confusion because the information will appear in the same location in the labeling of all orally ingested OTC drug products. The agency believes the most logical place for the sodium content labeling is at the end of the ingredients section. Further, the sodium content should be listed on a separate line after the heading 'Sodium Content' so that it is easily recognized by the consumer. Accordingly, the agency is amending proposed § 201.64(b) in this final rule to add a sentence that states: ''The sodium content per dosage unit shall be listed on a separate line after the heading 'Sodium Content' as the last statement in the ingredients section.''

11. One comment suggested that product labeling state a recommended safe range of sodium intake to provide consumers with a baseline for the control of sodium consumption.

The comment's request for labeling to advise consumers of a safe level of sodium is impractical because different medical and physiological problems require different levels of sodium restriction. Consumers should consult with physicians or other health professionals to determine the optimum levels of sodium consumption for their particular conditions. Thus, FDA is not requiring that the labeling state a recommended safe range of sodium intake at this time.

D. Comments on Sodium Warning Labeling

12. Two comments contended that the agency's proposal to include a sodium warning in the labeling of OTC drug products when the maximum recommended daily dose contains more than 140 mg of sodium is inconsistent with the labeling of foods, which does not require warnings at any level. The comments questioned the choice of 140 mg per maximum recommended daily dose as the level that triggers the sodium warning. The comments argued that the warning may unnecessarily confuse or alarm consumers. The first comment contended that the choice of 140 mg is completely arbitrary and questioned its scientific relevance. The comment stated that there is no evidence that consumers derive a significant percentage of sodium intake from OTC drug products.

The second comment stated that 140 mg of sodium is markedly lower than the level required to effect an increase in blood pressure. Asserting that OTC drugs are intended for short term use, the comment said intermittent use of such products will not affect the long-term benefit of a low-sodium diet because the resulting increase in blood pressure is rapidly reversed upon discontinuation of the product. The comment contended that the sodium warning, if required, should be based on ''per dose'' or ''per dosage unit,'' rather than ''maximum recommended daily dose,'' because a single dose more closely resembles a single serving, the unit used for food labeling. The comment also contended that the readability of the label will be compromised as the label becomes more cluttered, and that additional warnings of questionable value will only reduce the impact of other warnings on the label.

Noting that the sodium warning represents a familiar cautionary signal for consumers, a third comment stated that sodium-containing drugs could contribute a significant percentage of the daily sodium intake for some individuals. The comment mentioned that 1,000 mg of sodium per day is common for sodium restricted diets and that 140 mg of sodium represents 14 percent of the daily allowance for such diets. Several comments argued that sodium warnings should be considered on a case-by-case basis. (See section II.B., comment 4 of this document.)

FDA is establishing, where possible, uniformity in labeling between foods and OTC drug products. FDA recognizes that OTC drug products containing greater than 140 mg of sodium require a warning, while foods do not require a warning at any level of sodium. The labeling requirements for drugs need to be somewhat different from those for foods because of the differences in

consumption patterns. (See section II.A., comment 2 of this document.) The agency considers the labeling approach in this final rule appropriate, even though it is not the same as that for foods in all respects.

The choice of 140 mg as the level of sodium above which a warning should be required is not, as one comment contended, completely arbitrary. In a survey conducted by the agency and discussed in the final rule for declaration of sodium content and label claims for foods on the basis of sodium content (49 FR 15510 at 15519, April 18, 1984), it was found that over 50 percent of the foods surveyed contained less than 140 mg of sodium per serving. Thus, the agency determined that a substantial portion of the food supply is eligible to bear the ''low sodium'' descriptive term. By establishing 140 mg as an upper limit for the term ''low sodium'' for OTC drug products and requiring a warning for products containing sodium above that level, consumers can more easily monitor their total daily sodium intake. Requiring a warning for products below the 140 mg level could be confusing to consumers because some products containing the term ''low-sodium'' could, at the same time, contain the warning. FDA believes that a warning requirement for OTC drug products that contain more than 140 mg sodium would not unnecessarily confuse or alarm consumers, as two comments suggested. As another comment stated, the sodium warning represents a familiar cautionary signal for consumers. The agency concludes that the warning requirement will be welcomed by those who want to monitor their sodium intake.

The agency considers a numeric value that can be readily converted from mg to mEq useful for dietary planning, because physicians and dietitians sometimes calculate sodium in mEq rather than mg when prescribing sodium restrictions (49 FR 15510 at 15519). One mEq of sodium is equivalent to 23 mg. Thus, the 140 mg sodium level is approximately 6 mEq, allowing for easy calculation. The comments did not provide any evidence that warnings based on some other level of sodium would be more informative or useful to consumers than the 140 mg level proposed by the agency.

The agency agrees with one comment's contention that an OTC drug containing 140 mg of sodium is well below the level needed to affect blood pressure. However, it is the total amount of sodium consumed from all sources, both foods and drugs, that must be considered. As one comment pointed out, 140 mg represents 14 percent of a common (1,000 mg) sodium-restricted diet. The agency considers the level of sodium found in some OTC drug products, such as antacids, to be significant for people on low- sodium diets, especially if the drug product is taken in multiple daily doses as most antacids are. While many consumers do not derive significant amounts of sodium from OTC drug products, many others do. The agency concludes that it is important to provide information to those consumers who can be adversely affected by the sodium content of OTC drug products.

The agency disagrees with one comment's suggestion that the warning, if required, should be based on ''per dose,'' rather than on ''maximum recommended daily dose.'' Drug products are often taken in multiple doses in 1 day, while many different foods are more likely to be consumed only once a day. Thus, by equating one serving of food to one dose of drug, the intake per day for a drug would be a multiple of the amount in one dose, while the intake per day for a food may be only the amount found in a single serving of food. Because low-sodium diets are based on the total amount of sodium consumed in 1 day, the agency believes it is appropriate to base the sodium warning threshold on the labeled maximum daily dose.

The agency shares the comment's concern about readability of the label and avoiding unnecessary clutter. However, the agency considers a warning for OTC drug products containing appreciable amounts of sodium important to alert those consumers who wish or need to minimize their sodium intake. Therefore, in this final rule the agency is providing for a mandatory warning for all OTC drug products intended for oral ingestion containing more than 140 mg sodium per labeled maximum daily dose.

E. Comments on Use of Descriptive Terms in Sodium Labeling

13. One comment supported the intent of the sodium labeling proposal, but asserted that the term ''sodium free'' should be prohibited on drugs containing any sodium. The comment stated that labeling should be reliable and not mislead consumers as to the sodium content of OTC drug products. The comment contended that most consumers expect products labeled as ''sodium free'' to contain no sodium, but this would not be true if ''sodium free'' products were allowed to contain up to less than 5 mg of sodium. The comment mentioned health concerns about high blood pressure related to sodium, and argued that inaccurate labeling adversely impacts consumer purchasing decisions. The comment acknowledged that agency regulations for food allow products with less than 5 mg of sodium per serving to be labeled as ''sodium free.'' The comment requested that the existing food regulations and the proposed OTC drug regulations be modified to prohibit the use of the term ''sodium free'' on food and drug products containing any sodium.

The agency has considered the comment's request and concludes that the term ''sodium free'' should only be used for products containing ''0 mg'' sodium, as defined in this final rule. Thus, the level of sodium in OTC drug products for which the term ''sodium free'' proposed in § 201.64(d) may be used is being changed from ''less than 5 milligrams per maximum recommended daily dose'' to ''0 milligrams per labeled maximum daily dose'' in this final rule. The agency's basis for the term ''sodium free'' in the proposed rule for sodium labeling of OTC drug products (56 FR 19222 at 19223) was based on the sodium labeling regulation for foods in § 101.61(b)(1)(i) (21 CFR 101.61(b)(1)(i)), which provides for the voluntary use of ''sodium free'' in the labeling of foods containing less than 5 mg sodium per serving. Most foods naturally contain at least trace amounts of sodium and the amount of sodium in a given food can vary. The agency concluded that the 5 mg sodium level for food is, practically speaking, a nonsignificant amount of dietary sodium.

However, in contrast to foods in which sodium may occur naturally, the amount of sodium in OTC drug products can be controlled during the manufacturing process. With today's analytical methodology, sodium can be accurately measured in parts per million. Thus, the agency believes consumers expect labels of drug products to accurately and reliably convey the level of ingredients in the product. While there may be no need to inform consumers of minute amounts of sodium (e.g., this final rule requires sodium content labeling only for those products containing 5 or more mg sodium per recommended dose), there is also no reason to label a product as ''sodium free'' when, in fact, it contains more than ''0 mg'' of sodium, as defined in this final rule.

In § 201.64(b) of this final rule, sodium content labeling is rounded-off to the nearest whole number as mg per dosage unit. Thus, a product containing less than 0.5 mg sodium per dosage unit could be labeled as ''0 mg'' sodium and

a product containing more than 0.5 mg and less than 1.5 mg sodium could be labeled as ''1 mg'' sodium. The agency believes that the term ''sodium free'' should not be used in the labeling of OTC drug products except for those products that contain ''0 mg'' sodium per labeled maximum daily dose. Thus, a product containing 0.4 mg sodium per tablet or teaspoon (rounded-off to 0) with labeling to take one tablet or teaspoon daily may use the descriptive term ''sodium free'' in its labeling. However, when the recommended dose in an OTC drug monograph provides for more than one dosage unit per day, e.g., the directions advise to take one or two tablets (or teaspoons) or to take two tablets (or teaspoons), the same product containing 0.4 mg sodium (rounded-off to 0) per tablet or teaspoon could not use the term ''sodium free'' because the labeled maximum dose contains 0.8 mg (rounded-off to 1). The labeling set forth in this final rule also eliminates the possibility that products labeled ''sodium free'' will at the same time be labeled with a sodium content greater than ''0 mg,'' a potential basis for consumer confusion.

Similarly, the agency determined that the term ''alcohol free'' may not be used in the labeling of OTC drug products that contain any alcohol (see the Federal Register of March 13, 1995, 60 FR 13590). In § 328.50(e) (21 CFR 328.50(e)) the agency requires: ''For a product to state in its labeling that it is 'alcohol free,' it must contain no alcohol (0 percent).''

Therefore, in this final rule, the agency is providing under § 201.64(d) for the voluntary use of the term ''sodium free'' if the amount of sodium in the labeled maximum daily dose is ''0 mg.'' The agency recognizes that this position differs from that for nutrition labeling for foods, but believes that, for OTC drug product labeling, it is more appropriate. Any request to change the existing ''sodium free'' labeling for food products in § 101.61(b)(1)(i) should be made in a citizen petition, in accord with § 10.30 (21 CFR 10.30).

14. One comment recommended a relative print size limit on descriptive terms for sodium content to ensure that the primary emphasis of the OTC drug product label remains on the medical indication of the product. The comment stated that a consumer's foremost reason for purchasing an OTC drug product should be based on its medical indication, not on its sodium content.

FDA agrees with the comment that a relative print size limit on descriptive terms would be useful to help ensure that consumers are not distracted from the medical purpose of the product. The food regulations (21 CFR 103.13(f)) provide that a nutrient content claim shall be in a type size no larger than two times the statement of identity and shall not be unduly prominent in type style compared to the statement of identity. The agency believes that a related approach should also be used for OTC drug products.

The agency does not believe that the print size of the descriptive terms for sodium labeling for OTC drug products should be any larger than the print size of the statement of identity. Allowing larger print size (e.g., two times the size of that for the statement of identity, as for nutrient claims) could result in label clutter or misplaced emphasis. OTC drug products are generally marketed in smaller packages than foods and, thus, have less label space available than food products. Accordingly, the agency is adding in § 201.64(h) of this final rule the following statement:

The terms ''sodium free,'' ''very low sodium,'' and ''low sodium'' shall be in print size and style no larger than the product's statement of identity and shall not be unduly prominent in print size or style compared to the statement of identity.

15. One comment stated that descriptive terms in sodium labeling of OTC drug products will help improve consumer understanding of the message, and that the terms must be in simple language for lay persons to understand. Another comment contended that voluntary descriptive terms are unnecessary, often confusing, and potentially misleading. The comment suggested the proposed terms ''sodium free,'' ''very low sodium,'' and ''low sodium'' could translate into ''healthy'' and thereby become misleading. Further, the comment questioned using these descriptive terms in conjunction with the required warning, arguing that an inconsistent jump occurs from 140 mg (maximum daily dosage as ''low sodium'') to 141 mg (maximum daily dosage requiring a warning). The comment concluded that these two diverse measurements would prime the consumer for confusion.

The agency believes the voluntary descriptive terms ''sodium free,'' ''very low sodium,'' and ''low sodium'' are simple for consumers to understand. The terms are not intended to convey the exact level of sodium in a product, only an approximation. The comment did not provide any evidence that consumers might misinterpret these terms as meaning ''healthy,'' specifically as they relate to OTC drug product labeling. The agency recognizes that the jump for the maximum daily dose from 140 mg, representing ''low sodium,'' to 141 mg, requiring a warning, is not ideal. However, many standards have a set criterion, above or below which some action is triggered. The agency concludes there is no evidence to believe that these preset levels will lead to consumer confusion. (See also section II.A., comment 2 of this document.)

F. Comments on the Sodium-Hypertension Relationship

16. One comment considered it inappropriate for the agency to adopt regulations that address only sodium intake without reference to the anion (chloride). The comment urged that FDA regulations reflect the ''emerging learning that the chloride ion is a necessary causative element in salt-induced hypertension.'' The comment referenced 16 studies (Ref. 1) to show that both the sodium and chloride ions play roles in inducing hypertension in some persons, and that other sodium salts do not induce hypertension.

The comment stated that a report by the National Academy of Sciences/National Research Council (Ref. 2) on diet and health correlated dietary ''salt'' or ''sodium chloride,'' rather than ''sodium,'' with hypertension. The comment added that recent medical surveys reflect the growing understanding that both the sodium and the chloride ions play roles in causing salt-sensitive hypertension. For example, the comment cited the Yearbook of Medicine (Ref. 3) as stating that ''it remains to be established that any commonly ingested sodium salt other than sodium chloride can increase blood pressure in patients with salt-sensitive essential hypertension.''

A second comment also contended that the effects of sodium on blood pressure are limited to sodium in the form of sodium chloride. The comment provided literature references (Ref. 4) suggesting that when the accompanying anion was other than chloride, sodium intake did not affect blood pressure. The comment mentioned that sodium in drug products is usually present as the benzoate, phosphate, or citrate salt, and contended that there is no clear evidence that the sodium content of the drug presents a hazard sufficient to deem the proposed warning appropriate.

One comment, which approved of sodium content labeling but was opposed to the warning, mentioned a submission made in response to FDA's request for scientific data and information to determine if a scientific basis exists for health claims relating to sodium and hypertension (Ref. 5). In that submission, the comment concluded that there are no well-

documented scientific data supporting a clear relationship between dietary sodium and hypertension applicable to the general public. The comment claimed that recent scientific evidence shows that a reduced sodium diet does not reduce the risk of hypertension in healthy individuals, but that it may contribute to heart disease and additional health risks. The comment concluded that appropriate scientific evidence does not exist to support any general health claims based on a relationship between sodium and hypertension.

The comment subsequently provided current articles and reviews on the salt-blood pressure relationship (Ref. 6). The comment emphasized one article (Ref. 7) that addressed the question of whether and how sodium chloride intake influences blood pressure. The authors stated that past literature was interpreted as ''demonstrating a strong relationship between salt intake and blood pressure, a substantial benefit to all hypertensive persons of reduced salt intake, and a relatively low risk to society of promulgating this policy.'' Based on more recent studies, the authors suggested that only a portion (30 to 40 percent) of adults are salt (sodium chloride) sensitive and that salt sensitivity is linked to other cations and anions in the diet (e.g., adequate potassium and calcium intake may protect against salt sensitivity). The comment contended that because of new and mounting evidence that low-sodium diets may present some risk to individuals who are not salt-sensitive hypertensives, FDA should not require the sodium warning. Although opposed to the warning, the comment agreed that some individuals need to monitor their sodium intake.

The agency agrees with the comments that the sodium ion is not the only influence on hypertension. The question of whether or not the chloride ion is necessary for sodium to increase blood pressure is an academic issue. Even if chloride or another ion in addition to sodium is necessary to elevate blood pressure, hypertension is not the sole reason for this rulemaking. There are other conditions for which physicians recommend low-sodium diets. For instance, sodium bicarbonate reportedly exacerbates congestive heart failure. While sodium chloride is the primary source of sodium in the general population, sodium bicarbonate and other sodium-containing ingredients can account for a considerable amount of sodium in OTC drug products. Sodium labeling is not aimed specifically at patients with hypertension, but is intended to benefit all people who need or wish to monitor their sodium intake for whatever reason. The comments made no mention of the effect of sodium on any aspects of health other than hypertension.

This rulemaking does not state a causal relationship between sodium and hypertension, but rather provides for sodium content labeling and recommends that individuals on a low-sodium diet consult a physician if daily doses of greater than 140 mg sodium are to be ingested. This final rule provides that the labeling of OTC drug products include the total sodium content (including both active and inactive ingredients). It is reasonable for consumers on low-sodium diets to consult with their physician before taking OTC drug products with a high sodium content. The physician can put the variables into perspective and decide whether specific OTC drug products should be used. Alternative products containing less or no sodium may be available.

The agency has previously considered the relationship of sodium and hypertension and agrees that this is a complex subject that deserves more study. The agency recognizes that there are differences of opinion on this subject. Nonetheless, in a final rule on food labeling (health claims and labeling statements; sodium and hypertension), the agency stated ''based on the totality of the scientific evidence, there is significant agreement among qualified experts that diets high in sodium are associated with high blood pressure'' (58 FR 2820 at 2822, January 6, 1993). The agency stated that some studies indicate that sodium chloride and other sodium salts have distinct effects on blood pressure (58 FR 2829). Sodium chloride is the major source of sodium in foods and most studies investigating the effect of sodium on hypertension have involved either increasing or decreasing sodium chloride intake. The agency acknowledged that if it is true that sodium chloride, and not sodium, is implicated in high blood pressure, products containing other sources of sodium may be incorrectly considered to promote high blood pressure. The agency allowed the optional term ''salt'' to be used in addition to ''sodium'' in health claims in food labeling. However, the agency noted there is not significant scientific agreement that only sodium chloride affects blood pressure (58 FR 2829). Therefore, the basis for health claims relating to hypertension in that final rule was sodium content, not sodium chloride content.

FDA recognizes that not all individuals need to or should reduce their sodium intake. Sodium consumed from OTC drug products alone may, for most individuals, be insignificant and may not cause a significant increase in blood pressure. However, OTC drug products are not a consumer's sole source of sodium. All sources of sodium must be taken into account when monitoring daily intake. Even though, as one comment suggested, some individuals may need counseling from physicians or dietitians in order to maintain a strict low-sodium diet, the agency considers the sodium warning for OTC drug products helpful even for those individuals. This rulemaking does not recommend specific levels of sodium intake for the general population or for individuals h specific conditions. However, for those who need or want to monitor their sodium intake, the agency concludes that sodium content and warning labeling for OTC drug products is useful.

References

(1) Comment No. C00017, Docket No. 90N–0309, Dockets Management Branch.

(2) Committee on Diet and Health, National Academy of Sciences/National Research Council (U.S.), Diet and Health: Implications for Reducing Chronic Disease Risk, National Academy Press, Washington, 1989.

(3) D. E. Rogers et al., editors, Yearbook of Medicine, Yearbook Medical Publishers, Inc., Chicago, pp 589–590, 1989.

(4) Comment No. C00014, Docket No. 90N–0309, Dockets Management Branch.

(5) Comment No. C00007, Docket No. 91N–0095, Dockets Management Branch.

(6) Comment No. SUP 1, Docket No. 90N–0309, Dockets Management Branch.

(7) Muntzel, M., and T. Drueke, ''A Comprehensive Review of the Salt and Blood Pressure Relationship,'' American Journal of Hypertension, 5:1S–42S, 1992.

III. Summary of Significant Changes from the Proposed Rule

1. In this final rule, the agency is revising § 201.64(b) to eliminate the 5-mg rounding-off provision. The final rule requires that the sodium content be rounded-off to the nearest whole number, whatever the content, per dosage unit. (See section II.A., comment no. 3 of this document.)

2. The agency is changing the language in § 201.64(a) and (c) through (f) from ''orally administered OTC drug products'' to ''OTC drug products intended for oral ingestion,'' and is adding the following sentence to § 201.64(a): ''OTC drug products intended for oral ingestion include gum and lozenge dosage forms, but do not include dentifrices, mouthwashes, or mouth rinses.'' (See section II.B., comment no. 6 of this document.)

3. The agency is adding the following in § 201.64(b): ''The sodium content per

dosage unit shall be listed on a separate line after the heading 'Sodium Content' as the last statement in the ingredients section.'' (See section II.C., comment no. 10 of this document.)

4. Proposed § 201.64(d) provided for the voluntary use of the term ''sodium free'' for products containing ''less than 5 milligrams'' of sodium in the maximum recommended daily dose. This final rule allows for the use of the term ''sodium free'' only for those products containing ''0 mg'' of sodium in the labeled maximum daily dose. The agency is revising the example in proposed § 201.64(d) to clarify the basis for use of descriptive terms, taking into account the rounding-off provision for the sodium content in mg per dosage unit to the nearest whole number. (See section II.A., comment no. 3; section II.E., comment no. 13; and part III.1 of this document.)

5. The agency has added a provision in § 201.64(h) of this final rule limiting the print size and style of the ''sodium free,'' ''very low sodium,'' and ''low sodium'' terms to no larger than and not unduly prominent in comparison to the product's statement of identity. (See section II.E., comment no. 14 of this document.)

IV. The Agency's Final Conclusions on Sodium Labeling

FDA believes that the public interest in and the public health consequences of sodium intake have produced a need for more informative and consistent sodium content labeling information on drugs and foods. This is true for individuals with hypertension, heart failure, or other conditions who must monitor their sodium intake.

To establish uniform content declarations, warnings, and descriptive terms for sodium in foods and OTC drug products, the agency is implementing the following requirements for OTC drug products intended for oral ingestion: (1) The product must have a sodium content declaration if it contains five mg or more of sodium per single labeled dose (which may involve one or more dosage units, e.g., tablets, teaspoons). (2) The product must bear a sodium warning if it contains more than 140 mg (about 6 mEq) of sodium in the labeled maximum daily dose. This warning states: ''Do not use this product if you are on a sodium-restricted diet unless directed by a doctor.'' (3) Manufacturers may use the following descriptive terms for sodium content: ''Sodium-free'' for products containing 0 mg sodium in the labeled maximum daily dose; ''very low sodium'' for products containing 35 mg or less; and ''low sodium'' for products containing 140 mg or less. The requirement for a sodium content declaration is based on the number of mg of sodium in one dose, while the requirement for a warning statement and the use of the optional descriptive terms are based on the number of mg of sodium in the labeled maximum daily dose.

Because consumers and health professionals are accustomed to computing sodium intake in mg (49 FR 15510 at 15530), and to provide for uniformity in the declaration of sodium content labeling for foods and OTC drug products intended for oral ingestion, the term ''milligrams'' or the abbreviation ''mg'' is used to designate the sodium content of OTC drug products. The total sodium content (including both active and inactive ingredients), in mg per dosage unit, should be rounded-off to the nearest whole number. If the single recommended dose (one or more dosage units) of the product contains 5 mg or more of sodium, a declaration of sodium content expressed in mg per single dosage unit (e.g., tablet, teaspoon) is required to be listed on a separate line after the heading ''Sodium Content'' as the last statement in the ingredients section.

The new sodium labeling requirements apply to all OTC drugs intended for oral ingestion, whether marketed under an OTC drug monograph, an approved application, or no application. The existing requirements relating to sodium labeling in § 331.30(c)(5) and (f) of the final monograph for OTC antacid drug products are being deleted. The proposed sodium labeling requirements being considered in other ongoing OTC drug rulemakings will be deleted when final monographs for those drug classes are issued in a future issue of the Federal Register.

V. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291 was discussed in the proposed rule (56 FR 19222 at 19225). No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking. Executive Order 12291 has been superseded by Executive Order 12866.

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, thus, 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. With this final rule, one-time label modification costs associated with changing product labels will be incurred by some manufacturers. FDA estimates those costs to total less than $500,000 for the entire industry. This projected cost is based on estimates of the number of products that will be affected by this final rule, the number of distinct label changes that will be required, and the cost of printing new labels.

OTC antacid drug products are the primary products having a significant number of orally administered active ingredients containing sodium. The monograph for those products has been in effect since 1974 and these products currently bear sodium labeling. For these products, the labeling change will involve a slight change in wording, resulting only in a minor cost to have a labeling revision printed. In almost all cases, manufacturers can routinely revise labeling at the next printing so that minimal costs should be incurred. Manufacturers will have up to 12 months after publication of this final rule in the Federal Register to revise their product labeling. FDA anticipates that most antacid drug products would undergo a label printing within a 12-month period. Because these OTC antacid drug products already bear sodium labeling warnings, the agency may extend the time period beyond 12 months, if necessary, upon request, for the revised wording to be implemented.

Other OTC drug products (i.e., laxatives and internal analgesics) having a few sodium-containing active ingredients affected by this final rule previously were not required to bear sodium labeling. These products will need to have new labels printed to incorporate the sodium labeling. These products must also have new labeling printed in the future when the final monographs for OTC laxative and internal analgesic drug products are published. This again involves one-time label modification costs. For products undergoing such labeling changes, the incremental costs attributable to this rule for sodium labeling will be

negligible. A limited number of OTC laxative and internal analgesic drug products contain sodium-containing active ingredients. Tentative final monographs with sodium labeling requirements for these products have been published, and no adverse comments concerning economic impacts have been received in response to the proposals. The agency is not aware of any significant number of other OTC drug products that will be affected due to the sodium content of inactive ingredients. Use of the descriptive terms for sodium set forth in this rulemaking is voluntary. Therefore, any implementation of these terms could be done by a manufacturer at any time that new labeling is ordered. The agency finds that the cost of adding one of these descriptive terms to the product's labeling will be negligible. Accordingly, 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.

VI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Rather, the warning statement and the sodium terms are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)). The sodium content per dosage unit is product formulation information that manufacturers have on hand as part of their usual and customary business practice.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) 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.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 331

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, title 21 of the Code of Federal Regulations is amended in parts 201 and 331 as follows

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg-360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. New § 201.64 is added to subpart C to read as follows:

§ 201.64 Sodium labeling.

(a) The labeling of over-the-counter (OTC) drug products intended for oral ingestion shall contain the sodium content per dosage unit (e.g., tablet, teaspoonful) if the sodium content of a single recommended dose of the product (which may be one or more dosage units) is 5 milligrams or more. OTC drug products intended for oral ingestion include gum and lozenge dosage forms, but do not include dentifrices, mouthwashes, or mouth rinses.

(b) The sodium content shall be expressed in milligrams per dosage unit and shall include the total amount of sodium regardless of the source, i.e., from both active and inactive ingredients. The sodium content shall be rounded-off to the nearest whole number. The sodium content per dosage unit shall be listed on a separate line after the heading ''Sodium Content'' as the last statement in the ingredients section.

(c) The labeling of OTC drug products intended for oral ingestion shall contain the following warning under the heading ''Warning'' (or ''Warnings'' if it appears with additional warning statements) if the amount of sodium present in the labeled maximum daily dose of the product is more than 140 milligrams: ''Do not use this product if you are on a sodium-restricted diet unless directed by a doctor.''

(d) The term ''sodium free'' may be used in the labeling of OTC drug products intended for oral ingestion if the amount of sodium in the labeled maximum daily dose is 0 milligram. For example, a product containing 0.4 (rounded-off to zero (0)) milligram sodium per tablet with directions to take one tablet daily may use the term ''sodium free'' in its labeling. However, when the recommended dose provides for taking more than one dosage unit per day, e.g., take one or two tablets, or take two tablets, the same product containing 0.4 milligram sodium per tablet shall not use the term ''sodium free'' because the labeled maximum daily dose contains 0.8 milligram sodium.

(e) The term ''very low sodium'' may be used in the labeling of OTC drug products intended for oral ingestion if the amount of sodium in the labeled maximum daily dose is 35 milligrams or less.

(f) The term ''low sodium'' may be used in the labeling of OTC drug products intended for oral ingestion if the amount of sodium in the labeled maximum daily dose is 140 milligrams or less.

(g) The term ''salt'' is not synonymous with the term sodium and shall not be used interchangeably or substituted for the term ''sodium.''

(h) The terms ''sodium free,'' ''very low sodium,'' and ''low sodium'' shall be in print size and style no larger than the product's statement of identity and shall not be unduly prominent in print size or style compared to the statement of identity.

(i) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after April 22, 1997, is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

3. The authority citation for 21 CFR part 331 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 331.30 [Amended]

4. Section 331.30 *Labeling of antacid products* is amended by removing paragraph (c)(5) and redesignating paragraphs (c)(6) and (c)(7) as paragraphs (c)(5) and (c)(6), respectively, and by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

Dated: March 30, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–9735 Filed 4–19–96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 331

[Docket No. 95N–0254]

RIN 0910–AA63

Labeling of Orally Ingested Over-the-Counter Drug Products Containing Calcium, Magnesium, and Potassium

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the general labeling provisions for over-the-counter (OTC) drug products to require that the labeling of all OTC drug products intended for oral ingestion include the calcium content per dosage unit when the product contains 20 milligrams (mg) or more per single dose; a warning statement that persons with kidney stones and persons on a calcium-restricted diet should not take the product unless directed by a doctor when the product contains more than 3.2 grams (g) of calcium in the labeled maximum daily dose; the magnesium content per dosage unit when the product contains 8 mg or more per single dose; a warning statement that persons with kidney disease and persons on a magnesium-restricted diet should not take the product unless directed by a doctor if the product contains more than 600 mg magnesium in the labeled maximum daily dose; the potassium content per dosage unit when the product contains 5 mg or more per single dose; and a warning statement that persons with kidney disease and persons on a potassium-restricted diet should not take the product unless directed by a doctor if the product contains more than 975 mg potassium in the labeled maximum daily dose. The agency is proposing that the calcium, magnesium, and potassium content be labeled in mg per dosage unit, rounded to the nearest whole number. FDA is issuing this notice of proposed rulemaking in order to provide uniform calcium, magnesium, and potassium content and warning labeling for all OTC drug products intended for oral ingestion whether marketed under an OTC drug monograph, an approved application, or no application.

DATES: Written comments by July 22, 1996. Written comments on the agency's economic impact determination by July 22, 1996. The agency is proposing that any final rule based on this proposal be effective 12 months after the date of its publication in the Federal Register.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

SUPPLEMENTARY INFORMATION:

I. Background

A. Calcium

In the advance notice of proposed rulemaking for OTC antacid drug products (38 FR 8714 at 8718, April 5, 1973), the Advisory Review Panel on OTC Antacid Drug Products (Antacid Panel) concluded that calcium carbonate is safe when taken in a dosage of not more than 160 milliequivalents (mEq) of calcium (8 g calcium carbonate) per day. The Antacid Panel stated that hypercalcuria in response to calcium ingestion is not rare in the population and the danger of renal stone formation has to be considered in determining the intake of calcium-containing antacids.

The maximum daily dose for calcium carbonate or calcium phosphate in § 331.11(d) (21 CFR 331.11(d)) of the antacid monograph is 160 mEq (e.g., 3.2 g calcium). This amount of calcium is contained in 8.0 g calcium carbonate, 18.7 g monobasic calcium phosphate, and 8.3 g tribasic calcium phosphate. The warning in § 331.30(c)(1) (21 CFR 331.30(c)(1)) states: ''Do not take more than (maximum recommended daily dosage
* * *) in a 24-hour period, or use the maximum dosage of this product for more than 2 weeks, except under the advice and supervision of a physician.''

In the advance notice of proposed rulemaking for OTC digestive aid drug products (47 FR 454 at 469, January 5, 1982), the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel) stated that adverse reactions associated with calcium carbonate, including alkalosis, hypercalcemia, acid rebound, milk-alkali syndrome, and constipation, usually occur with ingestion of larger than recommended doses and/or with chronic ingestion. The Miscellaneous Internal Panel stated that some antacids decrease the effectiveness of many other drugs. The Miscellaneous Internal Panel recommended the following labeling for drug products containing calcium carbonate: (1) ''If you are taking other drugs, consult your physician as this drug may interfere with their effectiveness,'' and (2) ''Do not take for longer than 2 weeks or in greater than recommended amounts, except on the advice of a physician.'' However, these warnings were never finalized because no calcium salt attained monograph status as an active ingredient for use as an OTC digestive aid drug product.

B. Magnesium

In the advance notice of proposed rulemaking for OTC antacid drug products (38 FR 8714 at 8719), the Antacid Panel stated that in normal renal function it is difficult to reach excessive magnesium blood levels via the oral route, because magnesium enters and leaves the cells rapidly. However, the Antacid Panel stated that hypermagnesemia toxicity may occur in renal dysfunction and therefore a warning is necessary. The Antacid Panel concluded that for those products in which the maximal daily dose exceeds 50 mEq of magnesium, the labeling should state: ''Do not use this product if you have kidney disease except under the advice and supervision of a physician.''

In the final monograph for OTC antacid drug products (39 FR 19862 at 19868, June 6, 1974), the agency noted that at some of its early meetings the Antacid Panel initially considered 150 mEq per day of magnesium as the level for requiring a warning, but upon reconsideration reduced the amount to 50 mEq. The Antacid Panel gave several reasons for lowering this level: (1) The normal individual consumes from 20 to 40 mEq of magnesium per day and about one-third of that amount is absorbed into the body; (2) if a person is taking a magnesium-containing antacid, approximately 15 to 30 percent of that magnesium is absorbed, and (3) if a person does not have normal renal function, it is possible to have hypermagnesemia toxicity, i.e., the level of magnesium in the body may reach a toxic level.

The final monograph for OTC antacid drug products includes a warning in § 331.30(c)(4) for products containing more than 50 mEq of magnesium in the recommended daily dosage, which states: ''Do not use this product except under the advice and supervision of a physician if you have kidney disease.'' Although persons with normal renal function can easily tolerate more than 50 mEq of magnesium a day, the agency included this warning in the monograph because large doses of an antacid could present a serious problem for

individuals with reduced renal function.

In the advance notice of proposed rulemaking for OTC laxative drug products (56 FR 12902 at 12905, March 21, 1975), the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (Laxative Panel) stated that OTC laxative drug products containing more than 50 mEq (600 mg) magnesium in the maximum recommended daily dose should include a warning which states that people with kidney disease should not use the product except under the advice and supervision of a physician. In the Federal Register of January 15, 1985 (50 FR 2124 at 2153), the agency published a tentative final monograph for OTC laxative drug products that included the warning recommended by the Laxative Panel. This rulemaking has not been completed at this time.

In the advance notice of proposed rulemaking for OTC digestive aid drug products (47 FR 454 at 471), the Miscellaneous Internal Panel stated that high serum magnesium levels may result from magnesium ingestion by persons with kidney damage. The Miscellaneous Internal Panel agreed with the Antacid Panel that a warning statement should be present on any magnesium hydroxide preparation (47 FR 470) and on any magnesium trisilicate preparation (47 FR 471) for which the maximal daily dose exceeds 50 mEq (600 mg) of magnesium. The Miscellaneous Internal Panel also stated that magnesium hydroxide has the potential for drug interactions with certain anticoagulants and antibiotics. Similarly, the Miscellaneous Internal Panel noted that magnesium trisilicate absorbs various alkaloids and antibiotics in vitro. However, this warning was never finalized because no magnesium salt attained monograph status as an active ingredient for use as an OTC digestive aid drug product.

C. Potassium

In the advance notice of proposed rulemaking for OTC antacid drug products (38 FR 8714 at 8719), the Antacid Panel stated that hyperkalemia is rare for normal persons who can easily tolerate the potassium content of antacid drug products. The Antacid Panel concluded, however, that potassium can accumulate in the body of persons with impaired renal function and exert toxic effects. The Antacid Panel recommended the following warning for products containing more than 25 mEq (975 mg) potassium in the maximum recommended daily dose: ''Do not use this product if you have kidney disease except under the advice and supervision of a physician.'' This warning appears in § 331.30(c)(6) of the antacid final monograph, slightly rephrased to read: ''Do not use this product except under the advice and supervision of a physician if you have kidney disease.''

In the advance notice of proposed rulemaking (56 FR 12902 at 12905), the Laxative Panel recommended that if a laxative product contains more than 25 mEq (975 mg) of potassium in the maximum recommended daily dose, the labeling should advise consumers with kidney disease not to use the product except under the advice and supervision of a physician. The agency is aware that some effervescent laxative drug products contain significant amounts of potassium as inactive ingredients. The Laxative Panel recommended that the inactive ingredients be listed (with or without the amounts) for OTC laxative drug products and that the availability of sodium, potassium, and magnesium in the maximum recommended daily dose be stated in the labeling. The Laxative Panel noted that certain inactive ingredients (including calcium hydroxide and potassium carbonate) are added to some laxative preparations to enhance their formulation or to contribute to the effervescent qualities.

In the tentative final monograph for OTC laxative drug products (50 FR 2124 at 2153), the agency agreed with the Laxative Panel's recommendation and proposed the following warning for those products containing more than 975 mg potassium in the maximum recommended daily dose: ''Do not use this product if you have kidney disease unless directed by a doctor.'' This rulemaking has not been completed at this time.

D. Rulemaking for Sodium Labeling of OTC Drug Products

The agency has already addressed sodium labeling in a final rule published elsewhere in this issue of the Federal Register. That rule amends the general labeling provisions for OTC drug products to include sodium labeling and provides for across-the-board uniform sodium content and warning labeling for all OTC drug products intended for oral ingestion. New § 201.64 requires sodium content labeling of all products containing 5 mg or more sodium per single recommended dose and requires that products containing more than 140 mg sodium per maximum recommended daily dose be labeled with a general warning that states: ''Do not use this product if you are on a sodium-restricted diet unless directed by a doctor.'' Section 201.64 also provides for the voluntary use of certain descriptive terms (''sodium free,'' ''very low sodium,'' and ''low sodium''). These descriptive terms are the same terms used to describe sodium content in food labeling.

Sodium content is expressed in mg per single dosage unit (e.g., tablet, teaspoonful), rounded-off to the nearest whole number, and includes the total amount of sodium regardless of the source (both active and inactive ingredients). OTC drug products ''intended for oral ingestion'' also include gum and lozenge dosage forms, but do not include dentifrices, mouthwashes, or mouth rinses. Because some OTC drug products not intended for oral administration can contain very high levels of sodium that may be absorbed from both active and inactive ingredients, the agency has asked for comments from interested individuals on whether the final rule should be amended to include sodium labeling for OTC rectal, vaginal, dentifrice, mouthwash, and mouth rinse drug products. The agency will address this subject in a future issue of the Federal Register.

Two comments received to the tentative final monograph for OTC laxative drug products contended that sodium labeling of OTC laxative and other drug products should be consistent with FDA's food labeling terminology. The comments stated that food products already bear FDA terminology and the food terminology will become the dominant system. Thus, other mandatory FDA labeling systems should be made consistent with that system. The agency has used this approach in the final rule for sodium labeling of OTC drug products published elsewhere in this issue of the Federal Register.

E. Food Labeling Regulations

FDA regulations for food products address calcium and magnesium labeling. Section 101.9 (21 CFR 101.9) requires the labeling of food products to declare the content, as a percent of the Reference Daily Intake (RDI), of calcium, iron, vitamin C, and vitamin E. Other vitamins and minerals for which a RDI has been established, including magnesium, may be listed voluntarily, unless they are added as a nutrient supplement or a claim is made about them, in which case they must be declared.

Section 101.9(c)(5) provides for the voluntary declaration of potassium content in a labeled serving size. However, when a claim is made about potassium, the declaration is mandatory and is placed on the nutrition label

immediately following the sodium content. When the potassium content is less than 5 mg per serving, the content is expressed as zero.

Vitamins and minerals, other than calcium, iron, vitamin C, and vitamin E, present at less than 2 percent of the RDI are not required to be declared in nutrition labeling but may be declared as zero or by use of an asterisk referring to a footnote that states, ''Contains less than 2% of the Daily Value of this (these) nutrient (nutrients)'' (§ 101.9(c)(8)(iii)). The RDI for calcium is 1,000 mg and for magnesium is 400 mg (§ 101.9(c)(8)(iv)). Thus, for foods containing less than 20 mg of calcium per serving, a declaration of zero is required on the nutrition label. For foods containing less than 8 mg of magnesium per serving, content declaration is not required (unless a claim is made about the nutrient) or may be declared as zero or as less than 2 percent of the Daily Value.

The regulations in § 101.36(b)(3) (21 CFR 101.36(b)(3)) for nutrition labeling of dietary supplements of vitamins and minerals require that potassium be declared except when present in quantitative amounts by weight that allow a declaration of zero.

The regulations for health claims related to calcium and osteoporosis in § 101.72(c)(2)(i)(E) (21 CFR 101.72(c)(2)(i)(E)) require the labeling of food products to state that a total dietary intake greater than 2,000 mg of calcium has no further known benefit to bone health. This requirement applies when the food or supplement contains more than 400 mg of calcium per reference amount. A recently published NIH Concensus Statement on optimal calcium intake states that up to a total intake of 2,000 mg per day appears to be safe in most individuals (''Optimal Calcium Intake,'' NIH Consensus Statement, 12(4):1–31, June 6–8, 1994).

II. The Agency's Tentative Conclusions on Labeling of Orally Ingested OTC Drug Products Containing Calcium, Magnesium, and Potassium

A. Basis for Rulemaking

FDA believes that the public interest in, and the public health consequences of, calcium, magnesium, and potassium intake have produced a need for more informative and consistent labeling information for these ingredients in OTC drug products. The agency believes certain labeling requirements are needed to alert persons with renal failure, kidney stones, or other conditions, and persons taking other medications who wish to monitor their intake of calcium, magnesium, and potassium. Consumers need to consider their intake from foods, dietary supplements, and drugs. Therefore, the agency is proposing calcium, magnesium, and potassium content and warning labeling for all OTC drug products intended for oral ingestion that contain certain levels of these ingredients (including both active and inactive ingredients).

B. Criteria for Content and Warning Labeling

In order to establish uniform content declarations and warnings relating to calcium, magnesium, and potassium for orally ingested OTC drug products and to establish content labeling similar to that used in food labeling, the agency is proposing to adopt: (1) 20 mg of calcium, 8 mg of magnesium, and 5 mg of potassium as the amount per single recommended dose in an OTC drug product (which may involve one or more dosage units, e.g., tablets, teaspoonsful, etc.) that requires a content declaration; and (2) 3.2 g calcium, 600 mg magnesium, and 975 mg potassium as the amounts present in the maximum labeled daily dose above which a warning is required. The agency is therefore proposing to amend the general drug labeling provisions in part 201 (21 CFR part 201) to include these labeling requirements for OTC drug products intended for oral ingestion.

The proposed levels for requiring content labeling are similar to those used in food labeling. In contrast, the proposed levels for requiring warnings are based on recommendations of FDA advisory review panels in the early 1970's. The agency acknowledges that there may be more recent scientific information to consider in setting requirements for OTC drug product labeling. The agency specifically encourages comment and data on this aspect of the proposal.

C. Basis for Amount Requiring Content Labeling

1. Calcium and Magnesium Content

As stated in section I.E. of this document, a serving of food containing 20 mg or more of calcium requires a content declaration, and a serving of food containing 8 mg or more of magnesium (if added as a supplement or if a claim is made) requires a content declaration in the nutrition labeling of foods. Thus, the agency is using 20 mg calcium and 8 mg magnesium per single recommended dose as the amounts at which OTC drug products should include content labeling for these ingredients.

2. Potassium Content

As noted in section I.E. of this document, potassium labeling for foods is optional unless a claim is made about the potassium content; but, if declared, it is expressed in mg per serving for those foods containing 5 mg or more. In § 201.64(a) of the final rule for sodium labeling of OTC drug products, the agency required a declaration of the sodium content for all OTC drugs intended for oral ingestion if the sodium content per single recommended dose is 5 mg or more. The agency believes it is not necessary to declare potassium amounts below 5 mg per dose. However, the agency believes it is appropriate to declare the potassium content if the product contains 5 mg or more per single recommended dose.

D. Basis for Amount Requiring Warning Statements

The agency believes that for uniformity in labeling, warnings should be required across-the-board for calcium, magnesium, and potassium for those OTC drug products intended for oral ingestion containing a certain concentration of these ingredients.

1. Calcium Warning

Based on the current requirements in the monograph for OTC antacid drug products and the recommendations of the Miscellaneous Internal Panel (see section I.A. of this document), the agency is proposing to require the following warning for all OTC drug products containing more than 3.2 g calcium (equivalent to 8 g calcium carbonate) per labeled maximum daily dose: ''Do not use this product if you have kidney stones or if you are on a calcium-restricted diet unless directed by a doctor.'' The NIH Consensus Statement on optimal calcium intake suggests that a 2,000 mg total daily intake is safe, but it does not give a definitive conclusion as to what level is unsafe. When the 3,200 mg daily dosage level, proposed as the level requiring a warning, is added to the 1,000 mg recommended daily intake that may be included in a person's diet, the resulting 4,200 mg daily intake is considerably higher than the 2,000 mg level found to be safe in the NIH consensus statement. The agency invites comments on whether the proposed 3.2 g level requiring a warning should be lowered.

2. Magnesium Warning

The agency is proposing to require the following warning for all OTC drug products that contain more than 600 mg magnesium per labeled maximum daily dose: ''Do not use this product if you have kidney disease or if you are on a

magnesium-restricted diet unless directed by a doctor.'' This warning is similar to the warning in § 331.30(c)(4) of the final monograph for OTC antacid drug products.

3. Potassium Warning

The agency is proposing to require the following warning for all OTC drug products that contain more than 975 mg potassium per maximum recommended dose: ''Do not use this product if you have kidney disease or if you are on a potassium-restricted diet unless directed by a doctor.'' This warning is similar to the warning in § 331.30(c)(6) of the final monograph for OTC antacid drug products.

E. Units of Measure

The agency believes the units of measure, where possible, should be similar for foods and drugs. The unit of measure in declaring the content of these components in foods is mg or g per serving of food. While a serving of food is not the same as a dosage of a drug, the agency believes it is logical to declare the content in mg per dosage unit of the drug and to require a content declaration if the ingredient per dose (which could be contained in one or more active or inactive ingredients and in one or more dosage units) is equal to the amount in a serving of food that requires a declaration in the nutrition labeling. This is similar to the agency's approach in the final rule for sodium labeling of OTC drug products. Section 201.64(b) states: ''The sodium content shall be expressed in milligrams per dosage unit and shall include the total amount of sodium regardless of the source, i.e., from both active and inactive ingredients.''

F. Rounding to Whole Number

While the food labeling regulations allow for the content declaration of certain ingredients (e.g., sodium and potassium) to be labeled as ''zero'' up to a certain level (5 mg per serving) (§ 101.9(c)(8)(i) and (c)(8)(ii)), the agency believes these ingredients in drugs should not be labeled as zero content except when the content is zero (based on rounding to the nearest whole number, as in the regulation for sodium labeling of OTC drug products). As discussed in the sodium labeling final rule, most OTC drug products are manufactured and the concentration of ingredients can be strictly controlled. Thus, the concentration of specific ingredients is expected to be less variable in OTC drug products than in foods. For consistency in labeling, the agency believes the labeling of these ingredients should be expressed in mg per dosage unit rounded to the nearest whole number for those products containing less than 1 g. For those products containing 1 g or more per dosage unit, the content labeling may be rounded to the nearest tenth of a g.

G. Implementation of Labeling Requirements

The agency encourages manufacturers to comply voluntarily with the provisions of this proposed rule despite the fact that revisions in the requirements may occur in the final rule in response to submitted comments. Should any manufacturer choose to adopt the labeling described in this proposed rule, and should any revisions occur in the final rule, the agency will permit the use of existing stocks of labels for those products labeled according to the proposed rule for a period of 1 year following publication of the final rule.

Should this proposed amendment to part 201 relating to calcium, magnesium, and potassium content and warning labeling of all OTC drug products intended for oral ingestion be published as a final rule, then the existing requirements relating to magnesium labeling in § 331.30(c)(4) and potassium labeling in § 331.30(c)(5) of the final monograph for OTC antacid drug products and the proposed labeling requirements for magnesium and potassium being considered in other ongoing OTC drug rulemakings will be deleted. The agency advises that on or after 12 months after publication of a final rule any OTC drug product subject to this rule that does not meet these labeling requirements and that is initially introduced or initially delivered for introduction into interstate commerce will be misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n) and 352(a) and (f)).

III. Analysis of Impacts

FDA has examined the impacts of the proposed 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 proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and, thus, 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. Should this proposed rule become a final rule, one-time label modification costs associated with changing product labels would be incurred by some manufacturers. FDA estimates those costs to total less than $500,000 for the entire industry. This projected cost is based on estimates of the number of products that will be affected by the proposed rule, the number of distinct label changes that will be required, and the cost of printing new labels.

OTC antacid drug products are the primary products having a significant number of orally administered active ingredients containing calcium, magnesium, and potassium. The monograph for those products has been in effect since 1974 and these products currently bear magnesium and potassium warning labeling. For these products, the labeling change would involve a slight change in wording, resulting only in a minor cost to have a labeling revision printed. For those products containing calcium, a new warning would be required in product labeling. In almost all cases, this revision would be routinely done at the next labeling printing so that minimal costs should be incurred. Manufacturers will have up to 12 months after publication of a final rule in the Federal Register to revise their product labeling. It is anticipated that most antacid drug products would undergo a label printing within a 12-month period. Products containing magnesium and potassium would need only minor revisions, and products containing calcium would need to add some new labeling.

Other OTC drug products (i.e., antidiarrheals, laxatives, and internal analgesics) having one or a few calcium, magnesium, and potassium-containing active ingredients that would be affected by mandatory calcium, magnesium, and potassium labeling currently are not required to bear the labeling recommended in this proposed rule. These products would need to have new labels printed to incorporate the labeling requirements of this rulemaking. These products will also need to have new labeling printed in the future when the final monographs for OTC antidiarrheal, laxative, and internal analgesic drug products are published. This again involves one-time label modification costs. For products that will be undergoing such labeling

changes, the incremental costs attributable to this rule for calcium, magnesium, and potassium labeling would be negligible. A limited number of OTC antidiarrheal, laxative, and internal analgesic drug products contain calcium, magnesium, and potassium-containing active ingredients.

Accordingly, the agency certifies that the proposed 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.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC drug products intended for oral ingestion. Types of impact may include, but are not limited to, costs associated with relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC drug products should be accompanied by appropriate documentation. A period of 90 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Rather, the proposed warning statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)). The calcium, magnesium, and potassium content per dosage unit is product formulation information that manufacturers have on hand as part of their usual and customary business practice.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) 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.

VI. Request for Comments

Interested persons may, on or before July 22, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before July 22, 1996. Three copies of all 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 and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 331

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that title 21 of the Code of Federal Regulations be amended in parts 201 and 331 as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. New § 201.70 is added to subpart C to read as follows:

§ 201.70 Calcium labeling.

(a) The labeling of over-the-counter (OTC) drug products intended for oral ingestion shall contain the calcium content per dosage unit (e.g., tablet, teaspoonful) if the calcium content of a single recommended dose of the product (which may be one or more dosage units) is 20 milligrams or more. OTC drug products intended for oral ingestion include gum and lozenge dosage forms, but do not include dentifrices, mouthwashes, or mouth rinses.

(b) The calcium content shall be expressed in milligrams or grams per dosage unit and shall include the total amount of calcium regardless of the source, i.e., from both active and inactive ingredients. If less than 1 gram, milligrams should be used. The calcium content shall be rounded-off to the nearest whole number in milligrams (or tenth of a gram if over 1 gram) and shall be listed on a separate line after the heading ''Calcium Content'' as the last sentence in the ingredients section.

(c) The labeling of OTC drug products intended for oral ingestion shall contain the following warning under the heading ''Warning'' (or ''Warnings'' if it appears with additional warning statements) if the amount of calcium present in the labeled maximum daily dose of the product is more than 3.2 grams: ''Do not use this product if you have kidney stones or if you are on a calcium-restricted diet unless directed by a doctor.''

(d) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after (date 1 year after publication of the final rule), is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

3. New § 201.71 is added to subpart C to read as follows:

§ 201.71 Magnesium labeling.

(a) The labeling of over-the-counter (OTC) drug products intended for oral ingestion shall contain the magnesium content per dosage unit (e.g., tablet, teaspoonful) if the magnesium content of a single recommended dose of the product (which may be one or more dosage units) is 8 milligrams or more. OTC drug products intended for oral ingestion include gum and lozenge dosage forms, but do not include dentifrices, mouthwashes, or mouth rinses.

(b) The magnesium content shall be expressed in milligrams or grams per dosage unit and shall include the total amount of magnesium regardless of the source, i.e., from both active and inactive ingredients. If less than 1 gram, milligrams should be used. The magnesium content shall be rounded-off to the nearest whole number in milligrams (or tenth of a gram if over 1 gram) and shall be listed on a separate line after the heading ''Magnesium Content'' as the last sentence in the ingredients section.

(c) The labeling of OTC drug products intended for oral ingestion shall contain the following warning under the heading ''Warning'' (or ''Warnings'' if it appears with additional warning statements) if the amount of magnesium present in the labeled maximum daily dose of the product is more than 600 milligrams: ''Do not use this product if

you have kidney disease or if you are on a magnesium-restricted diet unless directed by a doctor.''

(d) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after (date 1 year after publication of the final rule), is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

4. New § 201.72 is added to subpart C to read as follows:

§ 201.72 Potassium labeling.

(a) The labeling of over-the-counter (OTC) drug products intended for oral ingestion shall contain the potassium content per dosage unit (e.g., tablet, teaspoonful) if the potassium content of a single recommended dose of the product (which may be one or more dosage units) is 5 milligrams or more. OTC drug products intended for oral ingestion include gum and lozenge dosage forms, but do not include dentifrices, mouthwashes, or mouth rinses.

(b) The potassium content shall be expressed in milligrams or grams per dosage unit and shall include the total amount of potassium regardless of the source, i.e., from both active and inactive ingredients. If less than 1 gram, miligrams should be used. The potassium content shall be rounded-off to the nearest whole number in milligrams (or tenth of a gram if over 1 gram) and shall be listed on a separate line after the heading ''Potassium Content'' as the last statement in the ingredients section.

(c) The labeling of OTC drug products intended for oral ingestion shall contain the following warning under the heading ''Warning'' (or ''Warnings'' if it appears with additional warning statements) if the amount of potassium present in the labeled maximum daily dose of the product is more than 975 milligrams: ''Do not use this product if you have kidney disease or if you are on a potassium-restricted diet unless directed by a doctor.''

(d) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after (date 1 year after publication of the final rule), is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

5. The authority citation for 21 CFR part 331 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 331.30 [Amended]

6. Section 331.30 *Labeling of antacid products* is amended by removing paragraphs (c)(4) and (c)(5) and by redesignating paragraph (c)(6) as paragraph (c)(4).

Dated: March 30, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–9734 Filed 4–19–96; 8:45 am]

BILLING CODE 4160–01–F

federal register

Monday
April 22, 1996

Part V

Department of Transportation

Coast Guard

46 CFR Part 67

Vessel Rebuilt Determinations; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 94–040]

RIN 2115–AE85

Vessel Rebuilt Determinations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulation to clarify the standard for determining when work on a vessel performed outside of the U.S. constitutes a foreign rebuilding, which results in a loss of coastwise privileges. Clarifying this standard will help vessel owners and operators make better business decisions regarding work to be performed on their vessels. This rule adopts a notice of proposed rulemaking (NPRM) titled Vessel Rebuilt Determinations (CGD 94–040; 60 FR 17290) published on April 5, 1995, as final with minor changes.

EFFECTIVE DATE: This final rule is effective on June 21, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–025), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LTJG Michael Antonellis, National Maritime Center at (703) 235–8447.

SUPPLEMENTARY INFORMATION:

Regulatory History

Two public meetings were held, both preceded by a notice in the Federal Register. The first meeting was on November 16, 1993 (58 FR 51298), and the second on February 15, 1994 (59 FR 725). The stated purpose of the public meetings was to obtain public input concerning whether the Coast Guard should undertake rulemaking to develop clearer standards for vessel rebuilt determinations.

On May 10, 1994, the Coast Guard published a policy statement in the Federal Register (CGD 93–063; 59 FR 24060) announcing that it was planning to undertake rulemaking regarding vessel rebuilt determinations.

As indicated above, on April 5, 1995, the Coast Guard published the NPRM. In the NPRM, the Coast Guard proposed to clarify when a vessel is deemed to have been rebuilt outside the United States, thereby losing the privilege of engaging in the coastwise trade.

Background and Purpose

When Congress enacted the Merchant Marine Act, 1920 (46 U.S.C. app. § 883), popularly referred to as the ''Jones Act,'' it included a provision to provide for a protected trade. Section 27 of the Jones Act generally prohibited the transportation of merchandise in the coastwise trade except in vessels built in and documented under the laws of the United States and owned by citizens of the United States.

In 1956, Congress amended Section 27 by enacting what is known as the ''Second Proviso.'' Under the proviso as enacted, a vessel of more than 500 gross tons entitled to engage in the coastwise trade which is later rebuilt outside the United States permanently loses the right to engage in the coastwise trade. Further, the proviso originally required the owner of a vessel of more than 500 gross tons documented in the United States which is rebuilt outside the United States to make a report of the circumstances of the rebuilding to the Secretary of Transportation.

The Second Proviso was amended numerous times as discussed in the NPRM and now applies to all vessels engaged in coastwise trade, regardless of tonnage. It was implemented by the Coast Guard primarily by regulations at 46 CFR § 67.177. The regulatory standard in § 67.177 states that a vessel is rebuilt when ''any considerable part of its hull or superstructure is built upon or substantially altered.'' While the wording of the regulatory standard has remained stable over the years, the Coast Guard's administration of the standard has changed and is fully discussed in the NPRM.

Discussion of Comments and Changes

The Coast Guard received three letters in response to the NPRM. Two letters specifically complimented the Coast Guard for its efforts in providing the industry with clearer standards relating to vessel rebuilt determinations. Generally, the three letters addressed the six matters discussed below.

First: Two comments suggested that the Coast Guard provide a list of items, such as furnishings and fittings, that could be excluded from being considered as part of the hull and superstructure for purposes of making vessel rebuilt determinations. In the preamble to the NPRM, the Coast Guard identified a number of items which it has previously considered to be furnishings and fittings. This list, which is not exhaustive, may be used for guidance. The Coast Guard believes that providing a specific list would work to the detriment of vessel owners and limit the Coast Guard's flexibility to determine whether those items not included on the list should or should not be excluded.

Second: One comment recommended that the numerical lower and upper parameters of 5 percent to 10 percent be adjusted to provide greater flexibility. Paragraph (b) of § 67.177 of the NPRM establishes numerical parameters for rebuilt determinations for vessels, the hull and superstructure of which are constructed of steel or aluminum. The Coast Guard agrees that adjusting the minimum threshold to 7.5 percent is appropriate because that level reflects the Coast Guard's past determinations of the percentage of steelweight that does not constitute a rebuilding. However, the Coast Guard finds that raising the maximum threshold would not reflect past Coast Guard practices. Therefore, in order to adopt a standard that is consistent with past Coast Guard practices, the numerical lower and upper parameters in the final rule are set at 7.5 percent and 10 percent. The Coast Guard's National Maritime Center, after consultation with the Maritime Administration and the maritime industry, will reevaluate these minimum and maximum threshold levels in the future. Based on the history of vessel rebuild determinations, the Coast Guard may propose additional changes to these levels and perhaps other aspects of vessel rebuilt determinations. A shipowner may still apply for a preliminary rebuilt determination regardless of the level of work being done.

Third: One comment favored the use of a ''surface area comparison'' as opposed to the ''comparability'' standard proposed for vessels built of materials other than steel or aluminum. The comparability approach provided in paragraph (c) of § 67.177 of the NPRM requires that the applicant for a rebuilt determination calculate to the maximum extent practicable what the steelweight of the vessel as a whole would be if it were constructed of steel or aluminum. This standard has been tested over time and determined to work effectively.

Fourth: One comment indicated a need for the Coast Guard to clarify that repairs in kind should be exempted from the standards applicable to vessel rebuilt determinations. The Coast Guard believes that vessels undergoing repairs overseas should continue to report these repairs and provide the necessary information to ensure that the Coast Guard can make an independent

determination that the vessel has not been rebuilt.

Fifth: One comment requested that the term ''vessel steelweight'' be clarified. Vessel steelweight is the actual weight of the hull and superstructure without furnishings and outfit, machinery, and fluids. The term ''vessel steelweight'' is intended to mean the same as ''discounted lightship weight.''

Sixth: One comment expressed concern that if a vessel is determined to be rebuilt, it may also be considered a new vessel and, as a result, be subject to the provisions of the Oil Pollution Act of 1990 (OPA) (Pub. L. 101–380). A rebuilt determination will not result in a vessel being reclassified as a new vessel. If a vessel is subject to this regulation and is determined to be rebuilt outside of the U.S. pursuant to this rule, then that vessel will lose its coastwise privileges. Whether a vessel is subject to the applicability of OPA requirements is in no way determined by this rule. That a vessel loses its coastwise privileges because it has been determined to have been rebuilt outside of the U.S. does not mean necessarily that the vessel will be considered essentially a new vessel and subject to OPA requirements.

After reviewing and considering these comments, the Coast Guard is adopting the NPRM as final with minor modifications. In effect, the term ''Commandant'' wherever it appeared in the NPRM was replaced with the term ''National Vessel Documentation Center'' (NVDC). The final rule raises the lower parameter of a rebuilt determination to from 5 percent to 7.5 percent. The Coast Guard has undergone a significant reorganization and, as a result, established the NVDC in West Virginia to streamline the vessel documentation program. The public was informed of the establishment of NVDC in a Federal Register notice published on June 15, 1995 (60 FR 31602).

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and do not require an assessment of potential costs and benefits under section 6(a)(3) of that order. They have not been reviewed by the Office of Management and Budget under that order. However, they are considered significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) due to the interests expressed by a segment of the maritime industry and the Government of Canada.

The Coast Guard expects the economic impact of these regulations to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These regulations merely clarify existing policies and practices followed in evaluating rebuilt determinations. As such, the changes are administrative in nature and provide better guidance to vessel owners planning for work to be performed on their vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether these regulations will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include: (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects the economic impact of these regulations to be minimal because they clarify existing policy and practices. The changes to the existing regulations are administrative in nature and are designed to provide better guidance to vessel owners planning to perform work on their vessels. Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that these regulations will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other similar requirements.

This regulation contains collection-of-information requirements in 46 CFR 67.177. However, these collection-of-information requirements are the same as those contained in the existing regulations which have been previously approved by OMB and assigned Control No. 2115–0110. This regulation adds no new or additional collection-of-information requirements. The regulations will reduce paperwork submissions by providing sufficiently clear guidance that many of the applications for preliminary rebuilt determinations may become unnecessary.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is administrative in nature and will have no significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

§ 67.19 [Amended]

2. In § 67.19(d)(3), remove ''67.177(a)'' and add, in its place, ''67.177''.

§ 67.21 [Amended]

3. In § 67.21(c), remove ''67.177(a)'' and add, in its place, ''67.177''.

4. Section 67.177 is revised to read as follows:

§ 67.177 Application for foreign rebuilding determination.

A vessel is deemed rebuilt foreign when any considerable part of its hull or superstructure is built upon or substantially altered outside of the United States. In determining whether a vessel is rebuilt foreign, the following parameters apply:

(a) Regardless of its material of construction, a vessel is deemed rebuilt when a major component of the hull or superstructure not built in the United States is added to the vessel.

(b) For a vessel of which the hull and superstructure is constructed of steel or aluminum—

(1) A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes more than 10

percent of the vessel's steelweight, prior to the work, also known as discounted lightship weight.

(2) A vessel may be considered rebuilt when work performed on its hull or superstructure constitutes more than 7.5 percent but not more than 10 percent of the vessel's steelweight prior to the work.

(3) A vessel is not considered rebuilt when work performed on its hull or superstructure constitutes 7.5 percent or less of the vessel's steelweight prior to the work.

(c) For a vessel of which the hull and superstructure is constructed of material other than steel or aluminum—

(1) A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to more than 10 percent of the vessel's steelweight prior to the work, calculated as if the vessel were wholly constructed of steel or aluminum.

(2) A vessel may be considered rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to more than 7.5 percent but not more than 10 percent of the vessel's steelweight prior to the work, calculated as if the vessel were wholly constructed of steel or aluminum.

(3) A vessel is not considered rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to 7.5 percent or less of the vessel's steelweight prior to the work, calculated as if the vessel were wholly constructed of steel or aluminum.

(d) For a vessel of mixed construction, such as a vessel the hull of which is constructed of steel or aluminum and the superstructure of which is constructed of fibrous reinforced plastic, the steelweight of the work performed on the portion of the vessel constructed of a material other than steel or aluminum will be determined, to the maximum extent practicable, and aggregated with the work performed on the portion of the vessel constructed of steel or aluminum. The numerical parameters described in paragraph (b) of this section will then be applied to the aggregate of the work performed on the vessel compared to the vessel's steelweight prior to the work, calculated as if the vessel were wholly constructed of steel or aluminum, to determine whether the vessel has been rebuilt.

(e) The owner of a vessel currently entitled to coastwise, Great Lakes, or fisheries endorsements which is altered outside the United States and the work performed is determined to constitute or be comparable to more than 7.5 percent of the vessel's steelweight prior to the work, or which has a major component of the hull or superstructure not built in the United States added, must file the following information with the National Vessel Documentation Center within 30 days following the earlier of completion of the work or redelivery of the vessel to the owner or owner's representative:

(1) A written statement applying for a rebuilt determination, outlining in detail the work performed and naming the place(s) where the work was performed;

(2) Calculations showing the actual or comparable steelweight of the work performed on the vessel, the actual or comparable steelweight of the vessel, and comparing the actual or comparable steelweight of the work performed to the actual or comparable steelweight of the vessel;

(3) Accurate sketches or blueprints describing the work performed; and

(4) Any further submissions requested by the National Vessel Documentation Center.

(f) Regardless of the extent of actual work performed, the owner of a vessel currently entitled to coastwise, Great Lakes, or fisheries endorsements may, as an alternative to filing the items listed in paragraph (e) of this section, submit a written statement to the National Vessel Documentation Center declaring the vessel rebuilt outside the United States. The vessel will then be deemed to have been rebuilt outside the United States with loss of trading privileges.

(g) A vessel owner may apply for a preliminary rebuilt determination by submitting:

(1) A written statement applying for a preliminary rebuilt determination, outlining in detail the work planned and naming the place(s) where the work is to be performed;

(2) Calculations showing the actual or comparable steelweight of work to be performed on the vessel, the actual or comparable steelweight of the vessel, and comparing the actual or comparable steelweight of the planned work to the actual or comparable steelweight of the vessel;

(3) Accurate sketches or blueprints describing the planned work; and

(4) Any further submissions requested by the National Vessel Documentation Center.

Note: A statement submitted in accordance with paragraph (f) of this section does not constitute an application for a rebuilt determination and does not require payment of a fee.

Dated: March 18, 1996.

A.E. Henn,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 96–9653 Filed 4–19–96; 8:45 am]

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federal register

Monday
April 22, 1996

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Proposed Funding Priority for Fiscal Years 1996–1997; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Years 1996–1997 for Rehabilitation Research and Training Centers.

SUMMARY: The Secretary proposes a funding priority for Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1996–1997. The Secretary takes this action to focus research attention on an area of national need identified through NIDRR's long-range planning process. This proposed priority is intended to improve outcomes for individuals with disabilities.

DATES: Comments must be received on or before May 22, 1996.

ADDRESSES: All comments concerning this proposed priority should be addressed to David Esquith, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133. Internet: David__Esquith@ed.gov

SUPPLEMENTARY INFORMATION: This notice contains one proposed priority under the RRTC program. The proposed priority is for research related to health care for individuals with disabilities.

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

This proposed priority supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priority proposed in this notice is consistent with the long-range planning process.

Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in research training, as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The Secretary proposes that the following requirements will apply to all of the RRTCs pursuant to the priority:

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following proposed priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Proposed Priority: Health Care for Individuals with Disabilities—Issues in Managed Care

Background

Individuals with disabilities have a vital interest in high quality health care, and important interests in the reshaping of the health care delivery system. To begin, they are higher than average users of health services (NMES, 1987), and are more likely to be dependent on quality health care services to prevent secondary disabilities and maintain quality of life. Individuals with disabilities are more likely to be insured under public programs—Medicare and Medicaid—and thus are particularly concerned with the directions of public policy in these programs (LaPlante, 1996). Individuals with disabilities are more likely to be dependent on their health care programs for a wide range of services intended to assure their quality of life and independence, particularly as health care insurers usually control access to funding for personal assistance services and assistive technology.

The central health care issue for individuals with disabilities is access to appropriate, high quality health care. Appropriate care must be timely, of high quality, in sufficient quantity, and accessible both physically and programmatically. For individuals with disabilities, appropriate care also generally implies an integrated continuum of care as necessary, and consumer involvement in the care decisions and implementation. A comprehensive continuum of care, including primary care, acute care, rehabilitation, and long-term care, is key to any health care delivery system for individuals with disabilities.

The health care needs of individuals with disabilities differ from those of the general population in many important aspects (DeJong, 1995). They are at greater risk of acquiring certain medical conditions, often experience these conditions differently, and may require a more extensive therapeutic intervention. Individuals with disabilities often are vulnerable to secondary conditions that may exacerbate the original disability. For this reason, as well as for costs related to the original impairment, persons with disabilities are likely to need more health care and thus to be particularly affected by cost constraints that may affect the volume or quality of services available.

In recent years there has been a significant change in the way health care is delivered and reimbursed. Historically, most of the insured population (including individuals with disabilities) received their health care through fee-for-service health care plans. However, various forms of managed care increasingly are the typical mode of organizing and delivering health care in the private sector, and segments of the Medicaid and Medicare populations have been enrolled in managed care plans. There are many varieties of managed care, ranging from the model of a case manager in a fee-for-service system, through preferred provider arrangements, to the HMO. Regardless of how managed care is operationalized, the essential features are that it is a cost-driven model paid for by a capitation method with strict controls on the volume and costliness of services to be provided to an individual with a given diagnosis. While traditional fee-for-service systems were said to reward the provider in direct proportion to the amount of services rendered, i.e., more services given equals more fees collected, managed care operates with an opposite set of incentives, often rewarding the provider for such things as low average costs, or fewer than average patient visits per diagnostic category. The provider in turn manages the care of the patient through gatekeeping practices that individuals with disabilities fear may limit access to specialists or higher-cost services. One challenge in improving health care for all individuals is to change the incentive-reward systems for gatekeepers, and all providers, from those based on cost savings to those based on quality of outcomes achieved.

A managed care system, particularly one without the funding constraints typically imposed by capitated managed care, has ideal elements of a system of care for individuals with disabilities. These elements include case management, with an opportunity for the primary care provider or case manager to become familiar with the needs of the individual consumer; coordination of interventions of a variety of specialists; often a single location that increases the physical accessibility of a variety of services and specialists; preventive health care; health education; coordination of medications; a frequent preference for alternative or holistic therapies (such as stress reduction, nutritional education, or exercise) over more invasive procedures that many consumers resent; and a central focus for quality assurance and consumer input.

The American Hospital Association has stated that, managed care is based on the premise that the majority of the health care services delivered in the United States are most appropriately delivered and managed by primary care physicians (HIAA, 1993). While this is not an exact description of the existing practices, it is an indicator of the importance of the primary care provider in the managed care model. The primary care physician (or nurse, physicians' assistant, or other triage personnel) determines the need for primary care and makes referrals as specialized care or hospitalization are needed, and thus controls not only the delivery of primary care but entry into other services.

However, individuals with disabilities have long been concerned about a lack of appropriate primary care, and are increasingly apprehensive about effects of capitated systems on the quantity and quality of care that will be available to them. As managed care becomes more frequent as a mechanism for delivering health care, primary care providers become even more critical to the disabled individual because of their typical roles in the managed care system, determining referrals to specialists as well as delivering primary care.

Batavia and others have written about the practice of individuals with disabilities educating primary care providers in the medical implications of their impairments, and have discussed the generally unsatisfactory nature of the primary care available to individuals with disabilities (Batavia, DeJong, Halstead, and Smith, 1989).

The role of the gatekeeper—usually the primary care provider—in managed care is a critical one for individuals with disabilities. That manager not only may have an incentive to limit access to services, but also may lack competence in assessing the needs of disabled individuals with various impairments or chronic conditions.

At present, most insured individuals with disabilities are enrolled—under Medicaid or Medicare—in fee-for-service programs, where they have some latitude in choosing providers and may often elect to see rehabilitation specialists for routine and preventive care. Within this market system, it has become common for rehabilitation medicine specialists, and rehabilitation hospitals, to provide primary care. Many disabled individuals choose to return to rehabilitation specialists who

are familiar with their conditions and have wide experience in the treatment of individuals with similar conditions for both routine preventive care and for treatment of occasional illnesses or injuries. Of course, not all disabled individuals seek primary care from rehabilitation specialists and teaching hospitals.

Similarly, it must be noted that not all individuals with disabilities require special health care arrangements different from those of the general population. It is also probable that special requirements of many groups of disabled individuals can be met by accommodations and attention to accessibility within mainstream programs. At present, there is no satisfactory method for identifying, or even accurately estimating the numbers of, those disabled individuals in the total population whose health care needs cannot be met through standard managed health care plans. Most studies of managed care for individuals with disabilities are based on SSI or SSDI recipients who are enrolled in Medicaid. However, Medicaid eligibility is not a satisfactory proxy for the target population of this Center, which is addressing all individuals with disabilities who require alternative health care delivery approaches. Identifying the target population based on high volume service usage is also unsatisfactory because many individuals with disabilities may use few medical services, but still require special knowledge or accommodations when they do access the health care system.

Individuals with disabilities, as potential plan enrollees, are concerned about cost containment strategies such as capitation, which have the financial incentive to deliver fewer services. There are also incentives to avoid high-risk enrollees, and to establish policies and practices that discourage the enrollment of high users. Examples of these practices discussed by Kronick (1995) in his concise description of this problem include: screening for pre-existing conditions, designing service packages to discourage potential enrollees with certain conditions, terminating of subscribers, discouraging service use by making access difficult, and encouraging disenrollment. Kronick proceeds to list a series of strategies designed to compensate for the intensely risk aversive nature of managed care programs, and these techniques are deserving of thorough evaluation in a variety of settings.

There are at present a number of alternative models for the delivery of health care services to populations with special health care needs other than the traditional fee-for-service approach. These include the social HMOs; managed care carve outs; centers of excellence and university-based medical centers; special demonstration programs that may be conducted in connection with centers for independent living or other disability organizations; designation of rehabilitation medicine specialists as primary care providers or case managers; so-called disease management models designating special elements of care based on diagnostic category; model systems of comprehensive care; special education efforts directed at primary care providers; and more traditional limited risk models based on principles of reinsurance. The suitability of these alternative models may vary by the type of impairment, age of the consumer, geographic location, and many other factors. In recent years there have been many innovative delivery models tested (Community Medical Alliance in Boston, extensively documented by Alan Meyers and Robert Masters; the On Loc project in San Francisco for elderly medically fragile and chronically ill persons; and the PACE project, for example). However, more needs to be done to investigate the applicability of a variety of models to a range of populations, especially to working age adults, to disabled individuals who are employed, and to those covered by private health insurance.

Finally, individuals with disabilities are concerned about the physical and programmatic accessibility of health care and with their own roles in maintaining health. Individuals with disabilities, and their organizations, are learning to take an active role in the choice and management of the services they receive. Health care is one of the most critical areas for individuals with disabilities to be informed consumers. In some cases, individuals with disabilities will have a choice among benefit plans or service providers under managed care. In all cases they need the option of an informed and active role in their individual health care, including understanding of risks and benefits, choice of optional treatments, and an opportunity to provide care system. A second focus group identified a number of issues in managed care from the perspective of individuals with disabilities.

The primary Federal responsibility for health care services and research is with the Department of Health and Human Services (HHS). Several units of HHS, particularly the Public Health Service, the Health Care Financing Administration, the Office of the Assistant Secretary for Planning and Evaluation (ASPE), and the Administration on Aging are establishing significant programs of research into managed care for vulnerable populations. NIDRR plans to continue collaboration with HHS, and expects any Center funded under this priority to work closely with HHS grantees.

However, NIDRR also has had a long history of support for medical rehabilitation research and demonstrations of model systems of care. In addressing its research mission, NIDRR has been impressed by the importance of health care to rehabilitation and independence, as well as by the high value individuals with disabilities attach to access to comprehensive, high-quality, consumer-responsive health care. In 1991, NIDRR supported a planning conference to set a long-term agenda for medical and health research in NIDRR. The conferees recommended four areas of focus: trauma care; medical rehabilitation; primary care; and long-term care.

Consistent with this agenda, NIDRR is supporting a number of RRTCs that address research issues related to trauma care, medical rehabilitation, and long-term care. In order to identify significant research issues related to primary care for individuals with disabilities, NIDRR convened a focus group of researchers, consumers, and service providers. Within the context of primary care, the group's most significant area of concern was managed care, including the role of primary care and of medical rehabilitation in the managed care system. A second focus group identified a number of issues in managed care from the perspective of individuals with disabilities.

NIDRR's proposed priority on issues in managed care focuses on accessibility, consumer-responsiveness, the role of consumers and consumer organizations (e.g., Independent Living programs) in health maintenance and in the evaluation of managed care plans, and the role of rehabilitation medicine. In addition, the priority expands the target population of related research efforts that focus primarily on publicly financed systems to include individuals covered by private health plans and individuals without health care coverage. The research undertaken by this Center is expected to complement, supplement, or confirm studies sponsored by HHS.

The Secretary is interested in research that will identify the characteristics of a managed health care system that is responsive to the needs of individuals with disabilities, including research on

the effects of managed care on individuals with disabilities. For the purposes of this proposed priority, an individual with a disability is defined as one who has a physical or mental impairment that substantially limits one or more major life activities (Rehabilitation Act of 1973, section 7(8)(B)). One function of the proposed RRTC will be to develop a definition and parameters to identify those individuals whose disabilities necessitate special health care arrangements in a managed care system.

Priority

The Secretary proposes to establish an RRTC to conduct research that will contribute to the development of consumer-responsive managed health care that encompasses the continuum of care needed by individuals with disabilities whose health care needs require special attention under managed care and will provide information and training to service providers and individuals with disabilities on new developments in managed care systems and their implications for individuals with disabilities.

In addition to activities proposed by the applicant to fulfill this general purpose, the proposed RRTC shall:

- Develop a method for identifying those individuals with disabilities, using diagnostic and functional criteria, whose health care needs require special approaches under managed care;
- Analyze existing data related to alternative health delivery approaches, including carve out models, disease management models, and models combining acute and long-term services in order to: (1) identify critical elements (such as capitation formulas, incentive rewards, or service packages) that enhance the application of traditional managed care models to individuals with disabilities; and (2) identify gaps in the data to be addressed by future research;
- Review existing or emerging industry quality assurance standards in relation to the needs of individuals with disabilities, and develop recommended quality indicators for this population;
- Design programs to prepare individuals with disabilities to be educated consumers of health care, using consumer organizations in this effort;
- Serve as a center of information for policy makers, researchers, and individuals with disabilities about new developments in managed care, integrating the perspective of individuals with disabilities into the national discussion of managed care, and conduct at least two conferences on emerging issues in research on managed care for individuals with disabilities; and
- Establish and work with an Advisory Committee whose members include relevant Federal and other public agencies (e.g., relevant units of the Department of Health and Human Services and the Public Health Service), key managed care representatives from the private sector, individuals with disabilities, and other NIDRR centers addressing related issues.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3423, Mary Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Program Number 84.133B, Rehabilitation Research and Training Centers)

Dated: April 5, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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Federal Register

Vol. 61, No. 78

Monday, April 22, 1996

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FEDERAL REGISTER PAGES AND DATES, APRIL

14233–14464 1
14465–14606 2
14607–14948 3
14949–15176 4
15177–15362 5
15363–15694 8
15695–15874 9
15875–16042 10
16043–16202 11
16203–16374 12
16375–16614 15
16615–16702 16
16703–16872 17
16873–17226 18
17227–17546 19
17547–17822 22

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6874 14233
6875 14603
6876 14605
6877 15177
6878 15363
6879 15871
6880 16035
6881 16037
6882 16611
6883 16613
6885 17545

Executive Orders:
11880 (Amended by EO 12998) 15873
12821 (Superseded by EO 12999) 17227
12997 14949
12998 15873
12999 17227

Administrative Orders:
Memorandum:
April 8, 1996 16039
Presidential Determinations:
No. 96–19 of March 19, 1996 14235

5 CFR

Ch. XIV 16043
890 15177

7 CFR

58 .....15875, 17547
301 17550
353 15365
354 15365
911 17551
915 17551
927 17553
932 17555
982 17556
985 15695
1131 17561
1208 14951
1435 15881

Proposed Rules:
1 16231
51 17580
330 15201
929 17586
946 17587
999 15734
1002 14514
1004 14514
1106 17588
3550 15395

9 CFR

78 .....14237, 15881
92 .....14239, 17231
98 .....15180, 17231

Proposed Rules:
77 14982
91 14982
92 .....14268, 16978
93 16978
94 .....14999, 15201, 16978
95 16978
96 16978
98 16978

10 CFR

170 16203
171 16203

Proposed Rules:
50 15427
73 16067
430 17589
437 15736
1021 17257

12 CFR

219 14382
226 14952

Proposed Rules:
614 16403
619 16403
932 17603

13 CFR

301 15371

14 CFR

25 .....14607, 15372
33 16375
39 .....14240, 14242, 14608, 14960, 14961, 15184, 15882, 16226, 16377, 16379, 16382, 16384, 16703, 16873, 17562
91 16287
311 17564
399 17565

Proposed Rules:
25 14684
39 .....14269, 14271, 14273, 14275, 14515, 15000, 15002, 15430, 15738, 15903, 15904, 15906, 15908, 16412, 16413, 16414, 16416, 16418, 16420, 17257, 17259, 17261
71 .....15432, 15434, 15740, 15742, 16287, 17606, 17607
73 17608

15 CFR

30 15697
769 14243
902 .....14465, 15884
922 14963

16 CFR

303 16385

Proposed Rules:
239 14688

254 14685
406 14686
700 14688
701 14688
702 14688

17 CFR

200 15338

Proposed Rules:

228 17108
229 17108
240 17108
242 17108

18 CFR

Proposed Rules:

35 17263

20 CFR

Proposed Rules:

348 16067
416 17609
656 17610

21 CFR

Ch. I 14478, 16422
1 14244
2 15699
5 14375
101 16423
172 14481
173 14481
175 14481
176 14481
177 ..... 14481, 14964
178 14481
180 14481
181 14481
189 14481
201 17798
331 17798
341 15700
510 ..... 15703, 17565
520 15185
522 14482
558 ..... 14483, 17566
573 15703
803 16043
807 16043
814 15186
1313 17566
1316 17566

Proposed Rules:

25 14922
71 14690
170 14690
171 14690
201 17807
331 17807
510 15003
886 14277
900 ..... 14856, 14870, 14884, 14898, 14908

22 CFR

92 14375
514 15372

23 CFR

230 14615
625 17566
635 17243

Proposed Rules:

230 17264
1325 16729
1327 16729

24 CFR

0 15350
4 14448
12 14448
100 14378
103 14378
109 14378
200 ..... 14396, 14410
207 14396
213 14396
215 ..... 14396, 16172
219 14396
220 14396
221 14396
222 14396
231 14396
232 ..... 14396, 14410
233 14396
234 14396
236 ..... 14396, 16172
237 14396
241 ..... 14396, 14410
242 14396
244 14396
248 14396
265 14396
267 14396
583 17245
811 ..... 14456, 16045
813 16172
913 16172
950 16172
990 17538
3500 14617

Proposed Rules:

50 15340

26 CFR

1 ..... 14247, 14248, 15891, 17572
31 17572
602 ..... 14248, 17572

Proposed Rules:

1 ..... 14517, 15204, 15743, 17614
31 17614
35a 17614
301 ..... 17265, 17614
502 17614
503 17614
509 17614
513 17614
514 17614
516 17614
517 17614
520 17614
521 17614

28 CFR

25 17575
547 16374

Proposed Rules:

36 ..... 16232, 16233
74 17667
553 14440

29 CFR

1614 17576
1625 15374

Proposed Rules:

1904 15435
1910 15205
1915 15205
1926 15205
1952 15435
2509 14690
2520 14690
2550 14690
2610 16387
2619 16388
2622 16387
2644 16391
2676 16388

30 CFR

914 ..... 15378, 15891
943 15380

Proposed Rules:

Ch. II 17266
6 15743
18 15743
19 15743
20 15743
21 15743
22 15743
23 15743
26 15743
27 15743
29 15743
33 15743
35 15743
218 17266
745 15005
900 15005
901 15005
906 15005
913 15005
914 15435
925 14517
926 ..... 15005, 15910
931 15005
934 15005
935 ..... 15005, 16731
936 ..... 15005, 15435
944 15005
946 15005
948 15005
950 15005

31 CFR

103 ..... 14248, 14382, 14383, 14386
535 15382

Proposed Rules:

321 14444

32 CFR

40a 16704
706 ..... 14966, 14967, 14968, 14969
865 16046

Proposed Rules:

117 15437
619 15010

33 CFR

100 ..... 14249, 16709, 16711, 17246
110 16711
117 ..... 14970, 17247, 17248
165 ..... 16714, 16716, 16717, 17249
175 15162
179 15162
181 15162

Proposed Rules:

100 ..... 16732, 16885, 17269, 17270
117 16736
165 ..... 14518, 16886

34 CFR

76 14483
81 14483
682 16718

35 CFR

70 16718

36 CFR

7 14617
223 14618
292 14621
1253 14971

Proposed Rules:

242 15014
1190 17271
1191 ..... 16232, 16233, 17271

38 CFR

1 14596
21 15190

39 CFR

111 ..... 17190, 17206

Proposed Rules:

111 15205

40 CFR

9 16290
51 16050
52 ..... 14484, 14487, 14489, 14491, 14493, 14634, 14972, 14974, 14975, 15704, 15706, 15709, 15713, 15715, 15717, 15719, 16050, 16229, 17576
60 ..... 14634, 15721, 17358
63 17358
70 16063
80 16391
81 14496
148 ..... 15566, 15660
167 14497
180 ..... 14637, 15192, 15895, 15896, 15900
185 15893
186 ..... 15192, 15900
260 ..... 16290, 17358
261 ..... 16290, 17358
262 16290
263 16290
264 ..... 16290, 17358
265 ..... 16290, 17358
266 ..... 16290, 17358
268 ..... 15566, 15660
270 17358
271 ..... 15566, 17358
273 16290
300 15902
403 ..... 15566, 15660
716 14596

Proposed Rules:

51 16068
52 ..... 14520, 14521, 14522, 14694, 15020, 15744, 15745, 15751, 15752, 16050, 16738, 17669, 17675
59 14531
60 17358
63 17358
68 ..... 16598, 16606
80 16432
81 ..... 14522, 16738

85 16738
141 16348
142 16348
180 ....14694, 15911, 15913, 16740, 16742, 16745, 16747
260 17358
261 ....14696, 17358
264 17358
265 17358
266 17358
270 17358
271 17358
300 ....14280, 16068, 16229
440 15917
721 17272

41 CFR

101–25 14978

42 CFR

405 14640
491 14640
Proposed Rules:
413 17677

43 CFR

Group 8400 15722
10010 16719
Proposed Rules
8000 15753
8300 15753

44 CFR

64 ....14497, 15723
65 ....14658, 14661, 16874, 17251
67 ....14665, 16875
Proposed Rules:
62 14709
67 ....14715, 16887

45 CFR

74 15564
1633 14250
1634 14252
1635 14261
Proposed Rules:
1301 17754
1303 17754
1304 17754
1305 17754
1306 17754
1308 17754

46 CFR

2 15162
67 17814
159 ....15162, 15868
160 ....15162, 15868
514 14979
Proposed Rules:
10 ....15438, 16749
12 ....15438, 16749
13 16749
15 15438

47 CFR

Ch. I 14672
0 ....14499, 16229
1 15724
2 ....14500, 15382
15 14500
21 115387
61 15724
63 15724
64 14979
73 ....14503, 14676, 14981, 16878, 16879
76 ....15387, 15388, 16396
97 15382
Proposed Rules:
Ch. I 14717, 16432, 16890
0 16424
1 15439
2 15206
15 15206
20 15753
36 15208
64 15020
68 15441
69 15208
73 ....14733, 15022, 15439, 15442, 15443
74 15439
76 16447

48 CFR

207 16879
225 16880
231 16881
242 16881
252 16880
1425 15389
1452 15389
1516 14504
1523 14506
1535 14264
1552 ....14264, 14504, 14506
1604 15196
1652 15196
Proposed Rules:
9 14946
15 14944
17 14944
31 14944
35 14946
37 14946
52 14944

49 CFR

3 17577
79 17578
382 14677
383 14677
390 14677
391 ....14677, 17253
392 14677
395 14677
533 14680
538 14507
541 15390
583 17253
800 14512
1154 16066
Proposed Rules:
37 ....16232, 16234
393 14733
544 15443
571 ....15446, 15449, 15917, 16073
574 15917
1002 15208
1100 14735
1101 14735
1102 14735
1103 14735
1104 14735
1105 14735
1106 14735
1107 14735
1108 14735
1109 14735
1110 14735
1111 14735
1112 14735
1113 14735
1114 14735
1115 14735
1116 14735
1117 14735
1118 14735
1119 14735
1120 14735
1121 14735
1122 14735
1123 14735
1124 14735
1125 14735
1126 14735
1127 14735
1128 14735
1129 14735
1130 14735
1131 14735
1132 14735
1133 14735
1134 14735
1135 14735
1136 14735
1137 14735
1138 14735
1139 14735
1140 14735
1141 14735
1142 14735
1143 14735
1144 14735
1145 14735
1146 14735
1147 14735
1148 14735
1149 14735
1169 17579
1313 17682

50 CFR

216 15884
228 15884
251 14682
611 14465
620 16401
625 15199
641 14683
649 16882
650 15733
655 14465
663 ....14512, 16402
672 17256
675 ....16883, 17256
Proposed Rules:
17 15452
23 14543
100 15014
230 15754
625 17682
630 ....15212, 16236
646 ....14735, 16076
650 16237
651 ....14284, 16237, 16892
671 16456
672 16456
674 16456
675 ....16085, 16456
676 14547
681 15452
686 16076

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton research and promotion:

Cotton Board supplemental assessment rates; published 3-22-96

Hazelnuts grown in Oregon and Washington; published 4-22-96

Meats, prepared meats, and meat products; grading, certification, and standards:

Definitions, certificate form changes, and official stamp imprints update; published 3-21-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Fire ant, imported; published 4-22-96

Poultry improvement:

National Poultry Improvement Plan and auxiliary provisions--

Administrative and testing procedures for participants and participating flocks; published 3-21-96

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Real estate title clearance and loan closing procedures; published 3-22-96

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Real estate title clearance and loan closing procedures; published 3-22-96

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Real estate title clearance and loan closing procedures; published 3-22-96

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Real estate title clearance and loan closing procedures; published 3-22-96

AGRICULTURE DEPARTMENT

Administrative regulations:

Perishable Agricultural Commodities Act; formal adjudicatory proceedings; published 3-21-96

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Florida; published 2-21-96

Michigan; published 2-21-96

Ohio; published 4-22-96

Clean Air Act:

State operating permits programs--

Kentucky; published 3-22-96

Hazardous waste:

State underground storage tank program approvals--

Maine; published 2-21-96

Rhode Island; published 2-20-96

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal Sector Equal Employmnet Opportunity:

Regulatory time limits extension; initial appeals filing, class action appeals, attorney fees motions, prohibited discrimination initial appeals, etc.; published 4-22-96

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Illinois; published 3-13-96

Wyoming; published 3-13-96

Television stations; table of assignments:

Alabama; published 3-21-96

FEDERAL MARITIME COMMISSION

Maritime carriers in foreign commerce:

Agreements among ocean common carriers; information form and post-effective reporting requirements; published 3-21-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Sponsor name and address change--

ADM Animal Health & Nutrition Division; published 4-22-96

Mallinckrodt Veterinary Operations, Inc.; published 4-22-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Grants administration:

Higher education institutions, hospitals, and other non-profit organizations; uniform administrative requirements and definitions, etc. (OMB A-110); published 3-22-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Low income housing:

Supportive housing for elderly and persons with disabilities; published 3-22-96

Mortgage and loan insurance programs:

Multifamily projects--

HUD-owned and subject to HUD-held multifamily mortgages; management and disposition; published 3-21-96

JUSTICE DEPARTMENT

Drug Enforcement Administration

Domestic Chemical Diversion Control Act of 1993; implementation:

List I chemicals; manufacturers, distributors, importers, and exporters; registration; correction; published 4-22-96

JUSTICE DEPARTMENT

Organization, functions, and authority delegations:

Civil Aeronautics Board decisions, recommendations to President; CFR Part removed; published 4-22-96

NUCLEAR REGULATORY COMMISSION

Employee protection policies; amendments; published 2-22-96

STATE DEPARTMENT

Removal of alien enemies brought to U.S.; World War II reparations; and disposal of surplus property in foreign areas; CFR parts removed; published 2-21-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

AlliedSignal, Inc.; published 2-22-96

Boeing; published 3-21-96

British Aerospace; published 3-21-96

McDonnell Douglas; published 3-21-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Operations Office

Acquisition regulations:

Review and revision; comments due by 4-29-96; published 2-28-96

COMMERCE DEPARTMENT

International Trade Administration

Uruguay Round Agreements Act (URAA); conformance:

Antidumping and countervailing duties; comments due by 4-29-96; published 2-27-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic striped bass and weakfish; comments due by 4-29-96; published 3-28-96

Atlantic swordfish; comments due by 5-2-96; published 4-12-96

North Pacific fisheries research plan; implementation; comments due by 4-29-96; published 3-28-96

DEFENSE DEPARTMENT

Privacy Act; implementation; comments due by 4-30-96; published 3-1-96

EDUCATION DEPARTMENT

Postsecondary education:

Foreign language and area studies fellowships program; comments due by 4-29-96; published 3-28-96

Modern foreign language training and area studies, etc.; comments due by 4-29-96; published 3-28-96

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

promulgation; various States:
California; comments due by 5-2-96; published 3-18-96
Illinois; comments due by 5-2-96; published 4-2-96
Indiana; comments due by 5-2-96; published 4-2-96
Kentucky; comments due by 5-2-96; published 4-2-96
Pennsylvania; comments due by 5-2-96; published 4-2-96
Tennessee; comments due by 5-2-96; published 4-2-96
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Michigan; comments due by 5-2-96; published 4-2-96
Superfund program:
National oil and hazardous substances contingency plan--
National priorities list update; comments due by 4-30-96; published 3-28-96
National priorities list update; comments due by 5-1-96; published 4-1-96
Water pollution control:
Ocean dumping; bioassay testing requirements; comments due by 5-1-96; published 3-28-96

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:
Regulatory fees (FY 1996); assessment and collection; comments due by 4-29-96; published 4-15-96
Radio and television broadcasting:
Equal employment opportunity rule and policies; revision; comments due by 4-30-96; published 3-12-96
Radio stations; table of assignments:
Colorado; comments due by 5-2-96; published 3-18-96
Illinois et al.; comments due by 4-29-96; published 3-13-96
Louisiana; comments due by 5-2-96; published 3-18-96
New York; comments due by 5-2-96; published 3-18-96
Virgin Islands; comments due by 5-3-96; published 3-18-96
Virginia; comments due by 4-29-96; published 3-13-96
Television stations; table of assignments:
Oklahoma; comments due by 5-3-96; published 3-18-96
Wisconsin; comments due by 4-29-96; published 3-13-96

FEDERAL TRADE COMMISSION

Lubricating oil, previously used; deceptive advertising and labeling; comments due by 5-3-96; published 4-3-96
Private vocational school guides; comments due by 5-3-96; published 4-3-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Biological products:
Well-characterized biotechnology products--
Approved application changes reporting; comments due by 4-29-96; published 1-29-96
Approved application changes reporting; guidance availability; comments due by 4-29-96; published 1-29-96
Approved application changes reporting; guidance availability; comments due by 4-29-96; published 1-29-96
Clinical investigators; financial disclosure; comments due by 4-29-96; published 3-5-96
Food for human consumption:
Federal regulatory review and comment request; comments due by 4-29-96; published 12-29-95
Food labeling--
Nutrient content claims; definition of term, healthy; comments due by 4-29-96; published 2-12-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal regulatory review:
Fair housing; certification and funding of State and local enforcement agencies; comments due by 4-29-96; published 2-28-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Federal regulatory review:
Wildlife and plants; lists consolidation; comments due by 5-3-96; published 3-19-96
Meetings:
Endangered Species of Wild Fauna and Flora International Trade Convention; comments due by 4-30-96; published 3-1-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 4-29-96; published 3-29-96
Missouri; comments due by 5-2-96; published 4-2-96

LABOR DEPARTMENT

Occupational Safety and Health Administration

Occupational injury and illness; recording and reporting requirements; comments due by 5-2-96; published 2-2-96
Preliminary economic analysis; executive summary; comments due by 5-2-96; published 2-29-96

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:
World's Fastest Lobster Boat Race; comments due by 5-3-96; published 3-4-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
AlliedSignal Inc.; comments due by 4-29-96; published 2-29-96
Michelin Aircraft Tire Corp.; comments due by 4-30-96; published 1-29-96
Class E airspace; comments due by 4-29-96; published 3-18-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rail licensing proceudres:
Abandonment and discontinuance of rail lines and rail transportation; comments due by 5-3-96; published 3-19-96

TREASURY DEPARTMENT

Customs Service

Organization and functions; field organization, ports of entry, etc.:
Columbus, OH; port limits extension; comments due by 4-30-96; published 3-1-96

TREASURY DEPARTMENT

Fiscal Service

Bonds and notes, U.S. Treasury:
Payments by banks and other financial institutions of United States savings bonds and notes (Freedom Shares); comments due by 5-1-96; published 4-1-96
Book-entry Treasury bonds, notes, and bills:
Securities held through financial intermediaries; comments due by 5-3-96; published 3-4-96

VETERANS AFFAIRS DEPARTMENT

Loan guaranty:
Discount points financed in connection with interest rate reduction refinancing loans; limitation; comments due by 4-29-96; published 2-28-96

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–026–00004–2)	23.00	Jan. 1, 1995
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1950–1999	(869–026–00024–7)	40.00	Jan. 1, 1995
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–026–00026–3)	23.00	Jan. 1, 1995
9 Parts:			
1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
0–50	(869–026–00029–8)	30.00	Jan. 1, 1995
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
200–399	(869–026–00031–0)	15.00	[6] Jan. 1, 1993
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500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
1–199	(869–026–00035–2)	12.00	Jan. 1, 1995
200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
220–299	(869–026–00037–9)	28.00	Jan. 1, 1995
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500–599	(869–026–00039–5)	19.00	Jan. 1, 1995
600–End	(869–026–00040–9)	35.00	Jan. 1, 1995
13	(869–026–00041–7)	32.00	Jan. 1, 1995
14 Parts:			
1–59	(869–026–00042–5)	33.00	Jan. 1, 1995
60–139	(869–026–00043–3)	27.00	Jan. 1, 1995
140–199	(869–026–00044–1)	13.00	Jan. 1, 1995
200–1199	(869–026–00045–0)	23.00	Jan. 1, 1995
1200–End	(869–026–00046–8)	16.00	Jan. 1, 1995
15 Parts:			
0–299	(869–026–00047–6)	15.00	Jan. 1, 1995
300–799	(869–026–00048–4)	26.00	Jan. 1, 1995
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–026–00051–4)	19.00	Jan. 1, 1995
1000–End	(869–026–00052–2)	25.00	Jan. 1, 1995
17 Parts:			
1–199	(869–026–00054–9)	20.00	Apr. 1, 1995
200–239	(869–026–00055–7)	24.00	Apr. 1, 1995
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–026–00060–3)	11.00	Apr. 1, 1995
19 Parts:			
1–140	(869–026–00061–1)	25.00	Apr. 1, 1995
141–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00069–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
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1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
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30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
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Title	Stock Number	Price	Revision Date
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[7] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
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100–499	(869–026–00111–1)	9.50	July 1, 1995
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1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
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30 Parts:			
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31 Parts:			
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33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
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34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
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37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
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790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
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8		4.50	[3] July 1, 1984
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1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
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47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
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48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
*1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
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49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.