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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
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  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

- WHEN:** January 28, 1997 at 9:00 am
- WHERE:** Office of the Federal Register  
Conference Room  
800 North Capitol Street, NW  
Washington, DC  
(3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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**Electronic Bulletin Board**

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Federal Register

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Thursday, January 16, 1997

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 96-AGL-18]

#### Establishment of Class E2 Airspace; Sawyer Airport, Gwinn, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E2 airspace to accommodate an Automated Weather Observation System/Surface Weather and Reporting System (AWOS/SWARS) to serve runway 01/19 approach at Sawyer Airport, Gwinn, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 UTC, March 27, 1997.

**FOR FURTHER INFORMATION CONTACT:** John A. Clayborn, Air Traffic Division, Operational Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

#### SUPPLEMENTARY INFORMATION:

##### History

On November 21, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to accommodate an AWOS/SWARS to serve runway 01/19 approach at Sawyer Airport, Gwinn, MI (61 FR 59207). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain

Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments objecting to the proposal were received. The notice inadvertently listed incorrect coordinates and these coordinates have been corrected in this Final Rule. Class E airspace designations for surface area for an airport are published in paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace to accommodate an Automated Weather Observation System/Surface Weather and Reporting System (AWOS/SWARS) to serve runway 01/19 approach at Sawyer Airport, Gwinn, MI. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

#### PART 71—[AMENDED]

1. The authority citation for 14 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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6002 The Class E airspace areas designated as a surface area for an airport.*

\* \* \* \* \*

AGL MI E2 Sawyer, MI [New]

Sawyer Airport, MI

(Lat. 46°21'13"N, long. 87°23'43"W)

Within a 4.6-mile radius of Sawyer Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

\* \* \* \* \*

Issued in Des Plaines, Illinois on January 8, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-1115 Filed 1-15-97; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 96-AGL-19]

#### Establishment of Class E5 Airspace; Sawyer Airport, Gwinn, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E5 airspace to accommodate an Instrument Landing System (ILS), a Very High Frequency Omnidirectional Range (VOR) and a Distance Measuring Equipment (DME) to serve runway 01/

19 approach at Sawyer Airport, Gwinn, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 UTC, March 27, 1997.

**FOR FURTHER INFORMATION CONTACT:** John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Thursday, November 21, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to accommodate an ILS, DME, and VOR to runway 01/19, Sawyer Airport, Gwinn, MI (61 FR 59208). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The notice inadvertently listed incorrect coordinates and these coordinates have been corrected in this Final Rule. Class E5 airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace to accommodate an Instrument Landing System (ILS), a Very High Frequency Omnidirectional Range (VOR) and a Distance Measuring Equipment (DME) to serve runway 01/19 approach at Sawyer Airport, Gwinn, MI. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The

area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

**PART 71—[AMENDED]**

1. The authority citation for 14 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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

\* \* \* \* \*

AGL MI E5 Sawyer, MI [New]  
Sawyer Airport, MI

(Lat. 46°21'13"N, long. 87°23'43"W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Sawyer Airport, excluding that airspace within the Marquette, MI, Class E airspace area, and that airspace extending upward from 1,200 feet above the surface within a 34.8-mile radius of the Sawyer Airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on January 8, 1997.

Maureen Woods,

*Manager, Air Traffic Division.*

[FR Doc. 97-1114 Filed 1-15-97; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 165**

**Beverages**

*CFR Correction*

In Title 21 of the Code of Federal Regulations, parts 100 to 169, revised as of April 1, 1996, § 165.110 is corrected by transferring paragraph (b)(5) from page 531 and inserting text immediately following the note in the second column on page 526.

**§ 165.110 Bottled water.**

\* \* \* \* \*

(b) \* \* \*

(5) *Radiological quality.* (i) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (b)(5)(ii) of this section, meet standards of radiological quality as follows:

(A) The bottled water shall not contain a combined radium-226 and radium-228 activity in excess of 5 picocuries per liter of water.

(B) The bottled water shall not contain a gross alpha particle activity (including radium-226, but excluding radon and uranium) in excess of 15 picocuries per liter of water.

(C) The bottled water shall not contain beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon-emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year.

(ii) Analyses conducted to determine compliance with paragraph (b)(5)(i) of this section shall be made in accordance with the methods described in the applicable sections of “Standard Methods for the Examination of Water and Wastewater,” 15th Ed. (1980), and “Interim Radiochemical Methodology for Drinking Water,” U.S. EPA, EMSL, EPA-600/4-75-008 (Revised), March

1976, both of which are incorporated by reference. The availability of these incorporations by reference is given in paragraph (b)(2) of this section.

\* \* \* \* \*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8711]

RIN 1545-AU82

#### Intangibles Under Sections 1060 and 338

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document amends the temporary regulations under sections 1060 and 338(b) of the Internal Revenue Code (Code) relating to purchase price allocations in taxable asset acquisitions and deemed asset purchases. The amendments revise the treatment of intangible assets in such acquisitions to take into account the enactment of section 197 by the Omnibus Budget Reconciliation Act of 1993. This document also makes conforming amendments to the final regulations under section 338. The regulations provide guidance regarding taxable asset acquisitions and deemed asset purchases resulting from elections under section 338. The text of the temporary regulations herein also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

**EFFECTIVE DATE:** These regulations are effective February 14, 1997.

For dates of applicability, see §§ 1.338(b)-2T(c)(4) and 1.1060-1T(a)(2)(ii).

**FOR FURTHER INFORMATION CONTACT:** Brendan P. O'Hara, Office of Assistant Chief Counsel (Corporate), (202) 622-7530 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

These regulations amend the current temporary regulations under sections 1060 (§ 1.1060-1T) and 338(b) (§§ 1.338(b)-2T and 1.338(b)-3T) (the current regulations) with respect to the treatment of acquired intangible assets.

They also amend related examples in the final regulations under section 338. Section 1060 provides for the allocation of purchase price among the assets of a trade or business under regulations. Section 338(b) provides for a similar allocation, also under regulations, for a deemed purchase of assets under section 338. The current regulations employ a residual method of allocation. The legislative history of section 1060, adopted in 1986, noted with approval the use of the residual method under the section 338(b) regulations and required that the same method be used pursuant to regulations to be prescribed under section 1060. S. Rep. No. 99-313, 99th Cong., 2d Sess. 253, 254 (1986); 1986-3 C.B. Vol. 3, 253-54.

The current regulations place each acquired asset into one of four asset classes. The purchase price is allocated among the classes in priority order. No asset in any class except for the last class is allocated more than its fair market value. If the aggregate purchase price allocable to a particular class is less than the aggregate fair market value of the assets within the class, each asset is allocated an amount in proportion to its fair market value and nothing is allocated to any junior class.

The four classes under the current regulations are as follows:

- Class I—Cash and cash equivalents;
- Class II—Certificates of deposit, U.S. government securities, readily marketable stock or securities, and foreign currency;
- Class III—All assets not in Class I, II, or IV; and
- Class IV—Intangible assets in the nature of goodwill and going concern value.

Section 197 was enacted as part of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, 107 Stat. 312 (1993) (the 1993 Act). Prior to the 1993 Act, acquired goodwill and going concern value were not amortizable, but other acquired intangible assets were amortizable if they could be separately identified and their useful lives determined with reasonable accuracy. Section 197 responded to policy and administrative concerns regarding the treatment of acquired intangibles by providing similar treatment for goodwill, going concern value, and certain other intangible assets acquired in a taxable acquisition and held in connection with a trade or business. The 1993 Act allows taxpayers to amortize certain acquired intangible assets (amortizable section 197 intangibles) over 15 years, subject to certain exceptions.

The report of the House Committee on Ways and Means accompanying the 1993 Act states that:

It is expected that the present [regulations under sections 338 and 1060] will be amended to reflect the fact that [section 197] allows an amortization deduction with respect to intangible assets in the nature of goodwill and going concern value. It is anticipated that the residual method specified in the regulations will be modified to treat all amortizable section 197 intangibles as Class IV assets and that this modification will apply to any acquisition of property to which [section 197] applies.

H.R. Rep. 111, 103d Cong., 1st Sess. 760, 776 (May 23, 1993), 1993-3 C.B. 336, 352.

The current regulations have not yet been amended in accordance with the legislative history of section 197. These new temporary regulations accomplish that change, with slight modifications, as discussed below.

#### Explanation of Provisions

The temporary and final regulations are amended to conform to the legislative history of the 1993 Act by placing all amortizable section 197 intangibles other than goodwill and going concern value in Class IV.

However, the new regulations also include nonamortizable section 197 intangibles in Class IV. Some section 197 intangibles are amortizable by the buyer though they were not amortizable by the seller. Other section 197 intangibles may not be amortizable because of the application of the anti-churning rules of section 197(f)(9). Although sections 338(b) and 1060 do not require conformity between the buyer and seller on purchase price allocations, they reflect strong policies encouraging conformity, including mandatory application of the rule of *Commissioner v. Danielson*, 378 F.2d 771 (3d Cir. 1967), cert. denied, 389 U.S. 858 (1967), in cases where the parties have agreed to an allocation, and a reporting system designed to reveal situations where the parties' allocations are inconsistent. These policies favoring conformity are best served by requiring both parties to include the same assets in each class. Moreover, this rule is also more consistent with section 1060(b) as amended by the 1993 Act. Section 1060(b)(1) requires the parties to report, under regulations, "the amount of consideration received for the assets which is allocable to section 197 intangibles." The term *section 197 intangibles* is more inclusive than amortizable section 197 intangibles. The goals of consistency, simplification, and administrability will be better achieved with respect to allocations to section

197 intangibles if all such assets are removed from Class III and isolated in a junior class (or classes). Accordingly, these regulations classify all section 197 intangibles (other than goodwill and going concern value) as Class IV assets.

To reconcile the original intention of Congress in requiring the residual method of allocation for goodwill and going concern value with the legislative history of the 1993 Act, these regulations provide that goodwill and going concern value will be assigned to a true residual class, Class V. This method is consistent with the policies of section 197 (which regards many intangible assets as the functional equivalent of goodwill and going concern value and thus treats them uniformly) as well as the original intention of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085 (1986) (that goodwill and going concern value not be valued separately for purchase price allocation purposes). Allocating goodwill and going concern value to Class V avoids the need for determining the value of goodwill and going concern value through a non-residual method. Although this approach places some section 197 intangibles in Class V instead of Class IV, it carries out the expectation set forth in the legislative history of the 1993 Act by making section 197 intangibles junior to all other assets in the allocation scheme. The practical significance of placing goodwill and going concern value in Class V is generally limited to circumstances in which fewer than all of the amortizable section 197 intangibles acquired in a single transaction are subsequently disposed of at a gain. Those situations, in any case, require some method of allocation among the intangibles.

**Effective Date**

These regulations are effective for applicable asset acquisitions, as defined in section 1060(c), completed on or after February 14, 1997, and for acquisition dates, as defined in section 338(h)(2), on or after February 14, 1997.

As described above, the current regulations have been in conflict with the 1993 Act legislative history concerning the classification of amortizable section 197 intangibles other than goodwill and going concern value since August 10, 1993, generally (the date of enactment of section 197), and, in some cases, since 1991.

The legislative history to the 1993 Act clearly contemplates that changes to the

classification system would be made by amended regulations. In the absence of such amendments, the only system available under regulations was the four-class system established before the enactment of section 197. Further, the IRS revised Form 8594, Asset Acquisition Statement under Section 1060, in January of 1996 in a manner consistent with the legislative history, i.e., by placing all amortizable section 197 intangibles in Class IV. For acquisition dates before February 14, 1997, if section 197 applies to any asset acquired or deemed acquired, the taxpayer (and all related parties) may consistently (in all transactions in which AGUB, ADSP, MADSP, or consideration must be allocated under section 338 or 1060)—

- (i) apply these new rules in full as written;
- (ii) apply the current temporary regulations as written; or
- (iii) apply the current temporary regulations as written, but treat all amortizable section 197 intangibles as Class IV assets.

**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) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the 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.

**Drafting Information**

The principal author of these regulations is Brendan P. O'Hara, Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

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

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

Par. 2. In § 1.338-0, entries for § 1.338(b)-2T(b)(2)(v) and § 1.338(b)-2T(c)(4) are added to read as follows:

**§ 1.338-0 Outline of topics.**

\* \* \* \* \*

§ 1.338(b)-2T Allocation of adjusted grossed-up basis among target assets (temporary).

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*
- (v) Class V assets.
- (c) \* \* \*
- (4) Effective dates.

\* \* \* \* \*

Par. 3. Section 1.338-3 is amended by:

- 1. Revising paragraph (b)(4).
- 2. Revising paragraph (d)(8)(ii) *Example 1*, paragraph (e); *Example 2*, paragraphs (a), (b), and (d); *Example 3*, paragraph (d); and *Example 4*, paragraphs (d) and (f).

The revisions read as follows:

**§ 1.338-3 Deemed sale and aggregate deemed sale price.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

(d) \* \* \*

(8) \* \* \*

(ii) \* \* \*

*Example 1.* \* \* \*

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

*Example 2.* \* \* \*

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

Asset	Basis	FMV	Ratio
1. Land .....	\$5,000	\$35,000	.14

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

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

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

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

$$1ADSP_{III} = (\$140,000 - (\$10,000 + \$10,000)) + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (ADSP_{III} - \$30,000) + (\$0 - \$3,000)]$$

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

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

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

**Example 3.**

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

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

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

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

$$.66ADSP = \$184,020$$

$$ADSP = \$278,818.18$$

(2) Because the ADSP as determined exceeds the aggregate fair market value of the Class I, II, III, and IV assets, the \$250,000 amount preliminarily allocated to the Class III assets is appropriate. Thus, the amount of the ADSP allocated to Class III assets equals their aggregate fair market value (\$250,000), and the allocated ADSP amount for each Class III asset is its fair market value. Further, because there are no Class IV assets, the allocable ADSP amount for the Class V asset (goodwill) is \$8,818.18 (the excess of the ADSP over the aggregate ADSP amounts for the Class I, II, and III assets).

**Example 4.**

(d) Because the portion of the preliminary ADSP allocable to Class III assets (\$243,666.67) does not exceed their fair market value (\$250,000), no amount is allocated to Class V assets for T. Further, this amount (\$243,666.67) is allocated among T's

Class III assets in proportion to their fair market values. See paragraph (e) of *Example 2*. Tentatively, \$48,733.34 of this amount is allocated to the T1 stock.

(f) The facts are the same as in paragraph (a) of this *Example 4*, except that the T1 inventory has a \$12,500 basis and a \$62,500 value, the T1 stock has a \$62,500 value, and T owns 80% of the T1 stock. In preliminarily calculating ADSP<sub>III</sub>, the T1 stock can be disregarded but, because T owns only 80% of the T1 stock, only 80% of T1 asset basis and value should be taken into account in calculating T's ADSP. By taking into account 80% of these amounts, the remaining calculations and results are the same as in paragraphs (b), (c), (d), and (e) of this *Example 4*, except that the grossed-up basis in T's recently purchased T1 stock is \$44,455.00 (\$35,564.00/0.8).

Par. 4. Section 1.338(b)-2T is amended by:

1. Revising paragraphs (b)(2), (c)(1), and (c)(3)(iii).
2. Adding paragraph (c)(4).
3. Revising paragraph (d) *Example 1*, paragraphs (vi) and (x) through (xiii).
4. Revising paragraph (d) *Example 2*, paragraphs (vi) through (viii).

The revisions and addition read as follows:

**§ 1.338(b)-2T Allocation of adjusted grossed-up basis among target assets (temporary).**

(b) \*\*\*

(2) *Other assets*—(i) *In general*. Subject to the limitations and other special rules of paragraph (c) of this section, adjusted grossed-up basis (as reduced by Class I assets) is allocated among Class II assets of target held at the beginning of the day after the acquisition date in proportion to their fair market values at such time, then among Class III assets so held in such proportion, then among Class IV assets so held in such proportion, and finally to Class V assets.

(ii) *Class II assets*. Class II assets are certificates of deposit, U.S. Government securities, readily marketable stock or securities (within the meaning of § 1.351-1(c)(3)), foreign currency, and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(iii) *Class III assets*. Class III assets are all assets of target other than Class I, II, IV, and V assets.

(iv) *Class IV assets*. Class IV assets are all section 197 intangibles, as defined in section 197, except those in the nature of goodwill and going concern value.

(v) *Class V assets*. Class V assets are section 197 intangibles in the nature of goodwill and going concern value.

(c) \*\*\*

(1) *Basis not to exceed fair market value*. The amount of adjusted grossed-up basis allocated to an asset (other than Class V assets) shall not exceed the fair market value of that asset at the beginning of the day after the acquisition date. For modification of this fair market value limitation with respect to certain contingent income assets, see § 1.338(b)-3T(g).

(3) \*\*\*

(iii) *Allocation of adjusted grossed-up basis*. Subject to the limitations in paragraphs (c)(1) and (2) of this section, adjusted grossed-up basis (after reduction by the amount of Class I assets) is allocated among Class II, III, IV, and V assets of target held at the beginning of the day after the acquisition date in proportion to their fair market values at such time. For this purpose, the fair market value of Class V assets is deemed to be the excess, if any, of the hypothetical purchase price over the sum of the amount of the Class I assets and the fair market values of the Class II, III, and IV assets.

(4) *Effective dates*. This section applies for acquisition dates on or after February 14, 1997. For acquisition dates before February 14, 1997, if section 197 does not apply to any asset deemed acquired, the provisions of the regulations in effect before February 14, 1997, apply (see § 1.338(b)-2T as contained in 26 CFR part 1 revised April 1, 1996). For acquisition dates before February 14, 1997, if section 197 applies to any asset deemed acquired, the taxpayer (and all related parties) may consistently (in all transactions in which AGUB, ADSP, MADSP, or consideration must be allocated under section 338 or 1060)—

(i) Apply the provisions of this section;

(ii) Apply the provisions of this section as in effect before February 14, 1997 (see § 1.338(b)-2T as contained in 26 CFR part 1 revised April 1, 1996); or

(iii) Apply the provisions of this section as in effect before February 14, 1997 (see § 1.338(b)-2T as contained in 26 CFR part 1 revised April 1, 1996), but treat all amortizable section 197 intangibles as Class IV assets.

(d) \* \* \*

Example 1. \* \* \*

(vi) T has no Class IV assets. The amount allocated to T's Class V assets (assets in the nature of goodwill and going concern value) is \$150, i.e., \$2,500-\$2,350.

\* \* \* \* \*

(x) Assume that at the beginning of the day after the acquisition date, T1's cash and the fair market values of its Class III and IV assets are as follows:

Asset class	Asset	Fair market value
I .....	Cash .....	\$50 *
III .....	Equipment .....	200
IV .....	Patent .....	350
	Total .....	\$600

\* Amount

(xi) The amount of AGUB allocable to T1's Class III and IV assets is first reduced by the \$50 of cash.

(xii) Since the remaining amount of AGUB (\$570) is an amount which exceeds the fair market value of T1's only Class III asset, the equipment, the amount allocated to the equipment is its fair market value (\$200). After that, the remaining amount of AGUB (\$370) exceeds the fair market value of T1's only Class IV asset, the patent. Thus, the amount allocated to the patent is its fair market value (\$350).

(xiii) The amount allocated to T1's Class V assets (assets in the nature of goodwill and going concern value) is \$20, i.e., \$570 - \$550.

Example 2. \* \* \*

(vi) The amount of AGUB (\$2,700) available to allocate to T's assets is reduced by the amount of cash to \$2,500, i.e., \$2,700 - \$200. This \$2,500 balance is then allocated among the Class II, III, IV, and V assets in proportion to, and not in excess of, their fair market values (as determined under § 1.338(b)-2T(c)(3)(iii)).

(vii) Under paragraph (c)(3) of this section, the fair market value of the Class V assets is deemed to be \$150, i.e., the \$3,000 hypothetical purchase price minus \$2,850 (the sum of T's cash, \$200, and the fair market value of its Class II, III, and IV assets, \$2,650). The allocation is as follows:

Portfolio of marketable securities ...	* \$268
Inventory .....	268
Accounts receivable .....	536
Building .....	714
Land .....	178
Investment in T1 .....	402
Goodwill and going concern value	134
<b>Total .....</b>	<b>\$2,500</b>

\* All numbers rounded for convenience.

(viii) If the AGUB of T is increased (or decreased) as a result of a subsequent

adjustment, the hypothetical purchase price and the deemed fair market value of the Class V assets shall be redetermined and the increase (or decrease) in AGUB shall be allocated among T's acquisition date assets pursuant to § 1.338(b)-3T(f). The increase (or decrease) in AGUB is allocated pursuant to § 1.338(b)-3T(f) even if the hypothetical purchase price, as redetermined, no longer exceeds AGUB, as redetermined.

Par. 5. Section 1.338(b)-3T is amended by:

1. Revising paragraphs (e)(1), (f)(1), and (f)(2).

2. In paragraph (j), redesignating *Example (1)* through *Example (8)* as *Example 1* through *Example 8*.

3. Revising the following newly designated examples in paragraph (j): *Example 1*; *Example 2*; *Example 3*, paragraph (i) and paragraphs (v) through (vii); and *Example 6* through *Example 8*.

The revisions read as follows:

**§ 1.338(b)-3T Subsequent adjustments to adjusted grossed-up basis (temporary).**

\* \* \* \* \*

(e) \* \* \*

(1) *In general.* If adjusted grossed-up basis was allocated in accordance with the rules of § 1.338(b)-2T(b)(2), a decrease in adjusted gross-up basis (as determined under paragraph (c)(3) of this section) is allocated in the following order: first, as a reduction in the bases of target's Class V acquisition date assets, second, as a reduction of the bases of target's Class IV acquisition date assets in proportion to their fair market values at the beginning of the day after the acquisition date, third, as a reduction of the bases of target's Class III acquisition date assets in proportion to their fair market values at the beginning of the day after the acquisition date, and finally, as a reduction of the bases of target's Class II acquisition date assets in proportion to their fair market values at the beginning of the day after the acquisition date. The decrease in adjusted grossed-up basis allocated to an asset shall not exceed the adjusted grossed-up basis of target previously allocated to that asset. If adjusted grossed-up basis was allocated among target's assets pursuant to § 1.338(b)-2T(c)(3), a decrease in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is accounted for in accordance with the rules of paragraph (f) of this section.

\* \* \* \* \*

(f) \* \* \*

(1) *Scope.* This paragraph (f) applies if adjusted grossed-up basis was allocated among new target's Class II, III, IV, and V assets in accordance with § 1.338(b)-2T(c)(3) and an adjustment

event occurs after the close of the new target's first taxable year.

(2) *Allocation of increases (decreases) in adjusted grossed-up basis.* If an adjustment event after the close of new target's first taxable year increases (or decreases) adjusted grossed-up basis, the following items shall be redetermined, taking into account such adjustment event: the hypothetical purchase price, the deemed fair market value of Class V assets, and the adjusted grossed-up basis allocable to each acquisition date asset under § 1.338(b)-2T(c)(3) (the redetermined (c)(3) amount). (The redetermination of the deemed fair market value of Class V assets under this paragraph (f)(2) is made by taking into account the target's Class I assets and the fair market values of its Class II, III, and IV assets at the beginning of the day after the acquisition date.) If the redetermined (c)(3) amount for an acquisition date asset exceeds the amount of adjusted grossed-up basis previously allocated to such asset (taking into account prior adjustments under this paragraph (f)), an amount of adjusted grossed-up basis equal to such excess shall be allocated to such asset. If the amount of the adjusted grossed-up basis previously allocated to an acquisition date asset (taking into account prior adjustments under this paragraph (f)) exceeds the redetermined (c)(3) amount for that asset, an amount equal to such excess shall be allocated as a reduction in the basis of such asset. The rules of paragraph (d)(2) of this section (or paragraph (e)(2) of this section) apply for the treatment of amounts allocable under this paragraph (f) to an acquisition date asset that has been disposed of, depreciated, amortized, or depleted.

\* \* \* \* \*

(j) \* \* \*

*Example 1.* (i)(A) T's assets other than goodwill and going concern value, and their fair market values at the beginning of the day after the acquisition date, are as follows:

Asset class	Asset	Fair market value
III .....	Building .....	\$100
III .....	Stock of X (not a target)	200
	Total .....	\$300

(B) T has no liabilities other than a contingent obligation and T does not use the elective formula under section 338(h)(11).

(ii)(A) On September 1, 1997, P purchases all of the outstanding stock of T for \$270 and makes an express election for T. The grossed-up basis of the T stock and T's adjusted grossed-up basis (AGUB) are both \$270. The AGUB is ratably allocated among T's Class III

assets in proportion to their fair market values as follows:

Asset	Basis
Building (\$270×100/300) .....	\$ 90
Stock (\$270×200/300) .....	180
<b>Total</b> .....	<b>\$270</b>

(B) No amount is allocated to the Class V assets. New T is a calendar year taxpayer.

Assume that the X stock is a capital asset in the hands of new T.

(iii) On January 1, 1998, new T sells the X stock and uses the proceeds to purchase inventory.

(iv) On June 30, 1999, the contingent liability of old T becomes fixed and determinable. The amount of the liability is \$60.

(v) T's AGUB increases by \$60 from \$270 to \$330. This \$60 increase in AGUB is first allocated among T's acquisition date assets in accordance with the provisions of § 1.338(b)–

2T. Since the redetermined AGUB for T (\$330) exceeds the sum of the fair market values at the beginning of the day after the acquisition date of the Class III acquisition date assets (\$300), AGUB allocated to those assets is limited to those fair market values under § 1.338(b)–2T(c)(1). As there are no Class IV assets, the remaining AGUB of \$30 is allocated to goodwill and going concern value (Class V assets). The amount of increase in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase in AGUB
Building .....	\$ 90	\$100	\$10
X Stock .....	180	200	20
Goodwill and going concern value .....	0	30	30
<b>Total</b> .....	<b>\$270</b>	<b>\$330</b>	<b>\$60</b>

(vi) Since the X stock was disposed of before the contingent liability became fixed and determinable, no amount of the increase in AGUB attributable to such stock may be allocated to any T asset. Rather, such amount, \$20, is allowed as a capital loss to T for the taxable year 1999 under the principles of *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952). In addition, the \$10 increase in AGUB allocated to the building and the \$30 increase in AGUB allocated to the goodwill and going concern value are treated as basis redeterminations in 1999. See paragraph (d)(2) of this section.

**Example 2.** (i) On January 1, 1998, P purchases all of the outstanding stock of T and makes an express election for T. T does not use the elective formula under section 338(h)(11). Assume that the AGUB of T is \$500 and is allocated among T's acquisition date assets as follows:

Asset class	Asset	Basis
III .....	Machinery .....	\$150
III .....	Land .....	250
V .....	Goodwill and going concern value.	100
	<b>Total</b> .....	<b>\$500</b>

(ii) On September 30, 1998, P filed a claim against the selling shareholders of T in a court of appropriate jurisdiction alleging fraud in the sale of the T stock.

(iii) On January 1, 2007, the former shareholders refund part of the purchase price to P in a settlement of the lawsuit. This refund results in a decrease of T's AGUB of \$140.

(iv) Under paragraph (e)(1) of this section, the decrease in AGUB is allocated among T's acquisition date assets. First, because \$100 was originally allocated to the Class V assets, \$100 of the decrease is allocated to those assets. As there were no Class IV assets acquired, the remaining decrease in AGUB (\$40) is allocated to the Class III assets in proportion to their fair market values at the

beginning of the day after the acquisition date. Thus, \$15 is allocated to the machinery (\$40 x 150/\$400) and \$25 to the land (\$40 x 250/\$400).

(v) Assume that, as a result of deductions under section 168, the adjusted basis of the machinery immediately before the decrease in AGUB is zero. The machinery is treated as if it were disposed of before the decrease is taken into account. In 2007, T recognizes income of \$15, the character of which is determined under the principles of *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952), and the tax benefit rule. No adjustment to the basis of T's assets is made for any tax paid on this amount. Assume also that, as a result of amortization deductions, the adjusted basis of the goodwill and going concern value immediately before the decrease in AGUB is \$40. A similar adjustment to income is made in 2007 with respect to the \$60 of previously amortized goodwill and going concern value.

(vi) In summary, the basis of T's acquisition date assets, as of January 1, 2007, is as follows:

Asset	Basis
Machinery .....	\$0
Land .....	225
Goodwill and going concern value ...	0

**Example 3.** (i) Assume that the facts are the same as *Example 2* of § 1.338(b)–2T(d) except that the recently purchased stock is acquired for \$1,600 plus additional payments that are contingent upon T's future earnings. Thus, T's AGUB, determined as of the beginning of the day after the acquisition date (after reduction by T's cash of \$200), is \$2,500 and is allocable among T's Class II, III, IV, and V acquisition date assets pursuant to § 1.338(b)–2T(c)(3)(iii) as follows:

Asset	Basis
Portfolio of marketable securities .....	*\$268
Inventory .....	268

Asset	Basis
Accounts receivable .....	536
Building .....	714
Land .....	178
Investment in T1 .....	402
Goodwill and going concern value ...	134
<b>Total</b> .....	<b>\$2,500</b>

\*All numbers rounded for convenience.

\* \* \* \* \*

(v) Under § 1.338(b)–2T(c)(3) the redetermined fair market value of Class V assets is deemed to be \$400, i.e., the hypothetical purchase price, as redetermined, of \$3,250 minus \$2,850 (the sum of T's cash, \$200, and the fair market values of its Class II, III, and IV assets, \$2,650).

(vi) The amount of AGUB available to allocate to T's Class II, III, IV, and V acquisition date assets is \$2,700 (i.e., redetermined AGUB reduced by cash). AGUB allocable to each of T's acquisition date assets (i.e., the redetermined (c)(3) amount) is redetermined using the deemed fair market value of the Class V assets from paragraph (v) of this Example as follows:

Portfolio of marketable securities ...	*\$266
Inventory .....	266
Accounts receivable .....	531
Building .....	708
Land .....	177
Investment in T1 .....	398
Goodwill and going concern value	354
<b>Total</b> .....	<b>\$2,700</b>

\* All numbers rounded for convenience.

(vii) As illustrated by this example, the application of paragraph (f) of this section results in a basis increase for some assets and a basis decrease for other assets. The amount of increase (or decrease) in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined (c)(3) amount	Increase (or decrease) in AGUB
Portfolio of marketable securities .....	\$268	\$266	\$(2)
Inventory .....	268	266	(2)
Accounts receivable .....	536	531	(5)
Building .....	714	708	(6)
Land .....	178	177	(1)
Investment in T1 .....	402	398	(4)
Goodwill and going concern value .....	134	354	220
<b>Total .....</b>	<b>\$2,500</b>	<b>\$2,700</b>	<b>\$200</b>

\* \* \* \* \*  
**Example 6.** (i)(A) T has three assets (other than goodwill and going concern value) whose fair market values as of the beginning of the day after the acquisition date are as follows:

Asset class	Asset	Fair market value
III .....	Building .....	\$100
III .....	Equipment .....	50
IV .....	Secret process .....	50
	<b>Total .....</b>	<b>\$200</b>

(B) The secret process is a section 197 intangible. T has no liabilities. Assume that no election under section 338 (h)(10) or (h)(11) is in effect.

(ii) On January 1, 1998, P purchases all of the outstanding T stock for \$225 plus 50 percent of the net profits generated by the secret process for each of the next three years, determinable and payable on January 1 of each following year. P and T are calendar year taxpayers.

(iii) As of the beginning of January 2, 1998, T's AGUB is \$225, allocated as follows:

Asset class	Asset	Basis
III .....	Building .....	\$100
III .....	Equipment .....	50
IV .....	Secret process .....	50
V .....	Goodwill and going concern value.	25
	<b>Total .....</b>	<b>\$225</b>

(iv) On January 1, 1999, \$5 is paid by P for the T stock by reason of the net profits from the secret process. The payments are not attributable in any respect to any of T's other acquisition date assets. As a result, T's AGUB on January 1, 1999 is increased by \$5.

(v) Assume that on January 1, 1999, the fair market value of the secret process is redetermined to be \$52. (For purposes of this redetermination, only those circumstances that resulted in the increase to AGUB are taken into account.)

(vi) On January 1, 1999, only \$2 of the \$5 increase in AGUB is allocated to the secret process because the increase in AGUB so allocated cannot increase the basis of the secret process above its redetermined fair market value (\$52). The balance of the increase is allocated to goodwill and going

concern value because the fair market value limitation of § 1.338(b)-2T(c)(1) precludes allocating additional AGUB to the Class III and IV assets.

(vii) The price for which old target is deemed to have sold the secret process is increased to reflect the \$2 increase allocated to its basis to new target. See § 1.338-3(d) and paragraph (h)(1) of this section.

(viii) If the fair market value of the secret process as of January 1, 1999, is unchanged from the fair market value as of the beginning of the day after the acquisition date, then the \$5 increase in AGUB is allocated to T's goodwill and going concern value.

**Example 7.** (i) The facts are the same as in *Example 6* except that—

(A) The secret process is valued at \$75 as of the beginning of the day after the acquisition date; and

(B) P pays \$250 for the T stock and the former T shareholders agree to refund a portion of the purchase price to P for each of the three years that the net income from the secret process is less than \$15 per year, determinable and payable on January 1 of the next year.

(ii) Assume that the secret process in the hands of new T is an amortizable section 197 intangible and, therefore, on January 1, 1999, new T's adjusted basis in the secret process is \$70 (i.e., \$75-\$5 of allowable amortization).

(iii) Assume the net income from the process is less than \$15 for 1998, and on January 1, 1999, P receives a refund that reduces the stock purchase price by \$3.

(iv) Assume that as of January 1, 1999, the fair market value of the secret process is redetermined to be \$65. (For purposes of this redetermination, only those circumstances that resulted in the decrease to AGUB are taken into account.)

(v) As of January 1, 1999, the AGUB of T is decreased by \$3. This decrease is allocated to the secret process, the basis of which becomes \$67 (i.e., \$70-\$3) and is amortizable over the remaining 14 years.

(vi) The price for which old target is deemed to have sold the secret process is decreased to reflect the \$3 decrease allocated to its basis to new target. See § 1.338-3(d) and paragraph (h)(1) of this section.

**Example 8.** The facts are the same as in *Example 6* except that the intangible Class IV asset is a patent instead of a secret process. The redetermination of the fair market value of the patent on January 1, 1999, is made without regard to the decrease in the remaining life of the patent because that is

not a circumstance that resulted in the increase in AGUB.

Par. 6. Section 1.1060-1T is amended by:

1. Designating the text of paragraph (a)(2) following the heading as paragraph (a)(2)(i), adding a heading to newly designated paragraph (a)(2)(i), and adding paragraph (a)(2)(ii).

2. In paragraph (a)(3), revising the outline of topics entries for (a)(2), (b)(2) and (h)(3).

3. Revising the seventh sentence of paragraph (b)(4).

4. Revising paragraphs (d)(2), (e)(1), and (f)(3)(i).

5. Revising the following examples in paragraph (g): *Example 1; Example 2; Example 3*, paragraphs (i), (viii), and (xi); and *Example 4*.

6. Revising paragraph (h)(3).

The additions and revisions read as follows:

**§ 1.1060-1T Special allocation rules for certain asset acquisitions (temporary).**

(a) \* \* \*  
 (2) *Effective date*—(i) *In general.*  
 \* \* \*

(ii) *Allocation of consideration.* Paragraphs (d) and (h)(3) of this section and conforming amendments to other provisions of this section apply to applicable asset acquisitions completed on or after February 14, 1997. For applicable asset acquisitions completed before February 14, 1997, if section 197 does not apply to any of the acquired assets, the provisions of the regulations in effect before February 14, 1997 apply (see § 1.1060-1T as contained in 26 CFR part 1 revised April 1, 1996). For applicable asset acquisitions completed before February 14, 1997, if section 197 applies to any of the acquired assets, the taxpayer (and related parties) may consistently (in all transactions in which AGUB (as defined in § 1.338(b)-1), ADSP (as defined in § 1.338-3), MADSP (as defined in § 1.338(h)(10)-1), or consideration must be allocated under section 338 or 1060)—

(A) Apply the provisions of this section;

(B) Apply the provisions of this section as in effect before February 14, 1997 (see § 1.1060-1T as contained in 26 CFR part 1 revised April 1, 1996); or

(C) Apply the provisions of this section as in effect before February 14, 1997 (see § 1.1060-1T as contained in 26 CFR part 1 revised April 1, 1996), but treat all amortizable section 197 intangibles as Class IV assets.

(3) \* \* \*

(a) \* \* \*

(2) Effective date.

(i) In general.

(ii) Allocation of consideration.

\* \* \* \* \*

(d) \* \* \*

(2) Assets other than Class I assets.

(i) In general.

(ii) Class II assets.

(iii) Class III assets.

(iv) Class IV assets.

(v) Class V assets.

\* \* \* \* \*

(h) \* \* \*

(3) Interim procedures for Form 8594.

(b) \* \* \*

(4) \* \* \* The money and other property that are treated as transferred in exchange for the like-kind property (and which are excluded from the assets to which section 1060 applies) are considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, then from Class IV assets, and then from Class V assets. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(2) *Assets other than Class I assets—*

(i) *In general.* Subject to the limitations and other special rules of paragraph (e) of this section, consideration (as reduced by the amount of Class I assets) is allocated among Class II assets transferred by the seller in proportion to the fair market values of such Class II assets on the purchase date, then among Class III assets transferred by the seller in proportion to the fair market values of such Class III assets on that date, then among Class IV assets transferred by the seller in proportion to the fair market values of such Class IV assets on that date, and finally to Class V assets.

(ii) *Class II assets.* Class II assets are certificates of deposit, U.S. government securities, readily marketable stock or securities (within the meaning of § 1.351-1(c)(3)), foreign currency, and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(iii) *Class III assets.* Class III assets are all assets other than Class I, II, IV, and V assets.

(iv) *Class IV assets.* Class IV assets are all section 197 intangibles, as defined in section 197, except those in the nature of goodwill and going concern value.

(v) *Class V assets.* Class V assets are section 197 intangibles in the nature of goodwill and going concern value.

(e) \* \* \*

(1) *Allocation not to exceed fair market value.* The amount of consideration allocated to an asset (other than Class V assets) shall not exceed the fair market value of that asset on the purchase date.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(i) *In general.* A decrease in consideration is allocated in the following order: first, as a reduction in the amount previously allocated to Class V assets, second, as a reduction in the amount previously allocated to Class IV assets in proportion to their fair market values, third, as a reduction in the amount previously allocated to Class III assets in proportion to their fair market values, and finally, as a reduction in the amount previously allocated to Class II assets in proportion to their fair market values. Decreases in consideration allocated to an asset shall not exceed the amount of consideration previously allocated to that asset. Except as provided in paragraph (f)(4)(ii) of this section (relating to patents and similar property), the fair market value is the fair market value on the purchase date.

\* \* \* \* \*

(g) \* \* \*

*Example 1.* (i) On January 1, 1998, S, a sole proprietor, sells to P, a corporation, a group of assets which constitute a trade or business under paragraph (b)(2) of this section. P pays S \$2,000 in cash and assumes \$1,000 in liabilities. Thus, the total consideration is \$3,000.

(ii) Assume that P acquires no Class I assets and that on the purchase date, the fair market values of the Class II, Class III, and Class IV assets S sold to P are as follows:

Asset class	Asset	Fair market value
II .....	Portfolio of marketable securities.	\$ 400
	Total Class II .....	\$ 400
III .....	Furniture and fixtures ....	\$ 800
	Building .....	800
	Land .....	200
	Equipment .....	400

Asset class	Asset	Fair market value
	Accounts receivable .....	100
IV .....	Total Class III .....	\$2,300
	Covenant not to compete.	\$100
	Total Class IV .....	\$100

(iii) Under paragraphs (d)(1) and (2) of this section, the amount of consideration allocable to the Class II, III, IV, and V assets is the total consideration reduced by the amount of any Class I assets. Since P acquired no Class I assets, the total consideration of \$3,000 is next allocated first to Class II, then to Class III, and then to Class IV assets. Since the fair market value of the Class II assets is \$400, \$400 of consideration is allocated to the Class II assets. Since the remaining amount of consideration is \$2,600 (\$3,000 - \$400), an amount which exceeds the sum of the fair market values of the Class III assets (\$2,300), the amount allocated to each Class III asset is its fair market value. Since, after the allocation to Class III assets, the remaining amount of consideration is \$300 (\$3,000 - (\$400 + \$2,300)), an amount which exceeds the fair market value of the Class IV asset (\$100), the amount allocated to the Class IV asset is its fair market value. Thus, the total amount allocated to the Class II assets is \$400, the total amount allocated to the Class III assets is \$2,300, and the total amount allocated to the Class IV asset is \$100.

(iv) The amount allocated to the Class V assets (assets in the nature of goodwill and going concern value) is \$200 (i.e., \$3,000 - (\$400 + \$2,300 + \$100)).

*Example 2.* (i) Assume the same facts as in *Example 1.* Assume further that P and S each use the calendar year as the taxable year and that, on September 30, 1998, P files a claim against S alleging fraud in the sale of all of the assets.

(ii) On January 1, 2007, S refunds \$400 of the purchase price to P in a settlement of the lawsuit.

(iii) Under paragraph (f)(3)(i) of this section, both S and P take into account the \$400 decrease in consideration and allocate it among the assets. First, since \$200 of consideration previously was allocated to the assets in the nature of goodwill and going concern value (Class V assets), \$200 of the decrease in consideration is allocated to those assets. Then, since \$100 of consideration previously was allocated to the only Class IV asset, the covenant not to compete, the next \$100 of the remaining decrease in consideration (\$200) is allocated to that asset. The remaining decrease in consideration (\$100) is then allocated to the Class III assets in proportion to their fair market values on the purchase date as follows:

Asset	Fair market value	Allocation fraction	Decrease in consideration (\$100 × Col. (2))
Furniture and fixtures .....	\$800	800/2,300	\$34.78
Building .....	800	800/2,300	34.78
Land .....	200	200/2,300	8.70
Equipment .....	400	400/2,300	17.39
Accounts receivable .....	100	100/2,300	4.35
<b>Total .....</b>	<b>\$2,300</b>		<b>\$100.00</b>

(iv) In summary, the redetermined consideration that S received for the group of assets is \$2,600 after taking

into account the decrease in consideration. After allocating the

decrease, P's and S's redetermined consideration is as follows:

Asset	Original consideration	Decrease in consideration	Redetermined consideration
Portfolio of marketable securities .....	\$400.00	\$0.00	\$400.00
Furniture and fixtures .....	800.00	34.78	765.22
Building .....	800.00	34.78	765.22
Land .....	200.00	8.70	191.30
Equipment .....	400.00	17.39	382.61
Accounts receivable .....	100.00	4.35	95.65
Covenant not to compete .....	100.00	100.00	0.00
Goodwill and going concern value .....	200.00	200.00	0.00
<b>Total .....</b>	<b>\$3,000.00</b>	<b>\$400.00</b>	<b>\$2,600.00</b>

(v) Assume that, as a result of deductions under section 168, P's adjusted basis in the equipment immediately before the decrease in consideration is zero. P, therefore, treats the equipment as if it were disposed of before the decrease is taken into account. In 2007, P recognizes income of \$17.39, the character of which is determined under the principles of *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952), and the tax benefit rule. No adjustment to the basis of P's assets is made for any tax paid on this amount. Assume also that, as a result of amortization deductions, the adjusted basis of the covenant not to compete and the goodwill and going concern value immediately before the decrease in consideration is \$120. A similar adjustment to income is made in 2007 with respect to the \$180 of previously amortized covenant not to compete and goodwill and going concern value.

*Example 3.* (i) On January 1, 1998, A transfers assets X, Y, and Z worth \$1,000 to B in exchange for assets D, E, and F, worth \$100, plus \$1,000 cash.

(viii) A, as transferor of assets X, Y, and Z, received \$100 that must be allocated under section 1060 and paragraph (d) of this section. Since A transferred no Class I, II, III, or IV assets to which section 1060 applies, the \$100 is allocated to Class V assets (assets in

the nature of goodwill and going concern value).

\* \* \* \* \*

(xi) B, as transferee of assets X, Y, and Z, gave A \$100 that must be allocated under section 1060 and paragraph (d) of this section. Since B received from A no Class I, II, III, or IV assets to which section 1060 applies, the \$100 consideration is allocated by B to Class V assets (assets in the nature of goodwill and going concern value).

*Example 4.* (i) On January 1, 1998, S, a sole proprietor, sells to P, a corporation, a group of assets which constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes a covenant not to compete in P's favor. P pays S \$3,000 in cash and assumes \$1,000 in liabilities. Thus, the total consideration is \$4,000.

(ii) On the purchase date, P and S also execute a separate agreement that states that the fair market values of the Class II, Class III, and Class IV assets S sold to P are as follows:

Asset class	Asset	Fair market value
II .....	Portfolio of marketable securities.	\$500
	Total Class II .....	\$500
III .....	Furniture and fixtures ....	\$800
	Building .....	800
	Land .....	200
	Equipment .....	400
	Accounts receivable ..	200
	Total Class III .....	\$2,400

Asset class	Asset	Fair market value
IV .....	Covenant not to compete.	\$900
	Total Class IV .....	\$900

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (d) of this section in accordance with the agreed upon fair market values of the assets, so that \$500 is allocated to Class II assets, \$2,400 is allocated to Class III assets, \$900 is allocated to Class IV assets, and \$200 (\$4,000 total consideration less \$3,800 allocated to asset classes II, III, and IV) is allocated to the Class V assets (assets in the nature of goodwill and going concern value).

(iv) In connection with the examination of P's return, the District Director, in determining the fair market values of the assets transferred, may disregard the parties' agreement. Assume that the District Director correctly determines that the fair market value of the covenant not to compete was \$100. Since the allocation of consideration among Class II, III, and IV assets results in allocation up to the fair market value limitation, the \$800 of unallocated consideration resulting from the District Director's redetermination of the value of the covenant not to compete is allocated to Class V assets (assets in the nature of goodwill and going concern value).

(h) \* \* \*  
 (3) *Interim procedures for Form 8594.* Until such time, if any, as Form 8594 is revised to require otherwise, the sum of the amounts allocated to Classes IV and

V should be reported on Form 8594 as Class IV assets.

Approved: December 20, 1996.  
Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*  
Donald C. Lubick,  
*Acting Assistant Secretary of the Treasury.*  
[FR Doc. 97-656 Filed 1-9-97; 2:53 pm]  
BILLING CODE 4830-01-U

## 26 CFR Parts 1 and 602

[TD 8712]

RIN 1545-AU62

### Definition of Private Activity Bonds

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations on the definition of private activity bonds applicable to tax-exempt bonds issued by state and local governments. These final regulations reflect changes to the applicable law that were made by the Technical and Miscellaneous Revenue Act of 1988. These regulations affect issuers of tax-exempt bonds and provide needed guidance for applying the private activity bond restrictions.

**DATES:** These regulations are effective May 16, 1997.

For dates of applicability of these regulations, see §§ 1.141-15, 1.141-16, 1.148-6(a)(3) and 1.148-6(d)(1)(iii) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Loretta J. Finger or Nancy M. Lashnits, (202) 622-3980 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1451. Responses to these collections of information are mandatory. Pursuant to comments received, the collections of information have been amended, but the estimated annual burden per respondent/recordkeeper has not changed.

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 average annual burden hours per respondent/recordkeeper: 3 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20024, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to collections 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

##### *Removal of Existing Regulations for Repealed Sections*

Prior to the enactment of the Tax Reduction and Simplification Act of 1977 (Pub. L. 95-30), sections 141 through 144 contained provisions of the Internal Revenue Code of 1954 relating to the standard deduction. Sections 141 ("Standard Deduction"), 142 ("Individuals Not Eligible for Standard Deduction"), and 144 ("Election of Standard Deduction") were repealed by section 101(d)(1) of that act. Section 143 ("Determination of Marital Status") was redesignated section 7703 by section 1301(j)(2) of the Tax Reform Act of 1986 (Pub. L. 99-514). Therefore, existing regulations §§ 1.141-1, 1.142-1, 1.142-2, 1.144-1, 1.144-2, and 1.144-3 are being removed from the Code of Federal Regulations (CFR), and regulation § 1.143-1 is being redesignated § 1.7703-1.

#### Proposed Regulations

On December 30, 1994, proposed regulations (FI-72-88) were published in the Federal Register (59 FR 67658) to provide guidance under the Internal Revenue Code of 1986 (Code) in sections 141 (relating to private activity bonds and to qualified bonds), 142 (relating to exempt-facility bonds), 145 (relating to qualified 501(c)(3) bonds), 147 (relating to other requirements applicable to certain private activity bonds), 148 (relating to arbitrage), 150 (relating to change of use), and 1394 (relating to enterprise zone facility bonds). All subsequent references in this preamble to Code sections are to the Internal Revenue Code of 1986. On June 8, 1995, the IRS held a public hearing on the proposed regulations. Written comments responding to the proposed regulations were received.

On May 31, 1996, final regulations (FI-72-88) were published in the Federal Register (61 FR 106) to provide guidance under Code section 1394 to address the issues relating to enterprise zone facility bonds. After consideration of all the comments, certain of the proposed regulations under Code sections 141, 142, 144, 145, 147, 148, and 150 are adopted as revised by this Treasury decision. The principal revisions to the proposed regulations are discussed below.

#### Explanation of Provisions

Certain commentators suggested that the proposed regulations, with certain modifications, be published again as proposed regulations. A number of other commentators suggested that the proposed regulations, with certain modifications, should be promulgated as final regulations to provide certainty at the earliest possible time. After considering these comments, the IRS and Treasury concluded that state and local government issuers would benefit from the adoption of the proposed regulations, with certain modifications made in response to comments, as final regulations.

##### A. Section 1.141-1 Definitions and rules of general application.

**Replaced amounts.** The proposed regulations provide that the proceeds taken into account under the private activity bond tests include certain replacement proceeds that are reasonably expected to be available during the project period.

The final regulations treat replaced amounts also as arising to the extent that the issuer reasonably expects that the term of the issue will be longer than is reasonably necessary for the governmental purposes of the issue, in the same manner as replacement proceeds arise under the arbitrage regulations under Code section 148. Thus, replaced amounts may arise under the private activity bond tests if an issuer reasonably expects that there will be available amounts during the period that the bonds remain outstanding longer than necessary for the governmental purposes of the issue and if those amounts are used for purposes that are inconsistent with the private activity bond tests.

##### B. Section 1.141-2 Private activity bond tests.

**1. Clarification of reasonable expectations test.** Under the proposed regulations the private activity bond tests depend on both reasonable expectations as of the issue date and

subsequent deliberate actions of the issuer.

The final regulations clarify that, in general, the reasonable expectations test is met only if the issuer reasonably expects, as of the issue date, that no action or event during the entire term of the bonds will cause either the private business tests or the private loan financing test to be met. The final regulations further provide, however, that, if certain conditions are met, the period of expected compliance needs to extend only to a mandatory redemption date. This special rule is intended to accommodate issuers that reasonably expect that bond-financed property may be used by nongovernmental persons during the stated term of the issue, but have not entered into any arrangement with a nongovernmental person that will use the property and are unable to predict the timing of that nongovernmental use. This special rule does not permit, however, reasonably expected "recycling" of disposition proceeds because the special rule requires redemption of all nonqualified bonds.

**2. Definition of deliberate action.** The proposed regulations generally provide that any action within the control of an issuer is treated as a deliberate action and that, if the financed property was designed differently than is reasonably necessary for the governmental purposes of the issuer, an action with respect to that property is treated as deliberate, even if it is not within the issuer's control. Commentators suggested that deliberate action should be more narrowly defined.

The final regulations make certain changes that narrow the scope of the deliberate action rule to minimize administrative burden on state and local governments. First, the special rule for property that is "designed differently" is deleted. The reasonable expectations test adequately addresses the concerns of this special rule. Second, the final regulations clarify that an action taken by a state or local government in response to a regulatory directive of the federal government is not a deliberate action. Finally, the final regulations provide that, if certain conditions are met, dispositions of personal property in the ordinary course of an established governmental program are not treated as a deliberate action.

**3. Special rule for general obligation bond programs that finance a large number of separate purposes.** The proposed regulations provide a special exception to the definition of disposition proceeds that is intended to minimize the administrative burden of tracing the use of proceeds of general

obligation bonds that finance a large number of projects. Commentators suggested that this exception should be available for other types of bonds and that fewer conditions should apply to the exception.

The final regulations provide a similar rule that is broadly stated as an exception to the rule that a deliberate action after the issue date can cause an issue to meet the private activity bond tests. This exception is intended to provide relief for "cash flow" general obligation programs, where issuers use the proceeds of an issue for a large number of projects and spend proceeds promptly. These programs merit special treatment in part because they further the purposes of the arbitrage rules.

**4. When a deliberate action occurs.** The proposed regulations provide that a deliberate action occurs on the earlier of the date the parties agree on the consideration for the new use or the date on which the new use occurs. Commentators suggested that the regulations should not treat a deliberate action as occurring before the date on which new private business use actually commences, in part because it may not be possible to take a remedial action with disposition proceeds before the date on which the disposition proceeds are received.

The final regulations provide in general that a deliberate action occurs on the date the issuer enters into a binding contract with a nongovernmental person for use of the financed property that is not subject to any material contingencies. In most cases, material conditions to closing a transaction that results in private business use will be treated as material contingencies so that this date will not occur before the date of receipt of disposition proceeds.

**C. Section 1.141-3 Definition of private business use.**

**1. Economic benefit as private business use.** Under the proposed regulations, economic benefit to a nongovernmental person may be treated as private business use, even if the nongovernmental person has no special legal rights to use the financed property.

Commentators suggested that the private business use test should not be met unless special legal rights are provided to a nongovernmental person pursuant to an arrangement, and that mere economic benefit is insufficient to give rise to private business use.

The final regulations largely adopt these suggestions. The final regulations provide, however, that, if the financed property is not available for use by the general public, a nongovernmental

person may be treated as a private business user of the property based on all of the facts and circumstances, even if that nongovernmental person has no special legal entitlements to use of the property.

**2. Ownership.** The proposed regulations provide that ownership of property by a nongovernmental person is private business use of that property.

Commentators suggested that ownership for this purpose should be defined to mean ownership for general federal income tax purposes and that mere holding of title to property by a nongovernmental person should not necessarily give rise to private business use. Commentators further suggested that certain customary financing structures that require a nongovernmental person to be a nominal owner of financed property should be accommodated.

The final regulations adopt these suggestions.

**3. Discharge of a primary legal obligation.** The proposed regulations provide that the use of bond proceeds to provide property that discharges a primary and unconditional legal obligation of a nongovernmental person results in private business use of that property.

Commentators suggested that this rule be deleted from the final regulations. Many commentators indicated that this rule would interfere with traditional tax assessment bond financings for governmental projects such as roads and sidewalks. Some commentators also indicated that certain state and local governments may be required or encouraged under state law to enter into development agreements with private developers that could result in private business use of governmental projects under the discharge of a primary legal obligation rule.

The final regulations adopt this comment by deleting this rule.

**4. Management contracts.** The proposed regulations provide that management contracts other than qualified management contracts result in private business use of the managed property.

Commentators suggested that the qualified management contract rules should be safe harbors, not substantive rules, and that a management contract should give rise to private business use only if it transfers a proprietary interest in financed property to a manager that is a nongovernmental person. Commentators suggested that the permissible contract terms for qualified management contracts should be further extended and that limitations on the contract term based on useful life of the

financed property should be deleted. In addition, commentators suggested that contracts for incidental services, such as janitorial and equipment repair services, should never give rise to private business use of financed property.

The final regulations provide more flexible accommodation for management contracts that implement cost-saving "privatization" measures for state and local governments, but continue to reflect the view that Congress intended that a management contract can give rise to private business use even if it does not in substance transfer a leasehold or ownership interest to a nongovernmental person for general federal income tax purposes. Thus, the final regulations do not adopt the rule that a management contract gives rise to private business use only if it transfers a proprietary interest to a nongovernmental service provider. The final regulations provide that the determination of whether a management contract that does not meet the qualified management contract safe harbors gives rise to private business use is based on all of the facts and circumstances. In general, a management contract gives rise to private business use if the compensation under the contract is based on net profits. The final regulations further provide, however, that contracts for services solely incidental to the primary governmental function or functions of a financed facility do not otherwise give rise to private business use under the management contract rules. In addition, the final regulations clarify the standards to be applied in determining whether a management contract is properly characterized as a lease.

A separate revenue procedure establishes safe harbors which expand the types of management contracts that do not result in private business use. This revenue procedure in particular permits longer term management contracts for public utility facilities and systems, relaxes certain of the requirements for permitted compensation arrangements, and deletes the requirement that the issuer not control the service provider.

**5. Research agreements.** The proposed regulations set forth bright line rules for determining when corporate-sponsored research agreements and cooperative research agreements do not give rise to private business use. These rules apply only to basic research.

The final regulations provide a facts and circumstances rule, and a separate revenue procedure establishes safe harbors for determining when corporate-sponsored research agreements and cooperative research agreements do not

give rise to private business use. This revenue procedure also expands the definition of basic research, for purposes of Code section 141, to include any original investigation for the advancement of scientific knowledge not having a specific commercial objective.

**6. Exception for general public use.** The proposed regulations contain detailed quantitative rules for determining when use of financed property by a nongovernmental person is disregarded because the nongovernmental person is treated as using the property as a member of the general public. The proposed regulations also provide that use by a nongovernmental person of financed property is not treated as general public use if the property provides a significant economic benefit to the nongovernmental person because it is functionally and integrally related to other property used by the nongovernmental person.

Commentators suggested that the quantitative rules for defining general public use should be deleted, because they are not sufficiently flexible to accommodate the wide variety of state and local government financings and because they disproportionately affect small local governments.

The final regulations largely delete the quantitative approach in the proposed regulations for general public use. Instead, the final regulations adopt a more qualitative test focusing on whether financed property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business. This approach is more consistent with the requirement in Code section 141 that any activity carried on by a person that is not a natural person is treated as a trade or business activity. Because the final regulations generally do not treat mere economic benefit as private business use, the rules for functionally and integrally related property are deleted. In light of this narrower definition of private business use, the special system improvement rules have also been deleted. The final regulations retain the rule in the proposed regulations that use under an arrangement that conveys priority rights is not used on the same basis as the general public and clarifies that an arrangement for long-term use (defined as more than 180 days) is not treated as general public use. The final regulations provide that use of financed property by a nongovernmental person that is not general public use is not necessarily private business use. Under the approach taken in the final regulations,

the definition of general public use is significant for determining when economic benefit alone can give rise to private business use and for determining the permitted terms of short-term arrangements that are not treated as private business use.

**7. Exceptions for short-term arrangements.** The proposed regulations provide that a lease or similar arrangement that has a term of 1 year or less and that is not renewed or renewable is generally disregarded. Commentators suggested that longer term arrangements should be disregarded.

The final regulations provide different exceptions for various short-term contracts. The exceptions for short-term contracts are based on a hierarchy depending on how broadly contracts with the same terms are offered to other users. Under this approach, a contract that is available to the general public may have a term up to 180 days; a contract not treated as general public use, but offered on the basis of generally applicable or uniformly applied rates, may have a term of up to 90 days; and a specially negotiated contract that provides fair market value compensation may have a term of up to 30 days. In each case, the exception applies only if the property is not financed for a principal purpose of providing that property for use by the nongovernmental person entering into the contract. The final regulations delete the 1-year exception for non-renewable short-term contracts because the final regulations adopt a more flexible rule for measuring private business use, as discussed below.

**8. Exception for temporary use by developers.** The proposed regulations provide an exception for temporary use by a developer of an improvement that carries out an essential governmental function during an initial development period not exceeding 3 years.

Commentators suggested that the 3-year limitation on the exception is too short for many developments and that a requirement that development proceed with reasonable speed should suffice.

The final regulations largely adopt this comment. This approach focuses more on whether financed property serving an essential governmental function is transferred to a governmental person with reasonable speed than on a specific time frame for development of the property benefited by the improvement.

**9. Exceptions for incidental use and qualified improvements.** The final regulations remove certain conditions to exceptions for incidental use and qualified improvements.

*10. Measurement of private business use.* The proposed regulations generally provide that private business use is measured on an annual basis, except for private business use of output facilities. Commentators suggested that private business use should be measured on an average or cumulative basis over the term of an issue. The final regulations largely adopt the suggestion that private business use should be measured over the term of an issue. In general, the percentage of private business use of financed property is determined according to the average annual private business use of that property over the measurement period. The measurement period begins on the later of the issue date of the issue or the date the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue. For certain bonds that are issued in contemplation of refinancing, such as bond anticipation notes, the measurement period is based on the final maturity date of any bond of the refunding issue. Under an anti-abuse rule, however, if an issuer extends the term of an issue for a principal purpose of increasing the permitted amount of private business use, the Commissioner may determine the amount of private business use according to the greatest percentage of private business use in any 1-year period. Further, if an issuer reasonably expects on the issue date that bonds will be redeemed before the final maturity of the issue because of a deliberate action, the measurement period ends on the reasonably expected date of redemption. In addition, for arrangements that result in ownership of financed property by a nongovernmental person, the amount of private business use is the greatest percentage of private business use in any 1-year period.

This approach of looking to the average amount of private business use over the expected economic life of financed property is more consistent with the approach adopted for measuring private payments and security, which also in effect looks over the term of an issue. This approach also provides issuers with significantly greater flexibility to spread out de minimis private business use over the term of an issue.

The final regulations adopt the measurement-over-the-term rule for private business use, however, only for purposes of determining whether an issue has no more than the permitted amount of private business use (that is, in most cases, the 10 percent threshold). This general approach reflects the view

that adoption of the measurement-over-the-term rule for purposes other than the de minimis rules would be unduly complex to administer and could distort the economic substance.

This general approach also simplifies the regulations by providing a single rule for measuring private business use that applies to both output facilities and other governmental facilities. The final regulations reflect the view that all governmental facilities generally would benefit from more flexible private business use measurement rules.

*11. Determining average use within an annual period.* The proposed regulations generally provide that the average amount of private business use within a year is based on the amount of time financed property is actually used for private business use as a percentage of total time for all actual use, provided that significant differences in fair market value of different times of use must be taken into account.

Some commentators suggested that the average amount of private business use should be based on a comparison of time of private business use to time the financed property is available for use, not to time it is actually used.

The final regulations continue to determine private business use for certain purposes as a percentage of actual use. This method more accurately reflects economic substance. The final regulations also clarify that, in certain cases, the determination of fair market value of private business use must take into account the amount of private payments for that use.

#### D. Section 1.141-4 Private security or payment test.

*1. Payments not directly made by private business users.* The proposed regulations provide that payments made with respect to property used for a private business use are taken into account under the private payment test, even if not made by persons that are private business users of proceeds. Commentators suggested that payments by persons that are not private business users should be taken into account only if they can be imputed to a private business user of proceeds.

The final regulations retain the general rule in the proposed regulations but clarify that only payments made for the period of private business use are taken into account. The definition of private business use in the final regulations narrows the application of this general rule.

*2. Allocation of private payments to different sources of funding.* The proposed regulations provide that a payment from a private business user of

property may be allocated first to repay any costs of the property paid by the issuer from a source other than a borrowing ("equity"). The proposed regulations also provide, however, that, if a payment is made for property financed with two or more issues (including issues that are not tax-exempt), the payment must be allocated among those issues according to the relative amount of proceeds of those issues used to finance the property. Commentators generally favored the rule permitting allocations first to equity, but suggested that the same rule should apply to costs financed with taxable bonds.

The final regulations provide a more general facts and circumstances test for the allocation of private payments that looks to the nexus between the private payment and both the property financed and the source of funding. Thus, under the approach of the final regulations, allocations of private payments first to equity before other sources of funding are generally permitted only to the extent that there is a specific nexus between the payment and a prior expenditure. The final regulations do not adopt the recommendation that issuers also be permitted in all cases to allocate private payments first to repayment of taxable bonds, but treat the obligation to pay debt service in future years under the taxable debt as establishing a nexus to future private payments. The final regulations retain the rule that allocations of private payments among issues according to relative amounts of those sources of funding that are expended on the property is generally appropriate, but the final regulations provide issuers with more flexibility to match these allocations to debt service payments associated with various sources of funding.

*3. Allocation of private security among issues.* The proposed regulations provide that, for bonds other than parity bonds, property or payments securing more than one issue must be fully allocated to each issue under the private security test. Commentators suggested that the rule for allocation of private security among issues should reasonably reflect foreclosure and default scenarios under the bond documents. The final regulations in general adopt this comment.

*4. Limitations on private security.* The proposed regulations provide that any property that is used for a private business use is taken into account under the private security test if it secures payment of debt service on an issue.

The final regulations provide that

only financed property and property that is provided directly or indirectly by a nongovernmental person that is treated as a user of proceeds are taken into account under the private security test.

5. *Exception for generally applicable taxes.* The proposed regulations contain specific rules for when a special agreement with respect to a generally applicable tax may cause tax payments to be treated as private payments.

In response to comments, the final regulations are more flexible for arrangements that reduce the amount of tax paid and permit a wider range of tax equivalency payments. The final regulations also clarify that an impermissible agreement entered into by one taxpayer does not affect whether payments made by other taxpayers are treated as generally applicable taxes.

#### E. Section 1.141-5 Private loan financing test.

1. *Definition of proceeds for purposes of the private loan financing test.* The proposed regulations provide that the private loan financing test is met if more than the lesser of 5 percent of the "proceeds" or \$5 million of "sale proceeds" is used to make or finance loans to nongovernmental persons. Commentators suggested that the definition of proceeds for purposes of the test should be consistent.

The final regulations apply the general private activity bond definition of "proceeds" to both parts of the test. This approach reflects the view that investment proceeds that are used to make or finance loans should be taken into account in determining whether the private loan financing test is met.

2. *Requirements for the "tax assessment loan" exception.* The proposed regulations provide that a number of special requirements apply to the exception in Code section 141(c)(2) from the private loan financing test for loans that enable the borrower to finance a governmental tax or assessment of general application for a specific essential governmental function. Commentators suggested that these requirements would improperly restrict traditional special tax and assessment tax-exempt financing for governmental infrastructure in some states.

In general, special state law restrictions (for example, state constitutional limitations on issuing general obligation bonds) should not necessarily foreclose state and local governments from access to tax-exempt financing for traditional governmental infrastructure projects. Accordingly, the final regulations relax the requirements

for the tax assessment bond exception. The requirement that a tax or assessment of general application be proportionate to the benefit to the taxpayer is deleted. Further, the definition of improvements that serve essential governmental functions is expanded. Under the new definition, all improvements to utilities and systems that are owned by a governmental person and that are available for use by the general public serve essential governmental functions for this purpose. In addition, the final regulations provide that guarantees provided by persons treated as borrowers in most cases will not cause taxes or assessments to fail to qualify for the tax assessment bond exception.

#### F. Section 1.141-6 Allocation and accounting rules.

1. *Allocations of proceeds to expenditures.* The proposed regulations in general provide that proceeds must be allocated to expenditures consistently for private activity bond purposes and arbitrage purposes. Commentators suggested that, in light of the different purposes of the private activity bond rules and the arbitrage rules, this consistency should not be required.

The final regulations continue the approach of the proposed regulations. Final regulations are also adopted under Code section 148 clarifying that allocations of proceeds to expenditures for both purposes must be made by a definite time (in no event later than the date that rebate is, or would be, due).

2. *Other allocation rules.* The proposed regulations contain detailed rules in §§ 1.141-1 and 1.141-6 for allocations of proceeds and bonds, including rules for mixed use facilities and partnerships.

The final regulations reserve these provisions. The IRS and Treasury are considering more flexible rules to accommodate public/private partnerships.

#### G. Section 1.141-7 Special rules for output contracts.

The proposed regulations contain detailed rules in § 1.141-7 for determining the private business use and private payments resulting from output contracts.

Regulatory changes are dramatically affecting the electric power industry. In order to further consider the issues raised by these changes, the final regulations reserve this section. The final regulations, however, otherwise apply to bonds issued to finance output facilities.

#### H. Section 1.141-8 \$15 million limitation for output facilities.

Clarification of computation of nonqualified amount. The proposed regulations provide guidance on the special \$15 million limitation on output facilities of Code section 141(b)(4). The final regulations reserve this section.

#### I. Section 1.141-12 Remedial actions.

1. *Remedial actions generally.* The proposed regulations provide that an action that causes the private business tests or the private loan financing test to be met is not treated as a deliberate action if the issuer takes an appropriate remedial action.

The final regulations clarify that a remedial action affects only compliance with the private activity bond rules relating to use of proceeds and does not affect compliance with rules relating to security or payment. This clarification is important for purposes of determining the amount of "nonqualified bonds" with respect to which a remedial action must be taken.

2. *Relationship of disposition proceeds and remedial actions.* The proposed regulations contain separate rules for use of proceeds derived from the disposition of bond-financed property ("disposition proceeds") and remedial actions. Commentators suggested that the relationship between the disposition proceeds rules and the remedial action rules should be clarified and that, in particular, additional rules should be provided indicating when it is appropriate to treat an issue as financing disposition proceeds rather than the transferred property.

The final regulations take the view that, if an issuer disposes of bond-financed property, it is generally appropriate under Code section 141 for the Commissioner to treat the issue as financing either the transferred property or the disposition proceeds. This is because any disposition of bond-financed property has the potential to transfer the benefits of tax-exempt financing to the purchaser, and the private activity bond rules extend to transactions that have significant potential to transfer these benefits, as well as transactions that actually transfer these benefits. As a matter of administrative convenience, however, the final regulations in certain cases permit an issuer to choose to treat an issue as financing either the transferred property or the disposition proceeds, provided that certain conditions are met that protect against abuse. The final regulations accordingly treat the disposition proceeds rules as conditions to taking certain remedial actions. For

example, in order for an issue to be eligible for a remedial action, the disposition proceeds of an issue must generally be treated as proceeds for purposes of the arbitrage regulations.

**3. Conditions to taking a remedial action.** The proposed regulations provide that an issuer may take a remedial action to prevent bonds of an issue from becoming private activity bonds only if it made certain covenants and certifications on the issue date. Commentators suggested that these specific requirements should be deleted because they are unnecessary in light of standard industry practice to require similar covenants and certifications. The final regulations adopt this comment.

**4. Maturity limitations and remedial actions.** The proposed regulations provide that an issuer cannot take advantage of certain favorable rules involving disposition proceeds if the weighted average maturity of an issue is greater than 120 percent of the economic life of the financed property. Commentators suggested that use of this 120 percent maturity limitation as a condition to favorable treatment in taking remedial actions is burdensome for issuers of governmental bonds.

The final regulations provide that an issue is eligible for the remedial action rules only if the term of the issue is not longer than is reasonably necessary for the governmental purposes of the issue. To determine whether the term of an issue is unreasonably long, the final regulations adopt the same standard that is used for purposes of determining whether replacement proceeds arise because the term of an issue is unreasonably long under § 1.148-1(c)(4). This standard provides that the 120 percent maturity limitation is a safe harbor, rather than a requirement in all cases.

**5. Special rules for identifying disposition proceeds.** Under the proposed regulations, many of the rules for remedial actions depend on identification of disposition proceeds. The final regulations clarify how disposition proceeds are to be allocated to an issue when the transferred property has been financed with different sources of funding. In general, the final regulations provide that disposition proceeds should be allocated first to the outstanding bonds that financed the property (both tax-exempt and taxable) in proportion to the outstanding principal amounts of those outstanding bonds. Only amounts in excess of these outstanding principal amounts may be allocated to other sources of funding, such as equity of an

issuer or bonds that are no longer outstanding.

**6. Redemption and defeasance as remedial actions.** The proposed regulations generally provide that redemption and defeasance of nonqualified bonds are permitted remedial actions. In cases where the disposition is exclusively for cash, only the disposition proceeds need to be used to redeem or defease bonds; in other cases, the entire amount of nonqualified bonds is required to be redeemed or defeased. The proposed regulations also provide, however, that defeasance of bonds to a date that is more than six months from the date of a deliberate action is permitted only if the possibility of a disposition was remote as of the issue date of the bonds. Commentators suggested that this special limitation should be deleted because the remoteness standard is vague and would require governmental issuers to use special call provisions that would substantially increase borrowing costs.

The final regulations delete the "remote possibility" limitation on use of defeasance as a remedial action. Instead, the final regulations permit defeasance as a remedial action only if the first call date of the nonqualified bonds is not greater than 10½ years from the issue date. This limitation presents an administrable standard that will not unduly interfere with customary financing practices of state and local governments, while at the same time preventing improper use of defeasance as a remedial action for bonds that cannot be called for an extended period of time.

**7. Alternative qualifying use of a facility as a remedial action.** The proposed regulations provide that alternative qualifying use of a bond-financed facility is a permitted remedial action if the facility is used in a manner that meets the requirements for any type of qualified private activity bonds and the bonds are treated as reissued as of the date of the deliberate action for purposes of the tax-exempt bond rules concerning use of bond-financed property. Commentators suggested that for purposes of determining whether bonds that are treated as reissued as of the date of the deliberate action satisfy all of the applicable requirements for qualified bonds, the rules contained in Code section 146 relating to volume cap and the rules contained in Code sections 55 and 57 should not apply. Commentators also suggested that the regulations should clarify whether any limitations are placed on an issuer's use of disposition proceeds when it chooses to use this remedial action.

The final regulations provide that, in order to qualify for this remedial action, an issuer must deposit any disposition proceeds that it receives into a yield-restricted escrow to pay the nonqualified bonds. This requirement is different than the defeasance remedial action, because an issuer is permitted to leave bonds outstanding until maturity (rather than the first call date) and is not subject to the special 10½-year call protection limitation on the defeasance remedial action. Also, if an issuer chooses to use this rule, it may receive compensation in installments and use any payments received either to pay debt service or to deposit into a yield-restricted escrow to pay debt service. This requirement is appropriate because it establishes the necessary nexus between the new user and the nonqualified bonds. In effect, the new user is treated, as far as is reasonably practicable, as if it were the conduit borrower of the bond proceeds.

The final regulations also clarify that, for purposes of determining whether nonqualified bonds that are deemed to be reissued meet all of the requirements for qualified private activity bonds, the law in effect on the date of the deliberate action applies. The final regulations do not adopt the suggestion that the rules contained in Code section 146 relating to volume cap and the rules contained in Code sections 55 and 57 should not apply. The IRS and Treasury are issuing a revenue procedure (discussed in paragraph 10 below) to address the change in status of bonds from governmental bonds to qualified private activity bonds and the application of the alternative minimum tax provisions. The final regulations provide that the rules contained in Code section 147(d) relating to the acquisition of existing property do not apply to this remedial action.

**8. Nonqualified bonds.** The proposed regulations permit an issuer to take a remedial action with respect to a portion of the bonds of an issue, rather than the entire issue. In general, the proposed regulations require that these "nonqualified bonds" be a pro rata portion (among the maturities) of the outstanding bonds of an issue. Commentators suggested that issuers should have greater flexibility to allocate uses of proceeds to bonds when a deliberate action occurs.

The final regulations permit an issuer to redeem or defease bonds with longer maturities than the nonqualified bonds in a remedial action, but in general continue to require that nonqualified bonds be identified on a pro rata basis. Issuers have significant flexibility to allocate bonds of an issue to separate

purposes on or before the issue date under § 1.150-1(c)(3).

Under the final regulations, the percentage of outstanding bonds that are nonqualified bonds is equal to the highest percentage of private business use in any 1-year period commencing with the deliberate action.

*9. Effect of deliberate actions and remedial actions on bonds that have been advance refunded.* The proposed regulations do not specifically address how deliberate actions and remedial actions affect bonds that have been advance refunded. Commentators suggested that a deliberate action should not affect the status of an advance refunded bond under Code section 141.

The final regulations provide that a remedial action taken with respect to advance refunding bonds proportionately "cures" the bonds that have been advance refunded.

*10. Remedial payment revenue procedure.* The preamble to the proposed regulations indicates that the IRS and Treasury are considering issuance of a revenue procedure pursuant to which an issuer may request a closing agreement with respect to outstanding bonds. Under the closing agreement, the issuer would make a payment to the IRS to prevent the interest on bonds from being includible in gross income of bondholders as a result of a deliberate action that results in satisfaction of the private activity bond test. In general, the payment would be based on the difference between applicable federal rates for taxable and tax-exempt obligations. The preamble to the proposed regulations indicates that this revenue procedure is being considered in lieu of permitting defeasance as a remedial action. Commentators generally favored the publication of such a revenue procedure but suggested that it should apply in addition to defeasance as a remedial action.

Commentators also suggested that an issuer should be permitted to make a payment to the IRS in those cases where the bonds were issued as governmental bonds, the interest on which was not treated as an item of tax preference for purposes of the alternative minimum tax provisions, but the bonds become qualified private activity bonds, the interest on which is treated as an item of tax preference for purposes of the alternative minimum tax provisions as a consequence of a remedial action taken by the issuer.

The IRS and Treasury are issuing a revenue procedure in addition to permitting defeasance as a remedial action. Under this revenue procedure the amount of the remedial payment is

based on a factor that roughly approximates revenue loss to the United States rather than the difference between taxable and tax-exempt applicable federal rates. While this approach may in many cases require greater remedial payments than under the approach described in the proposed regulations, the fluctuation in the difference between taxable and tax-exempt applicable federal rates would result in inconsistent treatment of issuers. Further, a more rigorous standard for determining the remedial payment is appropriate because the revenue procedure is adopted in addition to all of the remedial actions set forth in the final regulations.

In response to comments, this revenue procedure also provides that an issuer may make a payment to prevent the application of the alternative minimum tax provisions to interest payable on bonds that were issued as governmental bonds but, as a consequence of a remedial action taken by an issuer, are qualified private activity bonds. This approach recognizes the difficulty state and local government issuers may have in notifying bondholders of this change in status.

#### J. Section 1.141-13 Refunding issues.

The final regulations reserve on the treatment of refunding bonds under Code section 141.

#### K. Section 1.141-14 Anti-abuse rules.

Application of the rule to override specific tracing. The proposed regulations provide that if an issuer enters into a transaction or series of transactions with a principal purpose of transferring to nongovernmental persons (other than as members of the general public) significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of Code section 141, the Commissioner may take any action to reflect the substance of the transaction or transactions.

The final regulations adopt this rule and add examples to clarify that it may be invoked in appropriate cases to override specific tracing of the use of proceeds.

#### L. Section 1.145-1 Special rules for qualified 501(c)(3) bonds.

*1. Application of private activity bond rules to Code section 145(a).* The proposed regulations provide that the regulations under Code section 141 interpreting the private activity bond tests apply for purposes of Code section 145(a)(2).

The final regulations in general continue this approach but also provide that certain provisions under Code

section 141, which are intended to apply only to governmental programs, do not apply to qualified 501(c)(3) bonds. The final regulations also clarify that regulations under Code section 141 apply in the same manner to the ownership test of Code section 145(a)(1) and to the modified private activity bond test of Code section 145(a)(2).

*2. Application of deliberate action and remedial action rules to other provisions of Code section 145.* The proposed regulations provide that the deliberate action rules of § 1.141-2 and the remedial action rules of § 1.141-12 generally apply to Code section 145.

The final regulations do not apply to Code sections 145(b), (c), or (d). The \$150 million limitation on bonds other than hospital bonds of Code sections 145(b) and (c) involves a number of special considerations, which the IRS and Treasury believe would be more appropriate to consider in a project comprehensively interpreting the operation of the special volume cap rules. Similarly, the restrictions on bonds used to provide residential rental housing for family units of Code section 145(d) involve a number of special considerations, which the IRS and Treasury believe would be more appropriate to consider in a project comprehensively interpreting the special rules for bonds financing residential rental housing.

#### M. Special rules for other qualified bonds.

*1. General standard for compliance.* The proposed regulations provide that the requirements for qualified bonds (other than qualified 501(c)(3) bonds) generally must be actually met throughout the term of an issue. Commentators suggested that this rule should be deleted because the compliance standard for each type of qualified bond should be separately considered. Other commentators suggested that the compliance standard applicable to governmental bonds, looking to reasonable expectations and deliberate actions, is generally appropriate for qualified bonds.

The final regulations do not address the general compliance standard for qualified bonds (other than qualified 501(c)(3) bonds). The IRS and Treasury believe that further consideration should be given to whether special rules apply to different types of qualified bonds. Accordingly, the final regulations address only whether remedial actions may be taken to prevent certain types of qualified bonds from failing to meet requirements relating to use of proceeds. Thus, no implication is intended that the

measurement-over-the-term rule for private business use under Code sections 141 and 145 applies in any manner to other qualified bonds.

**2. Remedial actions for change in use.** The proposed regulations in general provide that, if an action results in nonqualified use of proceeds, the remedial actions that apply to governmental bonds also apply to qualified bonds. The permitted remedial actions include redemption and defeasance of bonds and alternative qualifying use of a facility.

The final regulations address only whether remedial actions may be taken for exempt facility bonds under Code section 142 and qualified small issue bonds under Code section 144(a) and with respect to certain provisions of 147. The final regulations continue to provide that redemption and defeasance are permitted remedial actions for these types of issues, under rules that are similar to the remedial action rules that apply to governmental bonds. The requirements for these types of qualified bonds focus on the use of a particular facility for a particular qualifying use, and, unlike governmental bonds and qualified 501(c)(3) bonds, do not generally focus on the status of the borrower. For this reason, the final regulations generally do not permit an issuer of exempt facility bonds or qualified small issue bonds to take a remedial action based on use of disposition proceeds. Accordingly, the final regulations clarify that the amount of bonds required to be redeemed or defeased under a remedial action is not limited to the amount of disposition proceeds. For administrative convenience, however, the final regulations permit the use of disposition proceeds from the sale of personal property that is incidental to a qualifying facility to replace the personal property that is sold. The final regulations do not permit alternative qualifying use of a facility as a remedial action for exempt facility bonds or qualified small issue bonds.

**3. Remedial actions for failure to spend proceeds.** The proposed regulations provide that a remedial action may be taken to correct a failure to spend proceeds as required under Code sections 142 and 144. This rule replaces Rev. Proc. 79-5, 1979-1 C.B. 485, and Rev. Proc. 81-22, 1981-1 C.B. 692, which provide guidance on how the requirement in the predecessor to Code section 142 that substantially all of the proceeds be spent for a qualifying purpose is met when excess bond proceeds remain on hand after acquisition or construction has been completed.

The final regulations clarify that the requirements for remedial action in the case of failure to spend proceeds for a qualifying purpose are comparable to the requirements for remedial action in the case of change in use of a qualifying facility. Accordingly, the final regulations require that nonqualified bonds must be redeemed at their first call date, regardless of the amount of call premium that is required to be paid, and that defeasance is permitted only if the first call date is no later than 10½ years after the issue date.

**4. Refundings of qualified bonds.** The final regulations reserve on the treatment of refundings of qualified bonds.

**N. Section 1.150-4 Statutory change of use rules for qualified private activity bonds.**

The proposed regulations provide that the change of use provisions of Code section 150(b) apply even if an issuer takes a remedial action that enables an issue of qualified private activity bonds to continue to meet use of proceeds requirements. Commentators suggested that a remedial action that preserves the tax-exempt status of a qualified private activity bond should also prevent application of the interest deduction denial and imputed unrelated business income provisions of Code section 150(b).

The final regulations more specifically address the effect of each type of remedial action on the application of the Code section 150(b) consequences. In general, defeasance of bonds does not prevent application of Code section 150(b). If other remedial actions are taken promptly after the date of the remedial action, however, Code section 150(b) does not apply.

**O. Effective dates.**

The final regulations generally apply to bonds issued after May 16, 1997. To promote compliance, the final regulations generally permit elective, retroactive application of the regulations in whole, but not in part, to outstanding issues. In addition, the final regulations permit elective, retroactive application to outstanding issues of any of the following sections of the regulations: §1.141-12 (the remedial action rules); §1.141-3(b)(4) (the management contract rules); and §1.141-3(b)(6) (the research agreement rules).

**Effect on Other Documents**

In part because the existing industrial development bond regulations under §1.103-7 may continue to apply to refunding bonds issued after the effective date of the private activity

bond regulations, §1.103-7 is not being removed from the Code of Federal Regulations.

For bonds to which the final regulations apply, the following publications are obsolete: Notice 87-69, 1987-2 C.B. 378. Notice 89-9, 1989-1 C.B. 630.

For actions that occur on or after May 16, 1997, the following publications are obsolete:

Rev. Proc. 93-17, 1993-1 C.B. 507.  
Rev. Proc. 81-22, 1981-1 C.B. 692.  
Rev. Proc. 79-5, 1979-1 C.B. 485.

**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) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal authors of these regulations are Michael G. Bailey, Loretta J. Finger, and Nancy M. Lashnits, Office of Assistant Chief Counsel (Financial Institutions and Products), and Linda B. Schakel of the Office of Tax Legislative Counsel. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

**26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**26 CFR Part 602**

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

## **PART 1—INCOME TAXES**

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

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

Section 1.148-6 also issued under 26 U.S.C. 148(f), (g), and (i). \* \* \*

Section 1.150-4 also issued under 26 U.S.C. 150(c)(5). \* \* \*

Par. 2. The center heading immediately preceding §1.141-1 is revised to read as follows:

#### Tax Exemption Requirements for State and Local Bonds

Par. 3. Section 1.141-1 is revised.

#### §1.143-1 [Redesignated as §1.7703-1]

Par. 4. Section 1.143-1 is redesignated as §1.7703-1.

#### §1.144-3 [Removed]

Par. 5. Section 1.144-3 is removed.

Par. 6. Sections 1.141-0 and 1.141-2 through 1.141-16 are added.

The revised and added sections read as follows:

#### §1.141-0 Table of contents.

This section lists the captioned paragraphs contained in §§ 1.141-1 through 1.141-16.

#### §1.141-1 Definitions and rules of general application.

- (a) In general.
- (b) Certain general definitions.
- (c) Elections.
- (d) Related parties.

#### §1.141-2 Private activity bond tests.

- (a) Overview.
- (b) Scope.
- (c) General definition of private activity bond.
- (d) Reasonable expectations and deliberate actions.
  - (1) In general.
  - (2) Reasonable expectations test.
  - (3) Deliberate action defined.
  - (4) Special rule for dispositions of personal property in the ordinary course of an established governmental program.
- (5) Special rule for general obligation bond programs that finance a large number of separate purposes.
  - (e) When a deliberate action occurs.
  - (f) Certain remedial actions.
  - (g) Examples.

#### §1.141-3 Definition of private business use.

- (a) General rule.
  - (1) In general.
  - (2) Indirect use.
  - (3) Aggregation of private business use.
- (b) Types of private business use arrangements.
  - (1) In general.
  - (2) Ownership.
  - (3) Leases.
  - (4) Management contracts.
  - (5) Output contracts.
  - (6) Research agreements.
  - (7) Other actual or beneficial use.
- (c) Exception for general public use.
  - (1) In general.
  - (2) Use on the same basis.
  - (3) Long-term arrangements not treated as general public use.

- (4) Relation to other use.
- (d) Other exceptions.
  - (1) Agents.
  - (2) Use incidental to financing arrangements.
  - (3) Exceptions for arrangements other than arrangements resulting in ownership of financed property by a nongovernmental person.
    - (4) Temporary use by developers.
    - (5) Incidental use.
    - (6) Qualified improvements.
    - (e) Special rule for tax assessment bonds.
    - (f) Examples.
    - (g) Measurement of private business use.
      - (1) In general.
      - (2) Measurement period.
      - (3) Determining average percentage of private business use.
      - (4) Determining the average amount of private business use for a 1-year period.
      - (5) Common areas.
      - (6) Allocation of neutral costs.
      - (7) Commencement of measurement of private business use.
      - (8) Examples.

#### §1.141-4 Private security or payment test.

- (a) General rule.
  - (1) Private security or payment.
  - (2) Aggregation of private payments and security.
    - (3) Underlying arrangement.
    - (b) Measurement of private payments and security.
      - (1) Scope.
      - (2) Present value measurement.
      - (c) Private payments.
        - (1) In general.
        - (2) Payments taken into account.
        - (3) Allocation of payments.
        - (d) Private security.
          - (1) In general.
          - (2) Security taken into account.
          - (3) Pledge of unexpended proceeds.
          - (4) Secured by any interest in property or payments.
            - (5) Payments in respect of property.
            - (6) Allocation of security among issues.
            - (e) Generally applicable taxes.
              - (1) General rule.
              - (2) Definition of generally applicable taxes.
              - (3) Special charges.
              - (4) Manner of determination and collection.
                - (5) Payments in lieu of taxes.
                - (f) Certain waste remediation bonds.
                  - (1) Scope.
                  - (2) Persons that are not private users.
                  - (3) Persons that are private users.
                  - (g) Examples.

#### §1.141-5 Private loan financing test.

- (a) In general.
- (b) Measurement of test.
- (c) Definition of private loan.
  - (1) In general.
  - (2) Application only to purpose investments.
    - (3) Grants.
    - (4) Hazardous waste remediation bonds.
    - (d) Tax assessment loan exception.
      - (1) General rule.
      - (2) Tax assessment loan defined.
      - (3) Mandatory tax or other assessment.
      - (4) Specific essential governmental function.

- (5) Equal basis requirement.
- (6) Coordination with private business tests.
  - (e) Examples.

#### §1.141-6 Allocation and accounting rules.

- (a) Allocation of proceeds to expenditures.
- (b) Allocation of proceeds to property.
  - [Reserved]
  - (c) Special rules for mixed use facilities.
    - [Reserved]
    - (d) Allocation of proceeds to common areas. [Reserved]
    - (e) Allocation of proceeds to bonds.
      - [Reserved]
      - (f) Treatment of partnerships. [Reserved]
      - (g) Examples. [Reserved]

#### §1.141-7 Special rules for output contracts.

[Reserved]

#### §1.141-8 \$15 million limitation for output facilities.

[Reserved]

#### §1.141-9 Unrelated or disproportionate use test.

- (a) General rules.
  - (1) Description of test.
  - (2) Application of unrelated or disproportionate use test.
    - (b) Unrelated use.
      - (1) In general.
      - (2) Use for the same purpose as government use.
        - (c) Disproportionate use.
          - (1) Definition of disproportionate use.
          - (2) Aggregation of related uses.
          - (3) Allocation rule.
          - (d) Maximum use taken into account.
          - (e) Examples.

#### §1.141-10 Coordination with volume cap.

[Reserved]

#### §1.141-11 Acquisition of nongovernmental output property.

[Reserved]

#### §1.141-12 Remedial actions.

- (a) Conditions to taking remedial action.
  - (1) Reasonable expectations test met.
  - (2) Maturity not unreasonably long.
  - (3) Fair market value consideration.
  - (4) Disposition proceeds treated as gross proceeds for arbitrage purposes.
  - (5) Proceeds expended on a governmental purpose.
    - (b) Effect of a remedial action.
      - (1) In general.
      - (2) Effect on bonds that have been advanced.
      - (c) Disposition proceeds.
        - (1) Definition.
        - (2) Allocating disposition proceeds to an issue.
          - (3) Allocating disposition proceeds to different sources of funding.
          - (d) Redemption or defeasance of nonqualified bonds.
            - (1) In general.
            - (2) Special rule for dispositions for cash.
            - (3) Notice of defeasance.
            - (4) Special limitation.
            - (5) Defeasance escrow defined.
            - (e) Alternative use of disposition proceeds.
              - (1) In general.

(2) Special rule for use by 501(c)(3) organizations.

(f) Alternative use of facility.

(g) Rules for deemed reissuance.

(h) Authority of Commissioner to provide for additional remedial actions.

(i) Effect of remedial action on continuing compliance.

(j) Nonqualified bonds.

(1) Amount of nonqualified bonds.

(2) Allocation of nonqualified bonds.

(k) Examples.

**§ 1.141-13 Refunding issues.**

[Reserved]

**§ 1.141-14 Anti-abuse rules.**

(a) Authority of Commissioner to reflect substance of transactions.

(b) Examples.

**§ 1.141-15 Effective dates.**

(a) Scope.

(b) Effective dates.

(c) Refunding bonds.

(d) Permissive application of regulations.

(e) Permissive retroactive application of certain sections.

**§ 1.141-16 Effective dates for qualified private activity bond provisions.**

(a) Scope.

(b) Effective dates.

(c) Permissive application.

**§ 1.141-1 Definitions and rules of general application.**

(a) *In general.* For purposes of §§ 1.141-0 through 1.141-16, the following definitions and rules apply: the definitions in this section, the definitions in § 1.150-1, the definition of placed in service under § 1.150-2(c), the definition of grant under § 1.148-6(d)(4)(iii), the definition of reasonably required reserve or replacement fund in § 1.148-2(f), and the following definitions under § 1.148-1: bond year, commingled fund, fixed yield issue, higher yielding investments, investment, investment proceeds, issue price, issuer, nonpurpose investment, purpose investment, qualified guarantee, qualified hedge, reasonable expectations or reasonableness, rebate amount, replacement proceeds, sale proceeds, variable yield issue, and yield.

(b) *Certain general definitions.*

*Common areas* means portions of a facility that are equally available to all users of a facility on the same basis for uses that are incidental to the primary use of the facility. For example, hallways and elevators generally are treated as common areas if they are used by the different lessees of a facility in connection with the primary use of that facility.

*Consistently applied* means applied uniformly to account for proceeds and other amounts.

*Deliberate action* is defined in § 1.141-2(d)(3).

*Discrete portion* means a portion of a facility that consists of any separate and discrete portion of a facility to which use is limited, other than common areas. A floor of a building and a portion of a building separated by walls, partitions, or other physical barriers are examples of a discrete portion.

*Disposition* is defined in § 1.141-12(c)(1).

*Disposition proceeds* is defined in § 1.141-12(c)(1).

*Essential governmental function* is defined in § 1.141-5(d)(4)(ii).

*Financed* means constructed, reconstructed, or acquired with proceeds of an issue.

*Governmental bond* means a bond issued as part of an issue no portion of which consists of private activity bonds.

*Governmental person* means a state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. It does not include the United States or any agency or instrumentality thereof.

*Hazardous waste remediation bonds* is defined in § 1.141-4(f)(1).

*Measurement period* is defined in § 1.141-3(g)(2).

*Nongovernmental person* means a person other than a governmental person.

*Output facility* means electric and gas generation, transmission, distribution, and related facilities, and water collection, storage, and distribution facilities.

*Private business tests* means the private business use test and the private security or payment test of section 141(b).

*Proceeds* means the sale proceeds of an issue (other than those sale proceeds used to retire bonds of the issue that are not deposited in a reasonably required reserve or replacement fund). Proceeds also include any investment proceeds from investments that accrue during the project period (net of rebate amounts attributable to the project period). Disposition proceeds of an issue are treated as proceeds to the extent provided in § 1.141-12. The Commissioner may treat any replaced amounts as proceeds.

*Project period* means the period beginning on the issue date and ending on the date that the project is placed in service. In the case of a multipurpose issue, the issuer may elect to treat the project period for the entire issue as ending on either the expiration of the temporary period described in § 1.148-2(e)(2) or the end of the fifth bond year after the issue date.

*Public utility property* means public utility property as defined in section 168(i)(10).

*Qualified bond* means a qualified bond as defined in section 141(e).

*Renewal option* means a provision under which either party has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for 1-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

*Replaced amounts* means replacement proceeds other than amounts that are treated as replacement proceeds solely because they are sinking funds or pledged funds.

*Weighted average maturity* is determined under section 147(b).

*Weighted average reasonably expected economic life* is determined under section 147(b). The reasonably expected economic life of property may be determined by reference to the class life of the property under section 168.

(c) *Elections.* Elections must be made in writing on or before the issue date and retained as part of the bond documents, and, once made, may not be revoked without the permission of the Commissioner.

(d) *Related parties.* Except as otherwise provided, all related parties are treated as one person and any reference to "person" includes any related party.

**§ 1.141-2 Private activity bond tests.**

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. The purpose of the private activity bond tests of section 141 is to limit the volume of tax-exempt bonds that finance the activities of nongovernmental persons, without regard to whether a financing actually transfers benefits of tax-exempt financing to a nongovernmental person. The private activity bond tests serve to identify arrangements that have the potential to transfer the benefits of tax-exempt financing, as well as arrangements that actually transfer these benefits. The regulations under section 141 may not be applied in a manner that is inconsistent with these purposes.

(b) *Scope.* Sections 1.141-0 through 1.141-16 apply generally for purposes of the private activity bond limitations under section 141.

(c) *General definition of private activity bond.* Under section 141, bonds are private activity bonds if they meet either the private business use test and private security or payment test of

section 141(b) or the private loan financing test of section 141(c). The private business use and private security or payment tests are described in §§ 1.141-3 and 1.141-4. The private loan financing test is described in § 1.141-5.

(d) *Reasonable expectations and deliberate actions*—(1) *In general.* An issue is an issue of private activity bonds if the issuer reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test. An issue is also an issue of private activity bonds if the issuer takes a deliberate action, subsequent to the issue date, that causes the conditions of either the private business tests or the private loan financing test to be met.

(2) *Reasonable expectations test*—(i) *In general.* In general, the reasonable expectations test must take into account reasonable expectations about events and actions over the entire stated term of an issue.

(ii) *Special rule for issues with mandatory redemption provisions.* An action that is reasonably expected, as of the issue date, to occur after the issue date and to cause either the private business tests or the private loan financing test to be met may be disregarded for purposes of those tests if—

(A) The issuer reasonably expects, as of the issue date, that the financed property will be used for a governmental purpose for a substantial period before the action;

(B) The issuer is required to redeem all nonqualifying bonds (regardless of the amount of disposition proceeds actually received) within 6 months of the date of the action;

(C) The issuer does not enter into any arrangement with a nongovernmental person, as of the issue date, with respect to that specific action; and

(D) The mandatory redemption of bonds meets all of the conditions for remedial action under § 1.141-12(a).

(3) *Deliberate action defined*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3), a deliberate action is any action taken by the issuer that is within its control. An intent to violate the requirements of section 141 is not necessary for an action to be deliberate.

(ii) *Safe harbor exceptions.* An action is not treated as a deliberate action if—

(A) It would be treated as an involuntary or compulsory conversion under section 1033; or

(B) It is taken in response to a regulatory directive made by the federal government.

(4) *Special rule for dispositions of personal property in the ordinary course of an established governmental program*—

(i) *In general.* Dispositions of personal property in the ordinary course of an established governmental program are not treated as deliberate actions if—

(A) The weighted average maturity of the bonds financing that personal property is not greater than 120 percent of the reasonably expected actual use of that property for governmental purposes;

(B) The issuer reasonably expects on the issue date that the fair market value of that property on the date of disposition will be not greater than 25 percent of its cost; and

(C) The property is no longer suitable for its governmental purposes on the date of disposition.

(ii) *Reasonable expectations test.* The reasonable expectation that a disposition described in paragraph (d)(4)(i) of this section may occur in the ordinary course while the bonds are outstanding will not cause the issue to meet the private activity bond tests if the issuer is required to deposit amounts received from the disposition in a commingled fund with substantial tax or other governmental revenues and the issuer reasonably expects to spend the amounts on governmental programs within 6 months from the date of commingling.

(iii) *Separate issue treatment.* An issuer may treat the bonds properly allocable to the personal property eligible for this exception as a separate issue under § 1.150-1(c)(3).

(5) *Special rule for general obligation bond programs that finance a large number of separate purposes.* The determination of whether bonds of an issue are private activity bonds may be based solely on the issuer's reasonable expectations as of the issue date if all of the requirements of paragraphs (d)(5)(i) through (vii) of this section are met.

(i) The issue is an issue of general obligation bonds of a general purpose governmental unit that finances at least 25 separate purposes (as defined in § 1.150-1(c)(3)) and does not predominantly finance fewer than 4 separate purposes.

(ii) The issuer has adopted a fund method of accounting for its general governmental purposes that makes tracing the bond proceeds to specific expenditures unreasonably burdensome.

(iii) The issuer reasonably expects on the issue date to allocate all of the net proceeds of the issue to capital expenditures within 6 months of the issue date and adopts reasonable procedures to verify that net proceeds are in fact so expended. A program to

randomly spot check that 10 percent of the net proceeds were so expended generally is a reasonable verification procedure for this purpose.

(iv) The issuer reasonably expects on the issue date to expend all of the net proceeds of the issue before expending proceeds of a subsequent issue of similar general obligation bonds.

(v) The issuer reasonably expects on the issue date that it will not make any loans to nongovernmental persons with the proceeds of the issue.

(vi) The issuer reasonably expects on the issue date that the capital expenditures that it could make during the 6-month period beginning on the issue date with the net proceeds of the issue that would not meet the private business tests are not less than 125 percent of the capital expenditures to be financed with the net proceeds of the issue.

(vii) The issuer reasonably expects on the issue date that the weighted average maturity of the issue is not greater than 120 percent of the weighted average reasonably expected economic life of the capital expenditures financed with the issue. To determine reasonably expected economic life for this purpose an issuer may use reasonable estimates based on the type of expenditures made from a fund.

(e) *When a deliberate action occurs.* A deliberate action occurs on the date the issuer enters into a binding contract with a nongovernmental person for use of the financed property that is not subject to any material contingencies.

(f) *Certain remedial actions.* See § 1.141-12 for certain remedial actions that prevent a deliberate action with respect to property financed by an issue from causing that issue to meet the private business use test or the private loan financing test.

(g) *Examples.* The following examples illustrate the application of this section:

*Example 1. Involuntary action.* City B issues bonds to finance the purchase of land. On the issue date, B reasonably expects that it will be the sole user of the land for the entire term of the bonds. Subsequently, the federal government acquires the land in a condemnation action. B sets aside the condemnation proceeds to pay debt service on the bonds but does not redeem them on their first call date. The bonds are not private activity bonds because B has not taken a deliberate action after the issue date. See, however, § 1.141-14(b), *Example 2.*

*Example 2. Reasonable expectations test— involuntary action.* The facts are the same as in *Example 1*, except that, on the issue date, B reasonably expects that the federal government will acquire the land in a condemnation action during the term of the bonds. On the issue date, the present value of the amount that B reasonably expects to

receive from the federal government is greater than 10 percent of the present value of the debt service on the bonds. The terms of the bonds do not require that the bonds be redeemed within 6 months of the acquisition by the federal government. The bonds are private activity bonds because the issuer expects as of the issue date that the private business tests will be met.

*Example 3. Reasonable expectations test—mandatory redemption.* City C issues bonds to rehabilitate an existing hospital that it currently owns. On the issue date of the bonds, C reasonably expects that the hospital will be used for a governmental purpose for a substantial period. On the issue date, C also plans to construct a new hospital, but the placed in service date of that new hospital is uncertain. C reasonably expects that, when the new hospital is placed in service, it will sell or lease the rehabilitated hospital to a private hospital corporation. The bond documents require that the bonds must be redeemed within 6 months of the sale or lease of the rehabilitated hospital (regardless of the amount actually received from the sale). The bonds meet the reasonable expectations requirement of the private activity bond tests if the mandatory redemption of bonds meets all of the conditions for a remedial action under § 1.141–12(a).

*Example 4. Dispositions in the ordinary course of an established governmental program.* City D issues bonds with a weighted average maturity of 6 years for the acquisition of police cars. D reasonably expects on the issue date that the police cars will be used solely by its police department, except that, in the ordinary course of its police operations, D sells its police cars to a taxicab corporation after 5 years of use because they are no longer suitable for police use. Further, D reasonably expects that the value of the police cars when they are no longer suitable for police use will be no more than 25 percent of cost. D subsequently sells 20 percent of the police cars after only 3 years of actual use. At that time, D deposits the proceeds from the sale of the police cars in a commingled fund with substantial tax revenues and reasonably expects to spend the proceeds on governmental programs within 6 months of the date of deposit. D does not trace the actual use of these commingled amounts. The sale of the police cars does not cause the private activity bond tests to be met because the requirements of paragraph (d)(4) of this section are met.

#### § 1.141–3 Definition of private business use.

(a) *General rule—(1) In general.* The private business use test relates to the use of the proceeds of an issue. The 10 percent private business use test of section 141(b)(1) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of financed property is treated as the direct use of proceeds. Any activity carried on by a person other than a natural person is treated as a trade or business. Unless the context

or a provision clearly requires otherwise, this section also applies to the private business use test under sections 141(b)(3) (unrelated or disproportionate use), 141(b)(4) (\$15 million limitation for certain output facilities), and 141(b)(5) (the coordination with the volume cap where the nonqualified amount exceeds \$15 million).

(2) *Indirect use.* In determining whether an issue meets the private business use test, it is necessary to look to both the indirect and direct uses of proceeds. For example, a facility is treated as being used for a private business use if it is leased to a nongovernmental person and subleased to a governmental person or if it is leased to a governmental person and then subleased to a nongovernmental person, provided that in each case the nongovernmental person's use is in a trade or business. Similarly, the issuer's use of the proceeds to engage in a series of financing transactions for property to be used by nongovernmental persons in their trades or businesses may cause the private business use test to be met. In addition, proceeds are treated as used in the trade or business of a nongovernmental person if a nongovernmental person, as a result of a single transaction or a series of related transactions, uses property acquired with the proceeds of an issue.

(3) *Aggregation of private business use.* The use of proceeds by all nongovernmental persons is aggregated to determine whether the private business use test is met.

(b) *Types of private business use arrangements—(1) In general.* Both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user of proceeds and financed property as a result of ownership; actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

(2) *Ownership.* Except as provided in paragraph (d)(1) or (d)(2) of this section, ownership by a nongovernmental person of financed property is private business use of that property. For this purpose, ownership refers to ownership for federal income tax purposes.

(3) *Leases.* Except as provided in paragraph (d) of this section, the lease of financed property to a

nongovernmental person is private business use of that property. For this purpose, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. In determining whether a management contract is properly characterized as a lease, it is necessary to consider all of the facts and circumstances, including the following factors—

(i) The degree of control over the property that is exercised by a nongovernmental person; and

(ii) Whether a nongovernmental person bears risk of loss of the financed property.

(4) *Management contracts—(i) Facts and circumstances test.* Except as provided in paragraph (d) of this section, a management contract (within the meaning of paragraph (b)(4)(ii) of this section) with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. A management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility.

(ii) *Management contract defined.* For purposes of this section, a management contract is a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

(iii) *Arrangements generally not treated as management contracts.* The arrangements described in paragraphs (b)(4)(iii) (A) through (D) of this section generally are not treated as management contracts that give rise to private business use.

(A) Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services).

(B) The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services, if those privileges are available to all

qualified physicians in the area, consistent with the size and nature of its facilities.

(C) A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider.

(D) A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

(iv) *Management contracts that are properly treated as other types of private business use.* A management contract with respect to financed property results in private business use of that property if the service provider is treated as the lessee or owner of financed property for federal income tax purposes, unless an exception under paragraph (d) of this section applies to the arrangement.

(5) *Output contracts.* See § 1.141-7 for special rules for contracts for the purchase of output of output facilities.

(6) *Research agreements—(i) Facts and circumstances test.* Except as provided in paragraph (d) of this section, an agreement by a nongovernmental person to sponsor research performed by a governmental person may result in private business use of the property used for the research, based on all of the facts and circumstances.

(ii) *Research agreements that are properly treated as other types of private business use.* A research agreement with respect to financed property results in private business use of that property if the sponsor is treated as the lessee or owner of financed property for federal income tax purposes, unless an exception under paragraph (d) of this section applies to the arrangement.

(7) *Other actual or beneficial use—(i) In general.* Any other arrangement that conveys special legal entitlements for beneficial use of bond proceeds or of financed property that are comparable to special legal entitlements described in paragraphs (b) (2), (3), (4), (5), or (6) of this section results in private business use. For example, an arrangement that conveys priority rights to the use or capacity of a facility generally results in private business use.

(ii) *Special rule for facilities not used by the general public.* In the case of financed property that is not available for use by the general public (within the meaning of paragraph (c) of this section), private business use may be established solely on the basis of a

special economic benefit to one or more nongovernmental persons, even if those nongovernmental persons have no special legal entitlements to use of the property. In determining whether special economic benefit gives rise to private business use it is necessary to consider all of the facts and circumstances, including one or more of the following factors—

(A) Whether the financed property is functionally related or physically proximate to property used in the trade or business of a nongovernmental person;

(B) Whether only a small number of nongovernmental persons receive the special economic benefit; and

(C) Whether the cost of the financed property is treated as depreciable by any nongovernmental person.

(c) *Exception for general public use—*

(1) *In general.* Use as a member of the general public (general public use) is not private business use. Use of financed property by nongovernmental persons in their trades or businesses is treated as general public use only if the property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business.

(2) *Use on the same basis.* In general, use under an arrangement that conveys priority rights or other preferential benefits is not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if—

(i) Different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or

(ii) A specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates.

(3) *Long-term arrangements not treated as general public use.* An arrangement is not treated as general public use if the term of the use under the arrangement, including all renewal options, is greater than 180 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if—

(i) The compensation for the use under the arrangement is redetermined at generally applicable, fair market

value rates that are in effect at the time of renewal; and

(ii) The use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

(4) *Relation to other use.* Use of financed property by the general public does not prevent the proceeds from being used for a private business use because of other use under this section.

(d) *Other exceptions—(1) Agents.* Use of proceeds by nongovernmental persons solely in their capacity as agents of a governmental person is not private business use. For example, use by a nongovernmental person that issues obligations on behalf of a governmental person is not private business use to the extent the nongovernmental person's use of proceeds is in its capacity as an agent of the governmental person.

(2) *Use incidental to financing arrangements.* Use by a nongovernmental person that is solely incidental to a financing arrangement is not private business use. A use is solely incidental to a financing arrangement only if the nongovernmental person has no substantial rights to use bond proceeds or financed property other than as an agent of the bondholders. For example, a nongovernmental person that acts solely as an owner of title in a sale and leaseback financing transaction with a city generally is not a private business user of the property leased to the city, provided that the nongovernmental person has assigned all of its rights to use the leased facility to the trustee for the bondholders upon default by the city. Similarly, bond trustees, servicers, and guarantors are generally not treated as private business users.

(3) *Exceptions for arrangements other than arrangements resulting in ownership of financed property by a nongovernmental person—(i) Arrangements not available for use on the same basis by natural persons not engaged in a trade or business.* Use by a nongovernmental person pursuant to an arrangement, other than an arrangement resulting in ownership of financed property by a nongovernmental person, is not private business use if—

(A) The term of the use under the arrangement, including all renewal options, is not longer than 90 days;

(B) The arrangement would be treated as general public use, except that it is not available for use on the same basis by natural persons not engaged in a trade or business because generally applicable and uniformly applied rates

are not reasonably available to natural persons not engaged in a trade or business; and

(C) The property is not financed for a principal purpose of providing that property for use by that nongovernmental person.

(ii) *Negotiated arm's-length arrangements.* Use by a nongovernmental person pursuant to an arrangement, other than an arrangement resulting in ownership of financed property by a nongovernmental person, is not private business use if—

(A) The term of the use under the arrangement, including all renewal options, is not longer than 30 days;

(B) The arrangement is a negotiated arm's-length arrangement, and compensation under the arrangement is at fair market value; and

(C) The property is not financed for a principal purpose of providing that property for use by that nongovernmental person.

(4) *Temporary use by developers.* Use during an initial development period by a developer of an improvement that carries out an essential governmental function is not private business use if the issuer and the developer reasonably expect on the issue date to proceed with all reasonable speed to develop the improvement and property benefited by that improvement and to transfer the improvement to a governmental person, and if the improvement is in fact transferred to a governmental person promptly after the property benefited by the improvement is developed.

(5) *Incidental use*—(i) *General rule.* Incidental uses of a financed facility are disregarded, to the extent that those uses do not exceed 2.5 percent of the proceeds of the issue used to finance the facility. A use of a facility by a nongovernmental person is incidental if—

(A) Except for vending machines, pay telephones, kiosks, and similar uses, the use does not involve the transfer to the nongovernmental person of possession and control of space that is separated from other areas of the facility by walls, partitions, or other physical barriers, such as a night gate affixed to a structural component of a building (a nonpossessory use);

(B) The nonpossessory use is not functionally related to any other use of the facility by the same person (other than a different nonpossessory use); and

(C) All nonpossessory uses of the facility do not, in the aggregate, involve the use of more than 2.5 percent of the facility.

(ii) *Illustrations.* Incidental uses may include pay telephones, vending machines, advertising displays, and use

for television cameras, but incidental uses may not include output purchases.

(6) *Qualified improvements.* Proceeds that provide a governmentally owned improvement to a governmentally owned building (including its structural components and land functionally related and subordinate to the building) are not used for a private business use if—

(i) The building was placed in service more than 1 year before the construction or acquisition of the improvement is begun;

(ii) The improvement is not an enlargement of the building or an improvement of interior space occupied exclusively for any private business use;

(iii) No portion of the improved building or any payments in respect of the improved building are taken into account under section 141(b)(2)(A) (the private security test); and

(iv) No more than 15 percent of the improved building is used for a private business use.

(e) *Special rule for tax assessment bonds.* In the case of a tax assessment bond that satisfies the requirements of §1.141-5(d), the loan (or deemed loan) of the proceeds to the borrower paying the assessment is disregarded in determining whether the private business use test is met. However, the use of the loan proceeds is not disregarded in determining whether the private business use test is met.

(f) *Examples.* The following examples illustrate the application of paragraphs (a) through (e) of this section. In each example, assume that the arrangements described are the only arrangements with nongovernmental persons for use of the financed property.

*Example 1. Nongovernmental ownership.* State A issues 20-year bonds to purchase land and equip and construct a factory. A then enters into an arrangement with Corporation X to sell the factory to X on an installment basis while the bonds are outstanding. The issue meets the private business use test because a nongovernmental person owns the financed facility. See also §1.141-2 (relating to the private activity bond tests), and §1.141-5 (relating to the private loan financing test).

*Example 2. Lease to a nongovernmental person.* (i) The facts are the same as in *Example 1*, except that A enters into an arrangement with X to lease the factory to X for 3 years rather than to sell it to X. The lease payments will be made annually and will be based on the tax-exempt interest rate on the bonds. The issue meets the private business use test because a nongovernmental person leases the financed facility. See also §1.141-14 (relating to anti-abuse rules).

(ii) The facts are the same as in *Example 2(i)*, except that the annual payments made by X will equal fair rental value of the facility and exceed the amount necessary to pay debt

service on the bonds for the 3 years of the lease. The issue meets the private business use test because a nongovernmental person leases the financed facility and the test does not require that the benefits of tax-exempt financing be passed through to the nongovernmental person.

*Example 3. Management contract in substance a lease.* City L issues 30-year bonds to finance the construction of a city hospital. L enters into a 15-year contract with M, a nongovernmental person that operates a health maintenance organization relating to the treatment of M's members at L's hospital. The contract provides for reasonable fixed compensation to M for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the hospital. However, the contract also provides that 30 percent of the capacity of the hospital will be exclusively available to M's members and M will bear the risk of loss of that portion of the capacity of the hospital so that, under all of the facts and circumstances, the contract is properly characterized as a lease for federal income tax purposes. The issue meets the private business use test because a nongovernmental person leases the financed facility.

*Example 4. Ownership of title in substance a leasehold interest.* Nonprofit corporation R issues bonds on behalf of City P to finance the construction of a hospital. R will own legal title to the hospital. In addition, R will operate the hospital, but R is not treated as an agent of P in its capacity as operator of the hospital. P has certain rights to the hospital that establish that it is properly treated as the owner of the property for federal income tax purposes. P does not have rights, however, to directly control operation of the hospital while R owns legal title to it and operates it. The issue meets the private business use test because the arrangement provides a nongovernmental person an interest in the financed facility that is comparable to a leasehold interest. See paragraphs (a)(2) and (b)(7)(i) of this section.

*Example 5. Rights to control use of property treated as private business use—parking lot.* Corporation C and City D enter into a plan to finance the construction of a parking lot adjacent to C's factory. Pursuant to the plan, C conveys the site for the parking lot to D for a nominal amount, subject to a covenant running with the land that the property be used only for a parking lot. In addition, D agrees that C will have the right to approve rates charged by D for use of the parking lot. D issues bonds to finance construction of the parking lot on the site. The parking lot will be available for use by the general public on the basis of rates that are generally applicable and uniformly applied. The issue meets the private business use test because a nongovernmental person has special legal entitlements for beneficial use of the financed facility that are comparable to an ownership interest. See paragraph (b)(7)(i) of this section.

*Example 6. Other actual or beneficial use—hydroelectric enhancements.* J, a political subdivision, owns and operates a hydroelectric generation plant and related facilities. Pursuant to a take or pay contract, J sells 15 percent of the output of the plant

to Corporation K, an investor-owned utility. K is treated as a private business user of the plant. Under the license issued to J for operation of the plant, J is required by federal regulations to construct and operate various facilities for the preservation of fish and for public recreation. J issues its obligations to finance the fish preservation and public recreation facilities. K has no special legal entitlements for beneficial use of the financed facilities. The fish preservation facilities are functionally related to the operation of the plant. The recreation facilities are available to natural persons on a short-term basis according to generally applicable and uniformly applied rates. Under paragraph (c) of this section, the recreation facilities are treated as used by the general public. Under paragraph (b)(7) of this section, K's use is not treated as private business use of the recreation facilities because K has no special legal entitlements for beneficial use of the recreation facilities. The fish preservation facilities are not of a type reasonably available for use on the same basis by natural persons not engaged in a trade or business. Under all of the facts and circumstances (including the functional relationship of the fish preservation facilities to property used in K's trade or business) under paragraph (b)(7)(ii) of this section, K derives a special economic benefit from the fish preservation facilities. Therefore, K's private business use may be established solely on the basis of that special economic benefit, and K's use of the fish preservation facilities is treated as private business use.

*Example 7. Other actual or beneficial use—pollution control facilities.* City B issues obligations to finance construction of a specialized pollution control facility on land that it owns adjacent to a factory owned by Corporation N. B will own and operate the pollution control facility, and N will have no special legal entitlements to use the facility. B, however, reasonably expects that N will be the only user of the facility. The facility will not be reasonably available for use on the same basis by natural persons not engaged in a trade or business. Under paragraph (b)(7)(ii) of this section, because under all of the facts and circumstances the facility is functionally related and is physically proximate to property used in N's trade or business, N derives a special economic benefit from the facility. Therefore, N's private business use may be established solely on the basis of that special economic benefit, and N's use is treated as private business use of the facility. See paragraph (b)(7)(ii) of this section.

*Example 8. General public use—airport runway.* (i) City I issues bonds and uses all of the proceeds to finance construction of a runway at a new city-owned airport. The runway will be available for take-off and landing by any operator of an aircraft desiring to use the airport, including general aviation operators who are natural persons not engaged in a trade or business. It is reasonably expected that most of the actual use of the runway will be by private air carriers (both charter airlines and commercial airlines) in connection with their use of the airport terminals leased by those carriers. These leases for the use of terminal space provide no priority rights or other

preferential benefits to the air carriers for use of the runway. Moreover, under the leases the lease payments are determined without taking into account the revenues generated by runway landing fees (that is, the lease payments are not determined on a "residual" basis). Although the lessee air carriers receive a special economic benefit from the use of the runway, this economic benefit is not sufficient to cause the air carriers to be private business users, because the runway is available for general public use. The issue does not meet the private business use test. See paragraphs (b)(7)(ii) and (c) of this section.

(ii) The facts are the same as in *Example 8(i)*, except that the runway will be available for use only by private air carriers. The use by these private air carriers is not for general public use, because the runway is not reasonably available for use on the same basis by natural persons not engaged in a trade or business. Depending on all of the facts and circumstances, including whether there are only a small number of lessee private air carriers, the issue may meet the private business use test solely because the private air carriers receive a special economic benefit from the runway. See paragraph (b)(7)(ii) of this section.

(iii) The facts are the same as in *Example 8(i)*, except that the lease payments under the leases with the private air carriers are determined on a residual basis by taking into account the net revenues generated by runway landing fees. These leases cause the private business use test to be met with respect to the runway because they are arrangements that convey special legal entitlements to the financed facility to nongovernmental persons. See paragraph (b)(7)(i) of this section.

*Example 9. General public use—airport parking garage.* City S issues bonds and uses all of the proceeds to finance construction of a city-owned parking garage at the city-owned airport. S reasonably expects that more than 10 percent of the actual use of the parking garage will be by employees of private air carriers (both charter airlines and commercial airlines) in connection with their use of the airport terminals leased by those carriers. The air carriers' use of the parking garage, however, will be on the same basis as passengers and other members of the general public using the airport. The leases for the use of the terminal space provide no priority rights to the air carriers for use of the parking garage, and the lease payments are determined without taking into account the revenues generated by the parking garage. Although the lessee air carriers receive a special economic benefit from the use of the parking garage, this economic benefit is not sufficient to cause the air carriers to be private business users, because the parking garage is available for general public use. The issue does not meet the private business use test. See paragraphs (b)(7)(ii) and (c) of this section.

*Example 10. Long-term arrangements not treated as general public use—insurance fund.* Authority T deposits all of the proceeds of its bonds in its insurance fund and invests all of those proceeds in tax-exempt bonds. The insurance fund provides insurance to a

large number of businesses and natural persons not engaged in a trade or business. Each participant receives insurance for a term of 1 year. The use by the participants, other than participants that are natural persons not engaged in a trade or business, is treated as private business use of the proceeds of the bonds because the participants have special legal entitlements to the use of bond proceeds, even though the contractual rights are not necessarily properly characterized as ownership, leasehold, or similar interests listed in paragraph (b) of this section. Use of the bond proceeds is not treated as general public use because the term of the insurance is greater than 180 days. See paragraphs (b)(7)(i) and (c)(3) of this section.

*Example 11. General public use—port road.* Highway Authority W uses all of the proceeds of its bonds to construct a 25-mile road to connect an industrial port owned by Corporation Y with existing roads owned and operated by W. Other than the port, the nearest residential or commercial development to the new road is 12 miles away. There is no reasonable expectation that development will occur in the area surrounding the new road. W and Y enter into no arrangement (either by contract or ordinance) that conveys special legal entitlements to Y for the use of the road. Use of the road will be available without restriction to all users, including natural persons who are not engaged in a trade or business. The issue does not meet the private business use test because the road is treated as used only by the general public.

*Example 12. General public use of governmentally owned hotel.* State Q issues bonds to purchase land and construct a hotel for use by the general public (that is, tourists, visitors, and business travelers). The bond documents provide that Q will own and operate the project for the term of the bonds. Q will not enter into a lease or license with any user for use of rooms for a period longer than 180 days (although users may actually use rooms for consecutive periods in excess of 180 days). Use of the hotel by hotel guests who are travelling in connection with trades or businesses of nongovernmental persons is not a private business use of the hotel by these persons because the hotel is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business. See paragraph (c)(1) of this section.

*Example 13. General public use with rights of first refusal.* Authority V uses all of the proceeds of its bonds to construct a parking garage. At least 90 percent of the spaces in the garage will be available to the general public on a monthly first-come, first-served basis. V reasonably expects that the spaces will be predominantly leased to natural persons not engaged in a trade or business who have priority rights to renew their spaces at then current fair market value rates. More than 10 percent of the spaces will be leased to nongovernmental persons acting in a trade or business. These leases are not treated as arrangements with a term of use

greater than 180 days. The rights to renew are not treated as renewal options because the compensation for the spaces is redetermined at generally applicable, fair market value rates that will be in effect at the time of renewal and the use of the spaces under similar arrangements is predominantly by natural persons who are not engaged in a trade or business. The issue does not meet the private business use test because at least 90 percent of the use of the parking garage is general public use. See paragraph (c)(3) of this section.

*Example 14. General public use with a specially negotiated rate agreement with agency of United States.* G, a sewage collection and treatment district, operates facilities that were financed with its bonds. F, an agency of the United States, has a base located within G. Approximately 20 percent of G's facilities are used to treat sewage produced by F under a specially negotiated rate agreement. Under the specially negotiated rate agreement, G uses its best efforts to charge F as closely as possible the same amount for its use of G's services as its other customers pay for the same amount of services, although those other customers pay for services based on standard district charges and tax levies. F is prohibited by federal law from paying for the services based on those standard district charges and tax levies. The use of G's facilities by F is on the same basis as the general public. See paragraph (c)(2)(ii) of this section.

*Example 15. Arrangements not available for use by natural persons not engaged in a trade or business—federal use of prisons.* Authority E uses all of the proceeds of its bonds to construct a prison. E contracts with federal agency F to house federal prisoners on a space-available, first-come, first-served basis, pursuant to which F will be charged approximately the same amount for each prisoner as other persons that enter into similar transfer agreements. It is reasonably expected that other persons will enter into similar agreements. The term of the use under the contract is not longer than 90 days, and F has no right to renew, although E reasonably expects to renew the contract indefinitely. The prison is not financed for a principal purpose of providing the prison for use by F. It is reasonably expected that during the term of the bonds, more than 10 percent of the prisoners at the prison will be federal prisoners. F's use of the facility is not general public use because this type of use (leasing space for prisoners) is not available for use on the same basis by natural persons not engaged in a trade or business. The issue does not meet the private business use test, however, because the leases satisfy the exception of paragraph (d)(3)(i) of this section.

*Example 16. Negotiated arm's-length arrangements—auditorium reserved in advance.* (i) City Z issues obligations to finance the construction of a municipal auditorium that it will own and operate. The use of the auditorium will be open to anyone who wishes to use it for a short period of time on a rate-scale basis. Z reasonably expects that the auditorium will be used by schools, church groups, sororities, and numerous commercial organizations.

Corporation H, a nongovernmental person, enters into an arm's-length arrangement with Z to use the auditorium for 1 week for each year for a 10-year period (a total of 70 days), pursuant to which H will be charged a specific price reflecting fair market value. On the date the contract is entered into, Z has not established generally applicable rates for future years. Even though the auditorium is not financed for a principal purpose of providing use of the auditorium to H, H is not treated as using the auditorium as a member of the general public because its use is not on the same basis as the general public. Because the term of H's use of the auditorium is longer than 30 days, the arrangement does not meet the exception under paragraph (d)(3)(ii) of this section.

(ii) The facts are the same as in *Example 16(i)*, except that H will enter into an arm's-length arrangement with Z to use the auditorium for 1 week for each year for a 4-year period (a total of 28 days), pursuant to which H will be charged a specific price reflecting fair market value. H is not treated as a private business user of the auditorium because its contract satisfies the exception of paragraph (d)(3)(ii) of this section for negotiated arm's-length arrangements.

(g) *Measurement of private business use—(1) In general.* In general, the private business use of proceeds is allocated to property under §1.141-6. The amount of private business use of that property is determined according to the average percentage of private business use of that property during the measurement period.

(2) *Measurement period—(i) General rule.* Except as provided in this paragraph (g)(2), the measurement period of property financed by an issue begins on the later of the issue date of that issue or the date the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue financing the property (determined without regard to any optional redemption dates). In general, the period of reasonably expected economic life of the property for this purpose is based on reasonable expectations as of the issue date.

(ii) *Special rule for refundings of short-term obligations.* For an issue of short-term obligations that the issuer reasonably expects to refund with a long-term financing (such as bond anticipation notes), the measurement period is based on the latest maturity date of any bond of the last refunding issue with respect to the financed property (determined without regard to any optional redemption dates).

(iii) *Special rule for reasonably expected mandatory redemptions.* If an issuer reasonably expects on the issue date that an action will occur during the term of the bonds to cause either the private business tests or the private loan

financing test to be met and is required to redeem bonds to meet the reasonable expectations test of §1.141-2(d)(2), the measurement period ends on the reasonably expected redemption date.

(iv) *Special rule for ownership by a nongovernmental person.* The amount of private business use resulting from ownership by a nongovernmental person is the greatest percentage of private business use in any 1-year period.

(v) *Anti-abuse rule.* If an issuer establishes the term of an issue for a period that is longer than is reasonably necessary for the governmental purposes of the issue for a principal purpose of increasing the permitted amount of private business use, the Commissioner may determine the amount of private business use according to the greatest percentage of private business use in any 1-year period.

(3) *Determining average percentage of private business use.* The average percentage of private business use is the average of the percentages of private business use during the 1-year periods within the measurement period. Appropriate adjustments must be made for beginning and ending periods of less than 1 year.

(4) *Determining the average amount of private business use for a 1-year period—(i) In general.* The percentage of private business use of property for any 1-year period is the average private business use during that year. This average is determined by comparing the amount of private business use during the year to the total amount of private business use and use that is not private business use (government use) during that year. Paragraphs (g)(4)(ii) through (v) of this section apply to determine the average amount of private business use for a 1-year period.

(ii) *Uses at different times.* For a facility in which actual government use and private business use occur at different times (for example, different days), the average amount of private business use generally is based on the amount of time that the facility is used for private business use as a percentage of the total time for all actual use. In determining the total amount of actual use, periods during which the facility is not in use are disregarded.

(iii) *Simultaneous use.* In general, for a facility in which government use and private business use occur simultaneously, the entire facility is treated as having private business use. For example, a governmentally owned facility that is leased or managed by a nongovernmental person in a manner

that results in private business use is treated as entirely used for a private business use. If, however, there is also private business use and actual government use on the same basis, the average amount of private business use may be determined on a reasonable basis that properly reflects the proportionate benefit to be derived by the various users of the facility (for example, reasonably expected fair market value of use). For example, the average amount of private business use of a garage with unassigned spaces that is used for government use and private business use is generally based on the number of spaces used for private business use as a percentage of the total number of spaces.

(iv) *Discrete portion.* For purposes of this paragraph (g), measurement of the use of proceeds allocated to a discrete portion of a facility is determined by treating that discrete portion as a separate facility.

(v) *Relationship to fair market value.* For purposes of paragraphs (g)(4) (ii) through (iv) of this section, if private business use is reasonably expected as of the issue date to have a significantly greater fair market value than government use, the average amount of private business use must be determined according to the relative reasonably expected fair market values of use rather than another measure, such as average time of use. This determination of relative fair market value may be made as of the date the property is acquired or placed in service if making this determination as of the issue date is not reasonably possible (for example, if the financed property is not identified on the issue date). In general, the relative reasonably expected fair market value for a period must be determined by taking into account the amount of reasonably expected payments for private business use for the period in a manner that properly reflects the proportionate benefit to be derived from the private business use.

(5) *Common areas.* The amount of private business use of common areas within a facility is based on a reasonable method that properly reflects the proportionate benefit to be derived by the users of the facility. For example, in general, a method that is based on the average amount of private business use of the remainder of the entire facility reflects proportionate benefit.

(6) *Allocation of neutral costs.* Proceeds that are used to pay costs of issuance, invested in a reserve or replacement fund, or paid as fees for a qualified guarantee or a qualified hedge must be allocated ratably among the

other purposes for which the proceeds are used.

(7) *Commencement of measurement of private business use.* Generally, private business use commences on the first date on which there is a right to actual use by the nongovernmental person. However, if an issuer enters into an arrangement for private business use a substantial period before the right to actual private business use commences and the arrangement transfers ownership or is an arrangement for other long-term use (such as a lease for a significant portion of the remaining economic life of financed property), private business use commences on the date the arrangement is entered into, even if the right to actual use commences after the measurement period. For this purpose, 10 percent of the measurement period is generally treated as a substantial period.

(8) *Examples.* The following examples illustrate the application of this paragraph (g):

*Example 1. Research facility.* University U, a state owned and operated university, owns and operates a research facility. U proposes to finance general improvements to the facility with the proceeds of an issue of bonds. U enters into sponsored research agreements with nongovernmental persons that result in private business use because the sponsors will own title to any patents resulting from the research. The governmental research conducted by U and the research U conducts for the sponsors take place simultaneously in all laboratories within the research facility. All laboratory equipment is available continuously for use by workers who perform both types of research. Because it is not possible to predict which research projects will be successful, it is not reasonably practicable to estimate the relative revenues expected to result from the governmental and nongovernmental research. U contributed 90 percent of the cost of the facility and the nongovernmental persons contributed 10 percent of the cost. Under this section, the nongovernmental persons are using the facility for a private business use on the same basis as the government use of the facility. The portions of the costs contributed by the various users of the facility provide a reasonable basis that properly reflects the proportionate benefit to be derived by the users of the facility. The nongovernmental persons are treated as using 10 percent of the proceeds of the issue.

*Example 2. Stadium.* (i) City L issues bonds and uses all of the proceeds to construct a stadium. L enters into a long-term contract with a professional sports team T under which T will use the stadium 20 times during each year. These uses will occur on nights and weekends. L reasonably expects that the stadium will be used more than 180 other times each year, none of which will give rise to private business use. This expectation is based on a feasibility study and historical use of the old stadium that is being replaced by the new stadium. There is

no significant difference in the value of T's uses when compared to the other uses of the stadium, taking into account the payments that T is reasonably expected to make for its use. Assuming no other private business use, the issue does not meet the private business use test because not more than 10 percent of the use of the facility is for a private business use.

(ii) The facts are the same as in *Example 2(i)*, except that L reasonably expects that the stadium will be used not more than 60 other times each year, none of which will give rise to private business use. The issue meets the private business use test because 25 percent of the proceeds are used for a private business use.

*Example 3. Airport terminal areas treated as common areas.* City N issues bonds to finance the construction of an airport terminal. Eighty percent of the leasable space of the terminal will be leased to private air carriers. The remaining 20 percent of the leasable space will be used for the term of the bonds by N for its administrative purposes. The common areas of the terminal, including waiting areas, lobbies, and hallways are treated as 80 percent used by the air carriers for purposes of the private business use test.

#### § 1.141-4 Private security or payment test.

(a) *General rule—(1) Private security or payment.* The private security or payment test relates to the nature of the security for, and the source of, the payment of debt service on an issue. The private payment portion of the test takes into account the payment of the debt service on the issue that is directly or indirectly to be derived from payments (whether or not to the issuer or any related party) in respect of property, or borrowed money, used or to be used for a private business use. The private security portion of the test takes into account the payment of the debt service on the issue that is directly or indirectly secured by any interest in property used or to be used for a private business use or payments in respect of property used or to be used for a private business use. For additional rules for output facilities, see § 1.141-7.

(2) *Aggregation of private payments and security.* For purposes of the private security or payment test, payments taken into account as private payments and payments or property taken into account as private security are aggregated. However, the same payments are not taken into account as both private security and private payments.

(3) *Underlying arrangement.* The security for, and payment of debt service on, an issue is determined from both the terms of the bond documents and on the basis of any underlying arrangement. An underlying arrangement may result from separate agreements between the parties or may

be determined on the basis of all of the facts and circumstances surrounding the issuance of the bonds. For example, if the payment of debt service on an issue is secured by both a pledge of the full faith and credit of a state or local governmental unit and any interest in property used or to be used in a private business use, the issue meets the private security or payment test.

(b) *Measurement of private payments and security*—(1) *Scope*. This paragraph (b) contains rules that apply to both private security and private payments.

(2) *Present value measurement*—(i) *Use of present value*. In determining whether an issue meets the private security or payment test, the present value of the payments or property taken into account is compared to the present value of the debt service to be paid over the term of the issue.

(ii) *Debt service*—(A) *Debt service paid from proceeds*. Debt service does not include any amount paid or to be paid from sale proceeds or investment proceeds. For example, debt service does not include payments of capitalized interest funded with proceeds.

(B) *Adjustments to debt service*. Debt service is adjusted to take into account payments and receipts that adjust the yield on an issue for purposes of section 148(f). For example, debt service includes fees paid for qualified guarantees under § 1.148-4(f) and is adjusted to take into account payments and receipts on qualified hedges under § 1.148-4(h).

(iii) *Computation of present value*—(A) *In general*. Present values are determined by using the yield on the issue as the discount rate and by discounting all amounts to the issue date. See, however, § 1.141-13 for special rules for refunding bonds.

(B) *Fixed yield issues*. For a fixed yield issue, yield is determined on the issue date and is not adjusted to take into account subsequent events.

(C) *Variable yield issues*. The yield on a variable yield issue is determined over the term of the issue. To determine the reasonably expected yield as of any date, the issuer may assume that the future interest rate on a variable yield bond will be the then-current interest rate on the bonds determined under the formula prescribed in the bond documents. A deliberate action requires a recomputation of the yield on the variable yield issue to determine the present value of payments under that arrangement. In that case, the issuer must use the yield determined as of the date of the deliberate action for purposes of determining the present value of payments under the

arrangement causing the deliberate action. See paragraph (g) of this section, *Example 3*.

(iv) *Application to private security*. For purposes of determining the present value of debt service that is secured by property, the property is valued at fair market value as of the first date on which the property secures bonds of the issue.

(c) *Private payments*—(1) *In general*. This paragraph (c) contains rules that apply to private payments.

(2) *Payments taken into account*—(i) *Payments for use*—(A) *In general*. Both direct and indirect payments made by any nongovernmental person that is treated as using proceeds of the issue are taken into account as private payments to the extent allocable to the proceeds used by that person. Payments are taken into account as private payments only to the extent that they are made for the period of time that proceeds are used for a private business use. Payments for a use of proceeds include payments (whether or not to the issuer) in respect of property financed (directly or indirectly) with those proceeds, even if not made by a private business user. Payments are not made in respect of financed property if those payments are directly allocable to other property being directly used by the person making the payment and those payments represent fair market value compensation for that other use. See paragraph (g) of this section, *Example 4* and *Example 5*. See also paragraph (c)(3) of this section for rules relating to allocation of payments to the source or sources of funding of property.

(B) *Payments not to exceed use*. Payments with respect to proceeds that are used for a private business use are not taken into account to the extent that the present value of those payments exceeds the present value of debt service on those proceeds. Payments need not be directly derived from a private business user, however, to be taken into account. Thus, if 7 percent of the proceeds of an issue is used by a person over the measurement period, payments with respect to the property financed with those proceeds are taken into account as private payments only to the extent that the present value of those payments does not exceed the present value of 7 percent of the debt service on the issue.

(C) *Payments for operating expenses*. Payments by a person for a use of proceeds do not include the portion of any payment that is properly allocable to the payment of ordinary and necessary expenses (as defined under section 162) directly attributable to the operation and maintenance of the

financed property used by that person. For this purpose, general overhead and administrative expenses are not directly attributable to those operations and maintenance. For example, if an issuer receives \$5,000 rent during the year for use of space in a financed facility and during the year pays \$500 for ordinary and necessary expenses properly allocable to the operation and maintenance of that space and \$400 for general overhead and general administrative expenses properly allocable to that space, \$500 of the \$5,000 received would not be considered a payment for the use of the proceeds allocable to that space (regardless of the manner in which that \$500 is actually used).

(ii) *Refinanced debt service*. Payments of debt service on an issue to be made from proceeds of a refunding issue are taken into account as private payments in the same proportion that the present value of the payments taken into account as private payments for the refunding issue bears to the present value of the debt service to be paid on the refunding issue. For example, if all the debt service on a note is paid with proceeds of a refunding issue, the note meets the private security or payment test if (and to the same extent that) the refunding issue meets the private security or payment test. This paragraph (c)(2)(ii) does not apply to payments that arise from deliberate actions that occur more than 3 years after the retirement of the prior issue that are not reasonably expected on the issue date of the refunding issue. For purposes of this paragraph (c)(2)(ii), whether an issue is a refunding issue is determined without regard to § 1.150-1(d)(2)(i) (relating to certain payments of interest).

(3) *Allocation of payments*—(i) *In general*. Private payments for the use of property are allocated to the source or different sources of funding of property. The allocation to the source or different sources of funding is based on all of the facts and circumstances, including whether an allocation is consistent with the purposes of section 141. In general, a private payment for the use of property is allocated to a source of funding based upon the nexus between the payment and both the financed property and the source of funding. For this purpose, different sources of funding may include different tax-exempt issues, taxable issues, and amounts that are not derived from a borrowing, such as revenues of an issuer (equity).

(ii) *Payments for use of discrete property*. Payments for the use of a discrete facility (or a discrete portion of a facility) are allocated to the source or

different sources of funding of that discrete property.

(iii) *Allocations among two or more sources of funding.* In general, except as provided in paragraphs (c)(3)(iv) and (v) of this section, if a payment is made for the use of property financed with two or more sources of funding (for example, equity and a tax-exempt issue), that payment must be allocated to those sources of funding in a manner that reasonably corresponds to the relative amounts of those sources of funding that are expended on that property. If an issuer has not retained records of amounts expended on the property (for example, records of costs of a building that was built 30 years before the allocation), an issuer may use reasonable estimates of those expenditures. For this purpose, costs of issuance and other similar neutral costs are allocated ratably among expenditures in the same manner as in § 1.141-3(g)(6). A payment for the use of property may be allocated to two or more issues that finance property according to the relative amounts of debt service (both paid and accrued) on the issues during the annual period for which the payment is made, if that allocation reasonably reflects the economic substance of the arrangement. In general, allocations of payments according to relative debt service reasonably reflect the economic substance of the arrangement if the maturity of the bonds reasonably corresponds to the reasonably expected economic life of the property and debt service payments on the bonds are approximately level from year to year.

(iv) *Payments made under an arrangement entered into in connection with issuance of bonds.* A private payment for the use of property made under an arrangement that is entered into in connection with the issuance of the issue that finances that property generally is allocated to that issue. Whether an arrangement is entered into in connection with the issuance of an issue is determined on the basis of all of the facts and circumstances. An arrangement is ordinarily treated as entered into in connection with the issuance of an issue if—

(A) The issuer enters into the arrangement during the 3-year period beginning 18 months before the issue date; and

(B) The amount of payments reflects all or a portion of debt service on the issue.

(v) *Allocations to equity.* A private payment for the use of property may be allocated to equity before payments are allocated to an issue only if—

(A) Not later than 60 days after the date of the expenditure of those amounts, the issuer adopts an official intent (in a manner comparable to § 1.150-2(e)) indicating that the issuer reasonably expects to be repaid for the expenditure from a specific arrangement; and

(B) The private payment is made not later than 18 months after the later of the date the expenditure is made or the date the project is placed in service.

(d) *Private security—(1) In general.* This paragraph (d) contains rules that relate to private security.

(2) *Security taken into account.* The property that is the security for, or the source of, the payment of debt service on an issue need not be property financed with proceeds. For example, unimproved land or investment securities used, directly or indirectly, in a private business use that secures an issue provides private security. Private security (other than financed property and private payments) for an issue is taken into account under section 141(b), however, only to the extent it is provided, directly or indirectly, by a user of proceeds of the issue.

(3) *Pledge of unexpended proceeds.* Proceeds qualifying for an initial temporary period under § 1.148-2(e)(2) or (3) or deposited in a reasonably required reserve or replacement fund (as defined in § 1.148-2(f)(2)(i)) are not taken into account under this paragraph (d) before the date on which those amounts are either expended or loaned by the issuer to an unrelated party.

(4) *Secured by any interest in property or payments.* Property used or to be used for a private business use and payments in respect of that property are treated as private security if any interest in that property or payments secures the payment of debt service on the bonds. For this purpose, the phrase any interest in is to be interpreted broadly and includes, for example, any right, claim, title, or legal share in property or payments.

(5) *Payments in respect of property.* The payments taken into account as private security are payments in respect of property used or to be used for a private business use. Except as otherwise provided in this paragraph (d)(5) and paragraph (d)(6) of this section, the rules in paragraphs (c)(2)(i)(A) and (B) and (c)(2)(ii) of this section apply to determine the amount of payments treated as payments in respect of property used or to be used for a private business use. Thus, payments made by members of the general public for use of a facility used for a private business use (for example, a facility that is the subject of a

management contract that results in private business use) are taken into account as private security to the extent that they are made for the period of time that property is used by a private business user.

(6) *Allocation of security among issues.* In general, property or payments from the disposition of that property that are taken into account as private security are allocated to each issue secured by the property or payments on a reasonable basis that takes into account bondholders' rights to the payments or property upon default.

(e) *Generally applicable taxes—(1) General rule.* For purposes of the private security or payment test, generally applicable taxes are not taken into account (that is, are not payments from a nongovernmental person and are not payments in respect of property used for a private business use).

(2) *Definition of generally applicable taxes.* A generally applicable tax is an enforced contribution exacted pursuant to legislative authority in the exercise of the taxing power that is imposed and collected for the purpose of raising revenue to be used for governmental purposes. A generally applicable tax must have a uniform tax rate that is applied to all persons of the same classification in the appropriate jurisdiction and a generally applicable manner of determination and collection.

(3) *Special charges.* A payment for a special privilege granted or service rendered is not a generally applicable tax. Special assessments paid by property owners benefiting from financed improvements are not generally applicable taxes. For example, a tax or a payment in lieu of tax that is limited to the property or persons benefited by an improvement is not a generally applicable tax.

(4) *Manner of determination and collection—(i) In general.* A tax does not have a generally applicable manner of determination and collection to the extent that one or more taxpayers make any impermissible agreements relating to payment of those taxes. An impermissible agreement relating to the payment of a tax is taken into account whether or not it is reasonably expected to result in any payments that would not otherwise have been made. For example, if an issuer uses proceeds to make a grant to a taxpayer to improve property, agreements that impose reasonable conditions on the use of the grant do not cause a tax on that property to fail to be a generally applicable tax. If an agreement by a taxpayer causes the tax imposed on that taxpayer not to be treated as a generally applicable tax, the

entire tax paid by that taxpayer is treated as a special charge, unless the agreement is limited to a specific portion of the tax.

(ii) *Impermissible agreements.* The following are examples of agreements that cause a tax to fail to have a generally applicable manner of determination and collection: an agreement to be personally liable on a tax that does not generally impose personal liability, to provide additional credit support such as a third party guarantee, or to pay unanticipated shortfalls; an agreement regarding the minimum market value of property subject to property tax; and an agreement not to challenge or seek deferral of the tax.

(iii) *Permissible agreements.* The following are examples of agreements that do not cause a tax to fail to have a generally applicable manner of determination and collection: an agreement to use a grant for specified purposes (whether or not that agreement is secured); a representation regarding the expected value of the property following the improvement; an agreement to insure the property and, if damaged, to restore the property; a right of a grantor to rescind the grant if property taxes are not paid; and an agreement to reduce or limit the amount of taxes collected to further a bona fide governmental purpose. For example, an agreement to abate taxes to encourage a property owner to rehabilitate property in a distressed area is a permissible agreement.

(5) *Payments in lieu of taxes.* A tax equivalency payment and any other payment in lieu of a tax is treated as a generally applicable tax if—

(i) The payment is commensurate with and not greater than the amounts imposed by a statute for a tax of general application; and

(ii) The payment is designated for a public purpose and is not a special charge (as described in paragraph (e)(3) of this section). For example, a payment in lieu of taxes made in consideration for the use of property financed with tax-exempt bonds is treated as a special charge.

(f) *Certain waste remediation bonds—*

(1) *Scope.* This paragraph (f) applies to bonds issued to finance hazardous waste clean-up activities on privately owned land (hazardous waste remediation bonds).

(2) *Persons that are not private users.* Payments from nongovernmental persons who are not (other than coincidentally) either users of the site being remediated or persons potentially responsible for disposing of hazardous waste on that site are not taken into

account as private security. This paragraph (f)(2) applies to payments that secure (directly or indirectly) the payment of principal of, or interest on, the bonds under the terms of the bonds. This paragraph (f)(2) applies only if the payments are made pursuant to either a generally applicable state or local taxing statute or a state or local statute that regulates or restrains activities on an industry-wide basis of persons who are engaged in generating or handling hazardous waste, or in refining, producing, or transporting petroleum, provided that those payments do not represent, in substance, payment for the use of proceeds. For this purpose, a state or local statute that imposes payments that have substantially the same character as those described in Chapter 38 of the Code are treated as generally applicable taxes.

(3) *Persons that are private users.* If payments from nongovernmental persons who are either users of the site being remediated or persons potentially responsible for disposing of hazardous waste on that site do not secure (directly or indirectly) the payment of principal of, or interest on, the bonds under the terms of the bonds, the payments are not taken into account as private payments. This paragraph (f)(3) applies only if at the time the bonds are issued the payments from those nongovernmental persons are not material to the security for the bonds. For this purpose, payments are not material to the security for the bonds if—

(i) The payments are not required for the payment of debt service on the bonds;

(ii) The amount and timing of the payments are not structured or designed to reflect the payment of debt service on the bonds;

(iii) The receipt or the amount of the payment is uncertain (for example, as of the issue date, no final judgment has been entered into against the nongovernmental person);

(iv) The payments from those nongovernmental persons, when and if received, are used either to redeem bonds of the issuer or to pay for costs of any hazardous waste remediation project; and

(v) In the case when a judgment (but not a final judgment) has been entered by the issue date against a nongovernmental person, there are, as of the issue date, costs of hazardous waste remediation other than those financed with the bonds that may be financed with the payments.

(g) *Examples.* The following examples illustrate the application of this section:

*Example 1. Aggregation of payments.* State B issues bonds with proceeds of \$10 million.

B uses \$9.7 million of the proceeds to construct a 10-story office building. B uses the remaining \$300,000 of proceeds to make a loan to Corporation Y. In addition, Corporation X leases 1 floor of the building for the term of the bonds. Under all of the facts and circumstances, it is reasonable to allocate 10 percent of the proceeds to that 1 floor. As a percentage of the present value of the debt service on the bonds, the present value of Y's loan repayments is 3 percent and the present value of X's lease payments is 8 percent. The bonds meet the private security or payment test because the private payments taken into account are more than 10 percent of the present value of the debt service on the bonds.

*Example 2. Indirect private payments.* J, a political subdivision of a state, will issue several series of bonds from time to time and will use the proceeds to rehabilitate urban areas. Under all of the facts and circumstances, the private business use test will be met with respect to each issue that will be used for the rehabilitation and construction of buildings that will be leased or sold to nongovernmental persons for use in their trades or businesses.

Nongovernmental persons will make payments for these sales and leases. There is no limitation either on the number of issues or the aggregate amount of bonds that may be outstanding. No group of bondholders has any legal claim prior to any other bondholders or creditors with respect to specific revenues of J, and there is no arrangement whereby revenues from a particular project are paid into a trust or constructive trust, or sinking fund, or are otherwise segregated or restricted for the benefit of any group of bondholders. There is, however, an unconditional obligation by J to pay the principal of, and the interest on, each issue. Although not directly pledged under the terms of the bond documents, the leases and sales are underlying arrangements. The payments relating to these leases and sales are taken into account as private payments to determine whether each issue of bonds meets the private security or payment test.

*Example 3. Computation of payment in variable yield issues.* (i) City M issues general obligation bonds with proceeds of \$10 million to finance a 5-story office building. The bonds bear interest at a variable rate that is recomputed monthly according to an index that reflects current market yields. The yield that the interest index would produce on the issue date is 6 percent. M leases 1 floor of the office building to Corporation T, a nongovernmental person, for the term of the bonds. Under all of the facts and circumstances, T is treated as using more than 10 percent of the proceeds. Using the 6 percent yield as the discount rate, M reasonably expects on the issue date that the present value of lease payments to be made by T will be 8 percent of the present value of the total debt service on the bonds. After the issue date of the bonds, interest rates decline significantly, so that the yield on the bonds over their entire term is 4 percent. Using this actual 4 percent yield as the discount rate, the present value of lease payments made by T is 12 percent of the present value of the actual total debt service

on the bonds. The bonds are not private activity bonds because M reasonably expected on the issue date that the bonds would not meet the private security or payment test and because M did not take any subsequent deliberate action to meet the private security or payment test.

(ii) The facts are the same as *Example 3(i)*, except that 5 years after the issue date M leases a second floor to Corporation S, a nongovernmental person, under a long-term lease. Because M has taken a deliberate action, the present value of the lease payments must be computed. On the date this lease is entered into, M reasonably expects that the yield on the bonds over their entire term will be 5.5 percent, based on actual interest rates to date and the then-current rate on the variable yield bonds. M uses this 5.5 percent yield as the discount rate. Using this 5.5 percent yield as the discount rate, as a percentage of the present value of the debt service on the bonds, the present value of the lease payments made by S is 3 percent. The bonds are private activity bonds because the present value of the aggregate private payments is greater than 10 percent of the present value of debt service.

*Example 4. Payments not in respect of financed property.* In order to further public safety, City Y issues tax assessment bonds the proceeds of which are used to move existing electric utility lines underground. Although the utility lines are owned by a nongovernmental utility company, that company is under no obligation to move the lines. The debt service on the bonds will be paid using assessments levied by City Y on the customers of the utility. Although the utility lines are privately owned and the utility customers make payments to the utility company for the use of those lines, the assessments are payments in respect of the cost of relocating the utility line. Thus, the assessment payments are not made in respect of property used for a private business use. Any direct or indirect payments to Y by the utility company for the undergrounding are, however, taken into account as private payments.

*Example 5. Payments from users of proceeds that are not private business users taken into account.* City P issues general obligation bonds to finance the renovation of a hospital that it owns. The hospital is operated for P by D, a nongovernmental person, under a management contract that results in private business use under §1.141-3. P will use the revenues from the hospital (after the required payments to D and the payment of operation and maintenance expenses) to pay the debt service on the bonds. The bonds meet the private security or payment test because the revenues from the hospital are payments in respect of property used for a private business use.

*Example 6. Limitation of amount of payments to amount of private business use not determined annually.* City Q issues bonds with a term of 15 years and uses the proceeds to construct an office building. The debt service on the bonds is level throughout the 15-year term. Q enters into a 5-year lease with Corporation R under which R is treated as a user of 11 percent of the proceeds. R will make lease payments equal to 20 percent of

the annual debt service on the bonds for each year of the lease. The present value of R's lease payments is equal to 12 percent of the present value of the debt service over the entire 15-year term of the bonds. If, however, the lease payments taken into account as private payments were limited to 11 percent of debt service paid in each year of the lease, the present value of these payments would be only 8 percent of the debt service on the bonds over the entire term of the bonds. The bonds meet the private security or payment test, because R's lease payments are taken into account as private payments in an amount not to exceed 11 percent of the debt service of the bonds.

*Example 7. Allocation of payments to funds not derived from a borrowing.* City Z purchases property for \$1,250,000 using \$1,000,000 of proceeds of its tax increment bonds and \$250,000 of other revenues that are in its redevelopment fund. Within 60 days of the date of purchase, Z declared its intent to sell the property pursuant to a redevelopment plan and to use that amount to reimburse its redevelopment fund. The bonds are secured only by the incremental property taxes attributable to the increase in value of the property from the planned redevelopment of the property. Within 18 months after the issue date, Z sells the financed property to Developer M for \$250,000, which Z uses to reimburse the redevelopment fund. The property that M uses is financed both with the proceeds of the bonds and Z's redevelopment fund. The payments by M are properly allocable to the costs of property financed with the amounts in Z's redevelopment fund. See paragraphs (c)(3) (i) and (v) of this section.

*Example 8. Allocation of payments to different sources of funding—improvements.* In 1997, City L issues bonds with proceeds of \$8 million to finance the acquisition of a building. In 2002, L spends \$2 million of its general revenues to improve the heating system and roof of the building. At that time, L enters into a 10-year lease with Corporation M for the building providing for annual payments of \$1 million to L. The lease payments are at fair market value, and the lease payments do not otherwise have a significant nexus to either the issue or to the expenditure of general revenues. Eighty percent of each lease payment is allocated to the issue and is taken into account under the private payment test because each lease payment is properly allocated to the sources of funding in a manner that reasonably corresponds to the relative amounts of the sources of funding that are expended on the building.

*Example 9. Security not provided by users of proceeds not taken into account.* County W issues certificates of participation in a lease of a building that W owns and covenants to appropriate annual payments for the lease. A portion of each payment is specified as interest. More than 10 percent of the building is used for private business use. None of the proceeds of the obligations are used with respect to the building. W uses the proceeds of the obligations to make a grant to Corporation Y for the construction of a factory that Y will own. Y makes no payments to W, directly or indirectly, for its

use of proceeds, and Y has no relationship to the users of the leased building. If W defaults under the lease, the trustee for the holders of the certificates of participation has a limited right of repossession under which the trustee may not foreclose but may lease the property to a new tenant at fair market value. The obligations are secured by an interest in property used for a private business use. However, because the property is not provided by a private business user and is not financed property, the obligations do not meet the private security or payment test.

*Example 10. Allocation of payments among issues.* University L, a political subdivision, issued three separate series of revenue bonds during 1989, 1991, and 1993 under the same bond resolution. L used the proceeds to construct facilities exclusively for its own use. Bonds issued under the resolution are equally and ratably secured and payable solely from the income derived by L from rates, fees, and charges imposed by L for the use of the facilities. The bonds issued in 1989, 1991, and 1993 are not private activity bonds. In 1997, L issues another series of bonds under the resolution to finance additional facilities. L leases 20 percent of the new facilities for the term of the 1997 bonds to nongovernmental persons who will use the facilities in their trades or businesses. The present value of the lease payments from the nongovernmental users will equal 15 percent of the present value of the debt service on the 1997 bonds. L will commingle all of the revenues from all its bond-financed facilities in its revenue fund. The present value of the portion of the lease payments from nongovernmental lessees of the new facilities allocable to the 1997 bonds under paragraph (d) of this section is less than 10 percent of the present value of the debt service on the 1997 bonds because the bond documents provide that the bonds are equally and ratably secured. Accordingly, the 1997 bonds do not meet the private security test. The 1997 bonds meet the private payment test, however, because the private lease payments for the new facility are properly allocated to those bonds (that is, because none of the proceeds of the prior issues were used for the new facilities). See paragraph (c) of this section.

*Example 11. Generally applicable tax.* (i) Authority N issues bonds to finance the construction of a stadium. Under a long-term lease, Corporation X, a professional sports team, will use more than 10 percent of the stadium. X will not, however, make any payments for this private business use. The security for the bonds will be a ticket tax imposed on each person purchasing a ticket for an event at the stadium. The portion of the ticket tax attributable to tickets purchased by persons attending X's events will, on a present value basis, exceed 10 percent of the present value of the debt service on N's bonds. The bonds meet the private security or payment test. The ticket tax is not a generally applicable tax and, to the extent that the tax receipts relate to X's events, the taxes are payments in respect of property used for a private business use.

(ii) The facts are the same as *Example 11(i)*, except that the ticket tax is imposed by N on

tickets purchased for events at a number of large entertainment facilities within the N's jurisdiction (for example, other stadiums, arenas, and concert halls), some of which were not financed with tax-exempt bonds. The ticket tax is a generally applicable tax and therefore the revenues from this tax are not payments in respect of property used for a private business use. The receipt of the ticket tax does not cause the bonds to meet the private security or payment test.

**§ 1.141-5 Private loan financing test.**

(a) *In general.* Bonds of an issue are private activity bonds if more than the lesser of 5 percent or \$5 million of the proceeds of the issue is to be used (directly or indirectly) to make or finance loans to persons other than governmental persons. Section 1.141-2(d) applies in determining whether the private loan financing test is met. In determining whether the proceeds of an issue are used to make or finance loans, indirect, as well as direct, use of the proceeds is taken into account.

(b) *Measurement of test.* In determining whether the private loan financing test is met, the amount actually loaned to a nongovernmental person is not discounted to reflect the present value of the loan repayments.

(c) *Definition of private loan—(1) In general.* Any transaction that is generally characterized as a loan for federal income tax purposes is a loan for purposes of this section. In addition, a loan may arise from the direct lending of bond proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed. Thus, the determination of whether a loan is made depends on the substance of a transaction rather than its form. For example, a lease or other contractual arrangement (for example, a management contract or an output contract) may in substance constitute a loan if the arrangement transfers tax ownership of the facility to a nongovernmental person. Similarly, an output contract or a management contract with respect to a financed facility generally is not treated as a loan of proceeds unless the agreement in substance shifts significant burdens and benefits of ownership to the nongovernmental purchaser or manager of the facility.

(2) *Application only to purpose investments—(i) In general.* A loan may be either a purpose investment or a nonpurpose investment. A loan that is a nonpurpose investment does not cause the private loan financing test to be met. For example, proceeds invested in loans, such as obligations of the United States, during a temporary period, as part of a reasonably required reserve or

replacement fund, as part of a refunding escrow, or as part of a minor portion (as each of those terms are defined in § 1.148-1 or § 1.148-2) are generally not treated as loans under the private loan financing test.

(ii) *Certain prepayments treated as loans.* Except as otherwise provided, a prepayment for property or services is treated as a loan for purposes of the private loan financing test if a principal purpose for prepaying is to provide a benefit of tax-exempt financing to the seller. A prepayment is not treated as a loan for purposes of the private loan financing test if—

(A) The prepayment is made for a substantial business purpose other than providing a benefit of tax-exempt financing to the seller and the issuer has no commercially reasonable alternative to the prepayment; or

(B) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing.

(3) *Grants—(i) In general.* A grant of proceeds is not a loan. Whether a transaction may be treated as a grant or a loan depends on all of the facts and circumstances.

(ii) *Tax increment financing—(A) In general.* Generally, a grant using proceeds of an issue that is secured by generally applicable taxes attributable to the improvements to be made with the grant is not treated as a loan, unless the grantee makes any impermissible agreements relating to the payment that results in the taxes imposed on that taxpayer not to be treated as generally applicable taxes under § 1.141-4(e).

(B) *Amount of loan.* If a grant is treated as a loan under this paragraph (c)(3), the entire grant is treated as a loan unless the impermissible agreement is limited to a specific portion of the tax. For this purpose, an arrangement with each unrelated grantee is treated as a separate grant.

(4) *Hazardous waste remediation bonds.* In the case of an issue of hazardous waste remediation bonds, payments from nongovernmental persons that are either users of the site being remediated or persons potentially responsible for disposing of hazardous waste on that site do not establish that the transaction is a loan for purposes of this section. This paragraph (c)(4) applies only if those payments do not secure the payment of principal of, or interest on, the bonds (directly or indirectly), under the terms of the bonds and those payments are not taken into account under the private payment test pursuant to § 1.141-4(f)(3).

(d) *Tax assessment loan exception—(1) General rule.* For purposes of this section, a tax assessment loan that satisfies the requirements of this paragraph (d) is not a loan for purposes of the private loan financing test.

(2) *Tax assessment loan defined.* A tax assessment loan is a loan that arises when a governmental person permits or requires property owners to finance any governmental tax or assessment of general application for an essential governmental function that satisfies each of the requirements of paragraphs (d) (3) through (5) of this section.

(3) *Mandatory tax or other assessment.* The tax or assessment must be an enforced contribution that is imposed and collected for the purpose of raising revenue to be used for a specific purpose (that is, to defray the capital cost of an improvement). Taxes and assessments do not include fees for services. The tax or assessment must be imposed pursuant to a state law of general application that can be applied equally to natural persons not acting in a trade or business and persons acting in a trade or business. For this purpose, taxes and assessments that are imposed subject to protest procedures are treated as enforced contributions.

(4) *Specific essential governmental function—(i) In general.* A mandatory tax or assessment that gives rise to a tax assessment loan must be imposed for one or more specific, essential governmental functions.

(ii) *Essential governmental functions.* For purposes of paragraph (d) of this section, improvements to utilities and systems that are owned by a governmental person and that are available for use by the general public (such as sidewalks, streets and street-lights; electric, telephone, and cable television systems; sewage treatment and disposal systems; and municipal water facilities) serve essential governmental functions. For other types of facilities, the extent to which the service provided by the facility is customarily performed (and financed with governmental bonds) by governments with general taxing powers is a primary factor in determining whether the facility serves an essential governmental function. For example, parks that are owned by a governmental person and that are available for use by the general public serve an essential governmental function. Except as otherwise provided in this paragraph (d)(4)(ii), commercial or industrial facilities and improvements to property owned by a nongovernmental person do not serve an essential governmental

function. Permitting installment payments of property taxes or other taxes is not an essential governmental function.

(5) *Equal basis requirement*—(i) *In general.* Owners of both business and nonbusiness property benefiting from the financed improvements must be eligible, or required, to make deferred payments of the tax or assessment giving rise to a tax assessment loan on an equal basis (the equal basis requirement). A tax or assessment does not satisfy the equal basis requirement if the terms for payment of the tax or assessment are not the same for all taxed or assessed persons. For example, the equal basis requirement is not met if certain property owners are permitted to pay the tax or assessment over a period of years while others must pay the entire tax or assessment immediately or if only certain property owners are required to prepay the tax or assessment when the property is sold.

(ii) *General rule for guarantees.* A guarantee of debt service on bonds, or of taxes or assessments, by a person that is treated as a borrower of bond proceeds violates the equal basis requirement if it is reasonable to expect on the date the guarantee is entered into that payments will be made under the guarantee.

(6) *Coordination with private business tests.* See §§ 1.141-3 and 1.141-4 for rules for determining whether tax assessment loans cause the bonds financing those loans to be private activity bonds under the private business use and the private security or payment tests.

(e) *Examples.* The following examples illustrate the application of this section:

*Example 1. Turnkey contract not treated as a loan.* State agency Z and federal agency H will each contribute to rehabilitate a project owned by Z. H can only provide its funds through a contribution to Z to be used to acquire the rehabilitated project on a turnkey basis from an approved developer. Under H's turnkey program, the developer must own the project while it is rehabilitated. Z issues its notes to provide funds for construction. A portion of the notes will be retired using the H contribution, and the balance of the notes will be retired through the issuance by Z of long-term bonds. Z lends the proceeds of its notes to Developer B as construction financing and transfers title to B for a nominal amount. The conveyance is made on condition that B rehabilitate the property and reconvey it upon completion, with Z retaining the right to force reconveyance if these conditions are not satisfied. B must name Z as an additional insured on all insurance. Upon completion, B must transfer title to the project back to Z at a set price, which price reflects B's costs and profit, not fair market value. Further, this price is adjusted downward to reflect any cost-

underruns. For purposes of section 141(c), this transaction does not involve a private loan.

*Example 2. Essential government function requirement not met.* City D creates a special taxing district consisting of property owned by nongovernmental persons that requires environmental clean-up. D imposes a special tax on each parcel within the district in an amount that is related to the expected environmental clean-up costs of that parcel. The payment of the tax over a 20-year period is treated as a loan by the property owners for purposes of the private loan financing test. The special district issues bonds, acting on behalf of D, that are payable from the special tax levied within the district, and uses the proceeds to pay for the costs of environmental clean-up on the property within the district. The bonds meet the private loan financing test because more than 5 percent of the proceeds of the issue are loaned to nongovernmental persons. The issue does not meet the tax assessment loan exception because the improvements to property owned by a nongovernmental person are not an essential governmental function under section 141(c)(2). The issue also meets the private business tests of section 141(b).

#### § 1.141-6 Allocation and accounting rules.

(a) *Allocation of proceeds to expenditures.* For purposes of §§ 1.141-1 through 1.141-15, the provisions of § 1.148-6(d) apply for purposes of allocating proceeds to expenditures. Thus, allocations generally may be made using any reasonable, consistently applied accounting method, and allocations under section 141 and section 148 must be consistent with each other.

(b) *Allocation of proceeds to property.*

[Reserved]

(c) *Special rules for mixed use facilities.* [Reserved]

(d) *Allocation of proceeds to common areas.* [Reserved]

(e) *Allocation of proceeds to bonds.*

[Reserved]

(f) *Treatment of partnerships.*

[Reserved]

(g) *Examples.* [Reserved]

#### § 1.141-7 Special rules for output contracts. [Reserved]

#### § 1.141-8 \$15 million limitation for output facilities. [Reserved]

#### § 1.141-9 Unrelated or disproportionate use test.

(a) *General rules*—(1) *Description of test.* Under section 141(b)(3) (the unrelated or disproportionate use test), an issue meets the private business tests if the amount of private business use and private security or payments attributable to unrelated or disproportionate private business use exceeds 5 percent of the proceeds of the issue. For this purpose, the private

business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (unrelated use) and use that is related but disproportionate to any government use of those proceeds (disproportionate use).

(2) *Application of unrelated or disproportionate use test*—(i) *Order of application.* The unrelated or disproportionate use test is applied by first determining whether a private business use is related to a government use. Next, private business use that relates to a government use is examined to determine whether it is disproportionate to that government use.

(ii) *Aggregation of unrelated and disproportionate use.* All the unrelated use and disproportionate use financed with the proceeds of an issue are aggregated to determine compliance with the unrelated or disproportionate use test. The amount of permissible unrelated and disproportionate private business use is not reduced by the amount of private business use financed with the proceeds of an issue that is neither unrelated use nor disproportionate use.

(iii) *Deliberate actions.* A deliberate action that occurs after the issue date does not result in unrelated or disproportionate use if the issue meets the conditions of § 1.141-12(a).

(b) *Unrelated use*—(1) *In general.* Whether a private business use is related to a government use financed with the proceeds of an issue is determined on a case-by-case basis, emphasizing the operational relationship between the government use and the private business use. In general, a facility that is used for a related private business use must be located within, or adjacent to, the governmentally used facility.

(2) *Use for the same purpose as government use.* Use of a facility by a nongovernmental person for the same purpose as use by a governmental person is not treated as unrelated use if the government use is not insignificant. Similarly, a use of a facility in the same manner both for private business use that is related use and private business use that is unrelated use does not result in unrelated use if the related use is not insignificant. For example, a privately owned pharmacy in a governmentally owned hospital does not ordinarily result in unrelated use solely because the pharmacy also serves individuals not using the hospital. In addition, use of parking spaces in a garage by a nongovernmental person is not treated as unrelated use if more than an insignificant portion of the parking

spaces are used for a government use (or a private business use that is related to a government use), even though the use by the nongovernmental person is not directly related to that other use.

(c) *Disproportionate use*—(1)

*Definition of disproportionate use.* A private business use is disproportionate to a related government use only to the extent that the amount of proceeds used for that private business use exceeds the amount of proceeds used for the related government use. For example, a private use of \$100 of proceeds that is related to a government use of \$70 of proceeds results in \$30 of disproportionate use.

(2) *Aggregation of related uses.* If two or more private business uses of the proceeds of an issue relate to a single government use of those proceeds, those private business uses are aggregated to apply the disproportionate use test.

(3) *Allocation rule.* If a private business use relates to more than a single use of the proceeds of the issue (for example, two or more government uses of the proceeds of the issue or a government use and a private use), the amount of any disproportionate use may be determined by—

(i) Reasonably allocating the proceeds used for the private business use among the related uses;

(ii) Aggregating government uses that are directly related to each other; or

(iii) Allocating the private business use to the government use to which it is primarily related.

(d) *Maximum use taken into account.* The determination of the amount of unrelated use or disproportionate use of a facility is based on the maximum amount of reasonably expected government use of a facility during the measurement period. Thus, no unrelated use or disproportionate use arises solely because a facility initially has excess capacity that is to be used by a nongovernmental person if the facility will be completely used by the issuer during the term of the issue for more than an insignificant period.

(e) *Examples.* The following examples illustrate the application of this section:

*Example 1. School and remote cafeteria.* County X issues bonds with proceeds of \$20 million and uses \$18.1 million of the proceeds for construction of a new school building and \$1.9 million of the proceeds for construction of a privately operated cafeteria in its administrative office building, which is located at a remote site. The bonds are secured, in part, by the cafeteria. The \$1.9 million of proceeds is unrelated to the government use (that is, school construction) financed with the bonds and exceeds 5 percent of \$20 million. Thus, the issue meets the private business tests.

*Example 2. Public safety building and courthouse.* City Y issues bonds with

proceeds of \$50 million for construction of a new public safety building (\$32 million) and for improvements to an existing courthouse (\$15 million). Y uses \$3 million of the bond proceeds for renovations to an existing privately operated cafeteria located in the courthouse. The bonds are secured, in part, by the cafeteria. Y's use of the \$3 million for the privately operated cafeteria does not meet the unrelated or disproportionate use test because these expenditures are neither unrelated use nor disproportionate use.

*Example 3. Unrelated garage.* City Y issues bonds with proceeds of \$50 million for construction of a new public safety building (\$30.5 million) and for improvements to an existing courthouse (\$15 million). Y uses \$3 million of the bond proceeds for renovations to an existing privately operated cafeteria located in the courthouse. The bonds are secured, in part, by the cafeteria. Y also uses \$1.5 million of the proceeds to construct a privately operated parking garage adjacent to a private office building. The private business use of the parking garage is unrelated to any government use of proceeds of the issue. Since the proceeds used for unrelated uses and disproportionate uses do not exceed 5 percent of the proceeds, the unrelated or disproportionate use test is not met.

*Example 4. Disproportionate use of garage.* County Z issues bonds with proceeds of \$20 million for construction of a hospital with no private business use (\$17 million); renovation of an office building with no private business use (\$1 million); and construction of a garage that is entirely used for a private business use (\$2 million). The use of the garage is related to the use of the office building but not to the use of the hospital. The private business use of the garage results in \$1 million of disproportionate use because the proceeds used for the garage (\$2 million) exceed the proceeds used for the related government use (\$1 million). The bonds are not private activity bonds, however, because the disproportionate use does not exceed 5 percent of the proceeds of the issue.

*Example 5. Bonds for multiple projects.* (i) County W issues bonds with proceeds of \$80 million for the following purposes: (1) \$72 million to construct a County-owned and operated waste incinerator; (2) \$1 million for a County-owned and operated facility for the temporary storage of hazardous waste prior to final disposal; (3) \$1 million to construct a privately owned recycling facility located at a remote site; and (4) \$6 million to build a garage adjacent to the County-owned incinerator that will be leased to Company T to store and repair trucks that it owns and uses to haul County W refuse. Company T uses 75 percent of its trucks to haul materials to the incinerator and the remaining 25 percent of its trucks to haul materials to the temporary storage facility.

(ii) The \$1 million of proceeds used for the recycling facility is used for an unrelated use. The garage is related use. In addition, 75 percent of the use of the \$6 million of proceeds used for the garage is allocable to the government use of proceeds at the incinerator. The remaining 25 percent of the proceeds used for the garage (\$1.5 million)

relates to the government use of proceeds at the temporary storage facility. Thus, this portion of the proceeds used for the garage exceeds the proceeds used for the temporary storage facility by \$0.5 million and this excess is disproportionate use (but not unrelated use). Thus, the aggregate amount of unrelated use and disproportionate use financed with the proceeds of the issue is \$1.5 million. Alternatively, under paragraph (c)(3)(iii) of this section, the entire garage may be treated as related to the government use of the incinerator and, under that allocation, the garage is not disproportionate use. In either event, section 141(b)(3) limits the aggregate unrelated use and disproportionate use to \$4 million. Therefore, the bonds are not private activity bonds under this section.

**§ 1.141–10 Coordination with volume cap. [Reserved]**

**§ 1.141–11 Acquisition of nongovernmental output property. [Reserved]**

**§ 1.141–12 Remedial actions.**

(a) *Conditions to taking remedial action.* An action that causes an issue to meet the private business tests or the private loan financing test is not treated as a deliberate action if the issuer takes a remedial action described in paragraph (d), (e), or (f) of this section with respect to the nonqualified bonds and if all of the requirements in paragraphs (a) (1) through (5) of this section are met.

(1) *Reasonable expectations test met.* The issuer reasonably expected on the issue date that the issue would meet neither the private business tests nor the private loan financing test for the entire term of the bonds. For this purpose, if the issuer reasonably expected on the issue date to take a deliberate action prior to the final maturity date of the issue that would cause either the private business tests or the private loan financing test to be met, the term of the bonds for this purpose may be determined by taking into account a redemption provision if the provisions of § 1.141–2(d)(2)(ii) (A) through (C) are met.

(2) *Maturity not unreasonably long.* The term of the issue must not be longer than is reasonably necessary for the governmental purposes of the issue (within the meaning of § 1.148–1(c)(4)). Thus, this requirement is met if the weighted average maturity of the bonds of the issue is not greater than 120 percent of the average reasonably expected economic life of the property financed with the proceeds of the issue as of the issue date.

(3) *Fair market value consideration.* Except as provided in paragraph (f) of this section, the terms of any arrangement that results in satisfaction

of either the private business tests or the private loan financing test are bona fide and arm's-length, and the new user pays fair market value for the use of the financed property. Thus, for example, fair market value may be determined in a manner that takes into account restrictions on the use of the financed property that serve a bona fide governmental purpose.

(4) *Disposition proceeds treated as gross proceeds for arbitrage purposes.* The issuer must treat any disposition proceeds as gross proceeds for purposes of section 148. For purposes of eligibility for temporary periods under section 148(c) and exemptions from the requirement of section 148(f) the issuer may treat the date of receipt of the disposition proceeds as the issue date of the bonds and disregard the receipt of disposition proceeds for exemptions based on expenditure of proceeds under §1.148-7 that were met before the receipt of the disposition proceeds.

(5) *Proceeds expended on a governmental purpose.* Except for a remedial action under paragraph (d) of this section, the proceeds of the issue that are affected by the deliberate action must have been expended on a governmental purpose before the date of the deliberate action.

(b) *Effect of a remedial action—(1) In general.* The effect of a remedial action is to cure use of proceeds that causes the private business use test or the private loan financing test to be met. A remedial action does not affect application of the private security or payment test.

(2) *Effect on bonds that have been advance refunded.* If proceeds of an issue were used to advance refund another bond, a remedial action taken with respect to the refunding bond proportionately reduces the amount of proceeds of the advance refunded bond that is taken into account under the private business use test or the private loan financing test.

(c) *Disposition proceeds—(1) Definition.* *Disposition proceeds* are any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue.

(2) *Allocating disposition proceeds to an issue.* In general, if the requirements of paragraph (a) of this section are met, after the date of the disposition, the proceeds of the issue allocable to the transferred property are treated as financing the disposition proceeds rather than the transferred property. If a disposition is made pursuant to an installment sale, the proceeds of the issue continue to be allocated to the

transferred property. If an issue does not meet the requirements for remedial action in paragraph (a) of this section or the issuer does not take an appropriate remedial action, the proceeds of the issue are allocable to either the transferred property or the disposition proceeds, whichever allocation produces the greater amount of private business use and private security or payments.

(3) *Allocating disposition proceeds to different sources of funding.* If property has been financed by different sources of funding, for purposes of this section, the disposition proceeds from that property are first allocated to the outstanding bonds that financed that property in proportion to the principal amounts of those outstanding bonds. In no event may disposition proceeds be allocated to bonds that are no longer outstanding or to a source of funding not derived from a borrowing (such as revenues of the issuer) if the disposition proceeds are not greater than the total principal amounts of the outstanding bonds that are allocable to that property. For purposes of this paragraph (c)(3), principal amount has the same meaning as in §1.148-9(b)(2) and outstanding bonds do not include advance refunded bonds.

(d) *Redemption or defeasance of nonqualified bonds—(1) In general.* The requirements of this paragraph (d) are met if all of the nonqualified bonds of the issue are redeemed. Proceeds of tax-exempt bonds must not be used for this purpose, unless the tax-exempt bonds are qualified bonds, taking into account the purchaser's use of the facility. If the bonds are not redeemed within 90 days of the date of the deliberate action, a defeasance escrow must be established for those bonds within 90 days of the deliberate action.

(2) *Special rule for dispositions for cash.* If the consideration for the disposition of financed property is exclusively cash, the requirements of this paragraph (d) are met if the disposition proceeds are used to redeem a pro rata portion of the nonqualified bonds at the earliest call date after the deliberate action. If the bonds are not redeemed within 90 days of the date of the deliberate action, the disposition proceeds must be used to establish a defeasance escrow for those bonds within 90 days of the deliberate action.

(3) *Notice of defeasance.* The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date the defeasance escrow is established.

(4) *Special limitation.* The establishment of a defeasance escrow

does not satisfy the requirements of this paragraph (d) if the period between the issue date and the first call date of the bonds is more than 10 1/2 years.

(5) *Defeasance escrow defined.* A defeasance escrow is an irrevocable escrow established to redeem bonds on their earliest call date in an amount that, together with investment earnings, is sufficient to pay all the principal of, and interest and call premium on, bonds from the date the escrow is established to the earliest call date. The escrow may not be invested in higher yielding investments or in any investment under which the obligor is a user of the proceeds of the bonds.

(e) *Alternative use of disposition proceeds—(1) In general.* The requirements of this paragraph (e) are met if—

(i) The deliberate action is a disposition for which the consideration is exclusively cash;

(ii) The issuer reasonably expects to expend the disposition proceeds within two years of the date of the deliberate action;

(iii) The disposition proceeds are treated as proceeds for purposes of section 141 and are used in a manner that does not cause the issue to meet either the private business tests or the private loan financing test, and the issuer does not take any action subsequent to the date of the deliberate action to cause either of these tests to be met; and

(iv) If the issuer does not use all of the disposition proceeds for an alternative use described in paragraph (e)(1)(iii) of this section, the issuer uses those remaining disposition proceeds for a remedial action that meets paragraph (d) of this section.

(2) *Special rule for use by 501(c)(3) organizations.* If the disposition proceeds are to be used by a 501(c)(3) organization, the nonqualified bonds must in addition be treated as reissued for purposes of sections 141, 145, 147, 149, and 150 and, under this treatment, satisfy all of the applicable requirements for qualified 501(c)(3) bonds. Thus, beginning on the date of the deliberate action, nonqualified bonds that satisfy these requirements must be treated as qualified 501(c)(3) bonds for all purposes, including sections 145(b) and 150(b).

(f) *Alternative use of facility.* The requirements of this paragraph (f) are met if—

(1) The facility with respect to which the deliberate action occurs is used in an alternative manner (for example, used for a qualifying purpose by a nongovernmental person or used by a

501(c)(3) organization rather than a governmental person);

(2) The nonqualified bonds are treated as reissued, as of the date of the deliberate action, for purposes of sections 55 through 59 and 141, 142, 144, 145, 146, 147, 149 and 150, and under this treatment, the nonqualified bonds satisfy all the applicable requirements for qualified bonds throughout the remaining term of the nonqualified bonds;

(3) The deliberate action does not involve a disposition to a purchaser that finances the acquisition with proceeds of another issue of tax-exempt bonds; and

(4) Any disposition proceeds other than those arising from an agreement to provide services (including disposition proceeds from an installment sale) resulting from the deliberate action are used to pay the debt service on the bonds on the next available payment date or, within 90 days of receipt, are deposited into an escrow that is restricted to the yield on the bonds to pay the debt service on the bonds on the next available payment date.

(g) *Rules for deemed reissuance.* For purposes of determining whether bonds that are treated as reissued under paragraphs (e) and (f) of this section are qualified bonds—

(1) The provisions of the Code and regulations thereunder in effect as of the date of the deliberate action apply; and

(2) For purposes of paragraph (f) of this section, section 147(d) (relating to the acquisition of existing property) does not apply.

(h) *Authority of Commissioner to provide for additional remedial actions.* The Commissioner may, by publication in the Federal Register or the Internal Revenue Bulletin, provide additional remedial actions, including making a remedial payment to the United States, under which a subsequent action will not be treated as a deliberate action for purposes of §1.141-2.

(i) *Effect of remedial action on continuing compliance.* Solely for purposes of determining whether deliberate actions that are taken after a remedial action cause an issue to meet the private business tests or the private loan financing test—

(1) If a remedial action is taken under paragraph (d), (e), or (f) of this section, the private business use or private loans resulting from the deliberate action are not taken into account for purposes of determining whether the bonds are private activity bonds; and

(2) After a remedial action is taken, the amount of disposition proceeds is treated as equal to the proceeds of the issue that had been allocable to the

transferred property immediately prior to the disposition. See paragraph (k) of this section, *Example 5*.

(j) *Nonqualified bonds*—(1) *Amount of nonqualified bonds.* The percentage of outstanding bonds that are nonqualified bonds equals the highest percentage of private business use in any 1-year period commencing with the deliberate action.

(2) *Allocation of nonqualified bonds.* Allocations to nonqualified bonds must be made on a pro rata basis, except that, for purposes of paragraph (d) of this section (relating to redemption or defeasance), an issuer may treat bonds with longer maturities (determined on a bond-by-bond basis) as the nonqualified bonds.

(k) *Examples.* The following examples illustrate the application of this section:

*Example 1. Disposition proceeds less than outstanding bonds used to retire bonds.* On June 1, 1997, City C issues 30-year bonds with an issue price of \$10 million to finance the construction of a hospital building. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the building. On the issue date, C reasonably expects that it will be the only user of the building for the entire term of the bonds. Six years after the issue date, C sells the building to Corporation P for \$5 million. The sale price is the fair market value of the building, as verified by an independent appraiser. C uses all of the \$5 million disposition proceeds to immediately retire a pro rata portion of the bonds. The sale does not cause the bonds to be private activity bonds because C has taken a remedial action described in paragraph (d) of this section so that P is not treated as a private business user of bond proceeds.

*Example 2. Lease to nongovernmental person.* The facts are the same as in *Example 1*, except that instead of selling the building, C, 6 years after the issue date, leases the building to P for 7 years and uses other funds to redeem all of the \$10 million outstanding bonds within 90 days of the deliberate act. The bonds are not treated as private activity bonds because C has taken the remedial action described in paragraph (d) of this section.

*Example 3. Sale for less than fair market value.* The facts are the same as in *Example 1*, except that the fair market value of the building at the time of the sale to P is \$6 million. Because the transfer was for less than fair market value, the bonds are ineligible for the remedial actions under this section. The bonds are private activity bonds because P is treated as a user of all of the proceeds and P makes a payment (\$6 million) for this use that is greater than 10 percent of the debt service on the bonds, on a present value basis.

*Example 4. Fair market value determined taking into account governmental restrictions.* The facts are the same as in *Example 1*, except that the building was used by C only for hospital purposes and C

determines to sell the building subject to a restriction that it be used only for hospital purposes. After conducting a public bidding procedure as required by state law, the best price that C is able to obtain for the building subject to this restriction is \$4.5 million from P. C uses all of the \$4.5 million disposition proceeds to immediately retire a pro rata portion of the bonds. The sale does not cause the bonds to be private activity bonds because C has taken a remedial action described in paragraph (d) of this section so that P is not treated as a private business user of bond proceeds.

*Example 5. Alternative use of disposition proceeds.* The facts are the same as in *Example 1*, except that C reasonably expects on the date of the deliberate action to use the \$5 million disposition proceeds for another governmental purpose (construction of governmentally owned roads) within two years of receipt, rather than using the \$5 million to redeem outstanding bonds. C treats these disposition proceeds as gross proceeds for purposes of section 148. The bonds are not private activity bonds because C has taken a remedial action described in paragraph (e) of this section. After the date of the deliberate action, the proceeds of all of the outstanding bonds are treated as used for the construction of the roads, even though only \$5 million of disposition proceeds was actually used for the roads.

*Example 6. Alternative use of financed property.* The facts are the same as in *Example 1*, except that C determines to lease the hospital building to Q, an organization described in section 501(c)(3), for a term of 10 years rather than to sell the building to P. In order to induce Q to provide hospital services, C agrees to lease payments that are less than fair market value. Before entering into the lease, an applicable elected representative of C approves the lease after a noticed public hearing. As of the date of the deliberate action, the issue meets all the requirements for qualified 501(c)(3) bonds, treating the bonds as reissued on that date. For example, the issue meets the two percent restriction on use of proceeds of finance issuance costs of section 147(g) because the issue pays no costs of issuance from disposition proceeds in connection with the deemed reissuance. C and Q treat the bonds as qualified 501(c)(3) bonds for all purposes commencing with the date of the deliberate action. The bonds are treated as qualified 501(c)(3) bonds commencing with the date of the deliberate action.

*Example 7. Deliberate action before proceeds are expended on a governmental purpose.* County J issues bonds with proceeds of \$10 million that can be used only to finance a correctional facility. On the issue date of the bonds, J reasonably expects that it will be the sole user of the bonds for the useful life of the facility. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the facility. After the issue date of the bonds, but before the facility is placed in service, J enters into a contract with the federal government pursuant to which the federal government will make a fair market value, lump sum payment equal to 25 percent of the cost of the

facility. In exchange for this payment, J provides the federal government with priority rights to use of 25 percent of the facility. J uses the payment received from the federal government to defease the nonqualified bonds. The agreement does not cause the bonds to be private activity bonds because J has taken a remedial action described in paragraph (d) of this section. See paragraph (a)(5) of this section.

**Example 8. Compliance after remedial action.** In 1997, City G issues bonds with proceeds of \$10 million to finance a courthouse. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the courthouse. G uses \$1 million of the proceeds for a private business use and more than 10 percent of the debt service on the issue is secured by private security or payments. G later sells one-half of the courthouse property to a nongovernmental person for cash. G immediately redeems 60 percent of the outstanding bonds. This percentage of outstanding bonds is based on the highest private business use of the courthouse in any 1-year period commencing with the deliberate action. For purposes of subsequently applying section 141 to the issue, G may continue to use all of the proceeds of the outstanding bonds in the same manner (that is, for both the courthouse and the existing private business use) without causing the issue to meet the private business use test. The issue, however, continues to meet the private security or payment test. The result would be the same if D, instead of redeeming the bonds, established a defeasance escrow for those bonds, provided that the requirement of paragraph (d)(4) of this section was met.

#### § 1.141-13 Refunding issues. [Reserved]

#### § 1.141-14 Anti-abuse rules.

(a) **Authority of Commissioner to reflect substance of transactions.** If an issuer enters into a transaction or series of transactions with respect to one or more issues with a principal purpose of transferring to nongovernmental persons (other than as members of the general public) significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of section 141, the Commissioner may take any action to reflect the substance of the transaction or series of transactions, including—

- (1) Treating separate issues as a single issue for purposes of the private activity bond tests;
- (2) Reallocating proceeds to expenditures, property, use, or bonds;
- (3) Reallocating payments to use or proceeds;
- (4) Measuring private business use on a basis that reasonably reflects the economic benefit in a manner different than as provided in § 1.141-3(g); and
- (5) Measuring private payments or security on a basis that reasonably reflects the economic substance in a

manner different than as provided in § 1.141-4.

(b) **Examples.** The following examples illustrate the application of this section:

**Example 1. Reallocating proceeds to indirect use.** City C issues bonds with proceeds of \$20 million for the stated purpose of financing improvements to roads that it owns. As a part of the same plan of financing, however, C also agrees to make a loan of \$7 million to Corporation M from its general revenues that it otherwise would have used for the road improvements. The interest rate of the loan corresponds to the interest rate on a portion of the issue. A principal purpose of the financing arrangement is to transfer to M significant benefits of the tax-exempt financing. Although C actually allocates all of the proceeds of the bonds to the road improvements, the Commissioner may reallocate a portion of the proceeds of the bonds to the loan to M because a principal purpose of the financing arrangement is to transfer to M significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of section 141. The bonds are private activity bonds because the issue meets the private loan financing test. The bonds also meet the private business tests. See also §§ 1.141-3(a)(2), 1.141-4(a)(1), and 1.141-5(a), under which indirect use of proceeds and payments are taken into account.

**Example 2. Taking into account use of amounts derived from proceeds that would be otherwise disregarded.** County B issues bonds with proceeds of \$10 million to finance the purchase of land. On the issue date, B reasonably expects that it will be the sole user of the land. Subsequently, the federal government acquires the land for \$3 million in a condemnation action. B uses this amount to make a loan to Corporation M. In addition, the interest rate on the loan reflects the tax-exempt interest rate on the bonds and thus is substantially less than a current market rate. A principal purpose of the arrangement is to transfer to M significant benefits of the tax-exempt financing. Although the condemnation action is not a deliberate action, the Commissioner may treat the condemnation proceeds as proceeds of the issue because a principal purpose of the arrangement is to transfer to M significant benefits of tax-exempt financing in a manner inconsistent with the purposes of section 141. The bonds are private activity bonds.

**Example 3. Measuring private business use on an alternative basis.** City F issues bonds with a 30-year term to finance the acquisition of an industrial building having a remaining reasonably expected useful economic life of more than 30 years. On the issue date, F leases the building to Corporation G for 3 years. F reasonably expects that it will be the sole user of the building for the remaining term of the bonds. Because of the local market conditions, it is reasonably expected that the fair rental value of the industrial building will be significantly greater during the early years of the term of the bonds than in the later years. The annual rental payments are significantly less than fair market value, reflecting the interest rate on

the bonds. The present value of these rental payments (net of operation and maintenance expenses) as of the issue date, however, is approximately 25 percent of the present value of debt service on the issue. Under § 1.141-3, the issue does not meet the private business tests, because only 10 percent of the proceeds are used in a trade or business by a nongovernmental person. A principal purpose of the issue is to transfer to G significant benefits of tax-exempt financing in a manner inconsistent with the purposes of section 141. The method of measuring private business use over the reasonably expected useful economic life of financed property is for the administrative convenience of issuers of state and local bonds. In cases where this method is used in a manner inconsistent with the purposes of section 141, the Commissioner may measure private business use on another basis that reasonably reflects economic benefit, such as in this case on an annual basis. If the Commissioner measures private business use on an annual basis, the bonds are private activity bonds because the private payment test is met and more than 10 percent of the proceeds are used in a trade or business by a nongovernmental person.

**Example 4. Treating separate issues as a single issue.** City D enters into a development agreement with Corporation T to induce T to locate its headquarters within D's city limits. Pursuant to the development agreement, in 1997 D will issue \$20 million of its general obligation bonds (the 1997 bonds) to purchase land that it will grant to T. The development agreement also provides that, in 1998, D will issue \$20 million of its tax increment bonds (the 1998 bonds), secured solely by the increase in property taxes in a special taxing district. Substantially all of the property within the special taxing district is owned by T or D. T will separately enter into an agreement to guarantee the payment of tax increment to D in an amount sufficient to retire the 1998 bonds. The proceeds of the 1998 bonds will be used to finance improvements owned and operated by D that will not give rise to private business use. Treated separately, the 1997 issue meets the private business use test, but not the private security or payment test; the 1998 issue meets the private security or payment test, but not the private business use test. A principal purpose of the financing plan including the two issues is to transfer significant benefits of tax-exempt financing to T for its headquarters. Thus, the 1997 issue and the 1998 issue may be treated by the Commissioner as a single issue for purposes of applying the private activity bond tests. Accordingly, the bonds of both the 1997 issue and the 1998 issue may be treated as private activity bonds.

**Example 5. Reallocating proceeds.** City E acquires an electric generating facility with a useful economic life of more than 40 years and enters into a 30-year take or pay contract to sell 30 percent of the available output to investor-owned utility M. E plans to use the remaining 70 percent of available output for its own governmental purposes. To finance the entire cost of the facility, E issues \$30 million of its series A taxable bonds at taxable interest rates and \$70 million series

B bonds, which purport to be tax-exempt bonds, at tax-exempt interest rates. E allocates all of M's private business use to the proceeds of the series A bonds and all of its own government use to the proceeds of the series B bonds. The series A bonds have a weighted average maturity of 15 years, while the series B bonds have a weighted average maturity of 26 years. M's payments under the take or pay contract are expressly determined by reference to 30 percent of M's total costs (that is, the sum of the debt service required to be paid on both the series A and the series B bonds and all other operating costs). The allocation of all of M's private business use to the series A bonds does not reflect economic substance because the series of transactions transfers to M significant benefits of the tax-exempt interest rates paid on the series B bonds. A principal purpose of the financing arrangement is to transfer to M significant benefits of the tax-exempt financing. Accordingly, the Commissioner may allocate M's private business use on a pro rata basis to both the series B bonds as well as the series A bonds, in which case the series B bonds are private activity bonds.

*Example 6. Allocations respected.* The facts are the same as in *Example 5*, except that the debt service component of M's payments under the take or pay contract is based exclusively on the amounts necessary to pay the debt service on the taxable series A bonds. E's allocation of all of M's private business use to the series A bonds is respected because the series of transactions does not actually transfer benefits of tax-exempt interest rates to M. Accordingly, the series B bonds are not private activity bonds. The result would be the same if M's payments under the take or pay contract were based exclusively on fair market value pricing, rather than the tax-exempt interest rates on E's bonds. The result also would be the same if the series A bonds and the series B bonds had substantially equivalent weighted average maturities and E and M had entered into a customary contract providing for payments based on a ratable share of total debt service. E would not be treated by the Commissioner in any of these cases as entering into the contract with a principal purpose of transferring the benefits of tax-exempt financing to M in a manner inconsistent with the purposes of section 141.

#### §1.141-15 Effective dates.

(a) *Scope.* The effective dates in this section apply for purposes of §§1.141-0 through 1.141-14, and 1.145-0 through 1.145-2 (the private activity bond regulations), and §1.150-1(a)(3) and the definition of bond documents contained in §1.150-1(b).

(b) *Effective dates.* Except as otherwise provided in this section, the private activity bond regulations, §1.150-1(a)(3), and the definition of bond documents contained in §1.150-1(b) apply to bonds issued on or after May 16, 1977 (the effective date) that are subject to section 1301 of the Tax Reform Act of 1986.

(c) *Refunding bonds.* The private activity bond regulations, §1.150-1(a)(3), and the definition of bond documents contained in §1.150-1(b) do not apply to bonds issued on or after the effective date to refund a bond to which the private activity bond regulations do not apply unless—

(1) The weighted average maturity of the refunding bonds is longer than—

(i) The weighted average maturity of the refunded bonds; or

(ii) In the case of a short-term obligation that the issuer reasonably expects to refund with a long-term financing (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(2) A principal purpose for the issuance of the refunding bonds is to make one or more new conduit loans.

(d) *Permissive application of regulations.* Except as provided in paragraph (e) of this section, the private activity bond regulations, §1.150-1(a)(3), and the definition of bond documents contained in §1.150-1(b) may be applied in whole, but not in part, to—

(1) Bonds that are outstanding on the effective date and subject to section 141; or

(2) Refunding bonds issued on or after the effective date.

(e) *Permissive retroactive application of certain sections.* The following sections may each be applied to any bonds issued before the effective date:

- (1) Section 1.141-3(b)(4);
- (2) Section 1.141-3(b)(6); and
- (3) Section 1.141-12.

#### §1.141-16 Effective dates for qualified private activity bond provisions.

(a) *Scope.* The effective dates of this section apply for purposes of §§1.142-0 through 1.142-2, 1.144-0 through 1.144-2, 1.147-0 through 1.147-2, and 1.150-4.

(b) *Effective dates.* Except as otherwise provided in this section, the regulations designated in paragraph (a) of this section apply to bonds issued on or after May 16, 1997 (the effective date).

(c) *Permissive application.* The regulations designated in paragraph (a) of this section may be applied in whole, but not in part, to bonds outstanding on the effective date.

Par. 7. Sections 1.142-0 and 1.142-3 are added and §§ 1.142-1 and 1.142-2 are revised to read as follows:

#### §1.142-0 Table of Contents.

This section lists the captioned paragraphs contained in §§ 1.142-1 through 1.142-3.

#### §1.142-1 Exempt facility bonds.

(a) Overview.

(b) Scope.

(c) Effective dates.

#### §1.142-2 Remedial actions.

(a) General rule.

(b) Reasonable expectations requirement.

(c) Redemption or defeasance.

(1) In general.

(2) Notice of defeasance.

(3) Special limitation.

(4) Special rule for dispositions of personal property.

(5) Definitions.

(d) When a failure to properly use proceeds occurs.

(1) Proceeds not spent.

(2) Proceeds spent.

(e) Nonqualified bonds.

#### §1.142-3 Refunding issues.

[Reserved]

#### §1.142-1 Exempt facility bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(A), an exempt facility bond issued under section 142 may be a qualified bond.

Under section 142(a), an exempt facility bond is any bond issued as a part of an issue using 95 percent or more of the proceeds for certain exempt facilities.

(b) *Scope.* Sections 1.142-0 through 1.142-3 apply for purposes of the rules for exempt facility bonds under section 142, except that, with respect to net proceeds that have been spent, § 1.142-2 does not apply to bonds issued under section 142(d) (relating to bonds issued to provide qualified residential rental projects) and section 142(f) (2) and (4) (relating to bonds issued to provide local furnishing of electric energy or gas).

(c) *Effective dates.* For effective dates of §§ 1.142-0 through 1.142-2, see § 1.141-16.

#### §1.142-2 Remedial actions.

(a) *General rule.* If less than 95 percent of the net proceeds of an exempt facility bond are actually used to provide an exempt facility, and for no other purpose, the issue will be treated as meeting the use of proceeds requirement of section 142(a) if the issue meets the condition of paragraph (b) of this section and the issuer takes the remedial action described in paragraph (c) of this section.

(b) *Reasonable expectations requirement.* The issuer must have reasonably expected on the issue date that 95 percent of the net proceeds of the issue would be used to provide an exempt facility and for no other purpose for the entire term of the bonds (disregarding any redemption

provisions). To meet this condition the amount of the issue must have been based on reasonable estimates about the cost of the facility.

(c) *Redemption or defeasance*—(1) *In general.* The requirements of this paragraph (c) are met if all of the nonqualified bonds of the issue are redeemed on the earliest call date after the date on which the failure to properly use the proceeds occurs under paragraph (d) of this section. Proceeds of tax-exempt bonds (other than those described in paragraph (d)(1) of this section) must not be used for this purpose. If the bonds are not redeemed within 90 days of the date on which the failure to properly use proceeds occurs, a defeasance escrow must be established for those bonds within 90 days of that date.

(2) *Notice of defeasance.* The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date the escrow is established.

(3) *Special limitation.* The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (c) if the period between the issue date and the first call date is more than 10½ years.

(4) *Special rule for dispositions of personal property.* For dispositions of personal property exclusively for cash, the requirements of this paragraph (c) are met if the issuer expends the disposition proceeds within 6 months of the date of the disposition to acquire replacement property for the same qualifying purpose of the issue under section 142.

(5) *Definitions.* For purposes of paragraph (c)(4) of this section, *disposition proceeds* means disposition proceeds as defined in § 1.141-12(c).

(d) *When a failure to properly use proceeds occurs*—(1) *Proceeds not spent.* For net proceeds that are not spent, a failure to properly use proceeds occurs on the earlier of the date on which the issuer reasonably determines that the financed facility will not be completed or the date on which the financed facility is placed in service.

(2) *Proceeds spent.* For net proceeds that are spent, a failure to properly use proceeds occurs on the date on which an action is taken that causes the bonds not to be used for the qualifying purpose for which the bonds were issued.

(e) *Nonqualified bonds.* For purposes of this section, the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would

be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds. The nonqualified bonds must be determined on a pro rata allocation basis, except that an issuer may treat bonds with longer maturities (determined on a bond-by-bond basis) as the nonqualified bonds.

#### § 1.142-3 Refunding issues.

[Reserved]

Par. 8. Section 1.144-0 is added and §§ 1.144-1 and 1.144-2 are revised to read as follows:

#### § 1.144-0 Table of Contents.

This section lists the captioned paragraphs contained in §§ 1.144-1 and 1.144-2.

§ 1.144-1 *Qualified small issue bonds, qualified student loan bonds, and qualified redevelopment bonds.*

- (a) Overview.
- (b) Scope.
- (c) Effective dates.

§ 1.144-2 *Remedial actions.*

#### § 1.144-1 Qualified small issue bonds, qualified student loan bonds, and qualified redevelopment bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(D), a qualified small issue bond issued under section 144(a) may be a qualified bond. Under section 144(a), any qualified small issue bond is any bond issued as a part of an issue 95 percent or more of the proceeds of which are to be used to provide certain manufacturing facilities or certain depreciable farm property and which meets other requirements. Under section 141(e)(1)(F) a qualified redevelopment bond issued under section 144(c) is a qualified bond. Under section 144(c), a qualified redevelopment bond is any bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used for one or more redevelopment purposes and which meets certain other requirements.

(b) *Scope.* Sections 1.144-0 through 1.144-2 apply for purposes of the rules for small issue bonds under section 144(a) and qualified redevelopment bonds under section 144(c), except that § 1.144-2 does not apply to the requirements for qualified small issue bonds under section 144(a)(4) (relating to the limitation on capital expenditures) or under section 144(a)(10) (relating to the aggregate limit of tax-exempt bonds per taxpayer).

(c) *Effective dates.* For effective dates of §§ 1.144-0 through 1.144-2, see § 1.141-16.

#### § 1.144-2 Remedial actions.

The remedial action rules of § 1.142-2 apply to qualified small issue bonds issued under section 144(a) and to qualified redevelopment bonds issued under section 144(c), for this purpose treating those bonds as exempt facility bonds and the qualifying purposes for those bonds as exempt facilities.

Par. 9. Sections 1.145-0 through 1.145-2 are added to read as follows:

#### § 1.145-0 Table of Contents.

This section lists the captioned paragraphs contained in §§ 1.145-1 and 1.145-2.

§ 1.145-1 *Qualified 501(c)(3) bonds.*

- (a) Overview.
- (b) Scope.
- (c) Effective dates.

§ 1.145-2 *Application of private activity bond regulations.*

- (a) In general.
- (b) Modification of private business tests.
- (c) Exceptions.

(1) Certain provisions relating to governmental programs.

- (2) Costs of issuance.

#### § 1.145-1 Qualified 501(c)(3) bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(G), a qualified 501(c)(3) bond issued under section 145 is a qualified bond. Under section 145, a qualified 501(c)(3) bond is any bond issued as a part of an issue that satisfies the requirements of sections 145(a) through (d).

(b) *Scope.* Sections 1.145-0 through 1.145-2 apply for purposes of section 145(a).

(c) *Effective dates.* For effective dates of §§ 1.145-0 through 1.145-2, see § 1.141-15.

#### § 1.145-2 Application of private activity bond regulations.

(a) *In general.* Except as provided in this section, §§ 1.141-0 through 1.141-15 apply to section 145(a). For example, under this section, § 1.141-1, and § 1.141-2, an issue ceases to be an issue of qualified 501(c)(3) bonds if the issuer or a conduit borrower 501(c)(3) organization takes a deliberate action, subsequent to the issue date, that causes the issue to fail to comply with the requirements of sections 141(e) and 145 (such as an action that results in revocation of exempt status of the 501(c)(3) organization).

(b) *Modification of private business tests.* In applying §§ 1.141-0 through 1.141-15 to section 145(a)—

(1) References to governmental persons include 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under section 513(a);

(2) References to "10 percent" and "proceeds" in the context of the private business use test and the private security or payment test mean "5 percent" and "net proceeds"; and

(3) References to the private business use test in §§1.141-2 and 1.141-12 include the ownership test of section 145(a)(1).

(c) *Exceptions*—(1) *Certain provisions relating to governmental programs.* The following provisions do not apply to section 145: §1.141-2(d)(4) (relating to the special rule for dispositions of personal property in the ordinary course of an established governmental program) and §1.141-2(d)(5) (relating to the special rule for general obligation bond programs that finance a large number of separate purposes).

(2) *Costs of issuance.* Section 1.141-3(g)(6) does not apply to section 145(a)(2) to the extent that it provides that costs of issuance are allocated ratably among the other purposes for which the proceeds are used. For purposes of section 145(a)(2), costs of issuance are treated as private business use.

Par. 10. Sections 1.147-0 through 1.147-2 are added to read as follows:

**§1.147-0 Table of Contents.**

This section lists the captioned paragraphs contained in §§1.147-1 and 1.147-2.

§1.147-1 *Other requirements applicable to certain private activity bonds.*

- (a) Overview.
- (b) Scope.
- (c) Effective dates.

§1.147-2 *Remedial actions.*

**§1.147-1 Other requirements applicable to certain private activity bonds.**

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 147, certain requirements must be met for a private activity bond to qualify as a qualified bond.

(b) *Scope.* Sections 1.147-0 through 1.147-2 apply for purposes of the rules in section 147 for qualified private activity bonds that permit use of proceeds to acquire land for

environmental purposes (section 147(c)(3)), permit use of proceeds for certain rehabilitations (section 147(d)(2) and (3)), prohibit use of proceeds to finance skyboxes, airplanes, gambling establishments and similar facilities (section 147(e)), and require public approval (section 147(f)), but not for the

rules limiting use of proceeds to acquire land or existing property under sections 147(c)(1) and (2), and (d)(1).

(c) *Effective dates.* For effective dates of §§ 1.147-0 through 1.147-2, see § 1.141-16.

**§1.147-2 Remedial actions.**

The remedial action rules of § 1.142-2 apply to the rules in section 147 for qualified private activity bonds that permit use of proceeds to acquire land for environmental purposes (section 147(c)(3)), permit use of proceeds for certain rehabilitations (section 147(d)(2) and (3)), prohibit use of proceeds to finance skyboxes, airplanes, gambling establishments and similar facilities (section 147(e)), and require public approval (section 147(f)), for this purpose treating those private activity bonds subject to the rules under section 147 as exempt facility bonds and the qualifying purposes for those bonds as exempt facilities.

Par. 11. Section 1.148-6 is amended by adding new paragraphs (a)(3) and (d)(1)(iii) to read as follows:

**§1.148-6 General allocation and accounting rules.**

(a) \* \* \*

(3) *Absence of allocation and accounting methods.* If an issuer fails to maintain books and records sufficient to establish the accounting method for an issue and the allocation of the proceeds of that issue, the rules of this section are applied using the specific tracing method. This paragraph (a)(3) applies to bonds issued on or after May 16, 1997.

(d) \* \* \*

(1) \* \* \*

(iii) *Timing.* An issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier. This paragraph (d)(1)(iii) applies to bonds issued on or after May 16, 1997.

\* \* \*

Par. 12. Section 1.150-1 is amended as follows:

1. Paragraph (a)(3) is added.
2. Paragraph (b) is amended by adding a new definition in alphabetical order. The additions read as follows:

**§1.150-1 Definitions.**

(a) \* \* \*

(3) *Exception to general effective date.* See § 1.141-15 for the effective date of

the definition of bond documents contained in paragraph (b) of this section.

\* \* \*

(b) \* \* \*

*Bond documents* means the bond indenture or resolution, transcript of proceedings, and any related documents.\* \* \*

\* \* \*

Par. 13. Section 1.150-4 is added to read as follows:

**§1.150-4 Change in use of facilities financed with tax-exempt private activity bonds.**

(a) *Scope.* This section applies for purposes of the rules for change of use of facilities financed with private activity bonds under sections 150(b)(3) (relating to qualified 501(c)(3) bonds), 150(b)(4) (relating to certain exempt facility bonds and small issue bonds), 150(b)(5) (relating to facilities required to be owned by governmental units or 501(c)(3) organizations), and 150(c).

(b) *Effect of remedial actions*—(1) *In general.* Except as provided in this section, the change of use provisions of sections 150(b)(3) through (5), and 150(c) apply even if the issuer takes a remedial action described in §§ 1.142-2, 1.144-2, or 1.145-2.

(2) *Exceptions*—(i) *Redemption.* If nonqualified bonds are redeemed within 90 days of a deliberate action under § 1.145-2(a) or within 90 days of the date on which a failure to properly use proceeds occurs under § 1.142-2 or § 1.144-2, sections 150(b)(3) through (5) do not apply during the period between that date and the date on which the nonqualified bonds are redeemed.

(ii) *Alternative qualifying use of facility.* If a bond-financed facility is used for an alternative qualifying use under §§ 1.145-2 and 1.141-12(f), sections 150(b)(3) and (5) do not apply because of the alternative use.

(iii) *Alternative use of disposition proceeds.* If disposition proceeds are used for a qualifying purpose under §§ 1.145-2 and 1.141-12(e), 1.142-2(c)(4), or 1.144-2, sections 150(b)(3) through (5) do not apply because of the deliberate action that gave rise to the disposition proceeds after the date on which all of the disposition proceeds have been expended on the qualifying purpose. If all of the disposition proceeds are so expended within 90 days of the date of the deliberate action, however, sections 150(b)(3) through (5) do not apply because of the deliberate action.

(c) *Allocation rules*—(1) *In general.* If a change in use of a portion of the property financed with an issue of qualified private activity bonds causes

section 150 (b)(3), (b)(4), or (b)(5) to apply to an issue, the bonds of the issue allocable to that portion under section 150(c)(3) are the same as the nonqualified bonds determined for purposes of §§ 1.142-1, 1.144-1, and 1.145-1, except that bonds allocable to all common areas are also allocated to that portion.

(2) *Special rule when remedial action is taken.* If an issuer takes a remedial action with respect to an issue of private activity bonds under §§ 1.142-2, 1.144-2, or 1.145-2, the bonds of the issue allocable to a portion of property are the same as the nonqualified bonds determined for purposes of those sections.

(d) *Effective dates.* For effective dates of this section, see § 1.141-16.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(c) \* \* \*

| CFR part or section where identified and described | Current OMB control No. |
|--|-------------------------|
| * * * *  | *                       |
| 1.141-1 .....                                      | 1545-1451               |
| 1.141-12 .....                                     | 1545-1451               |
| 1.142-2 .....                                      | 1545-1451               |
| * * * *  | *                       |
| 1.148-6 .....                                      | 1545-1451               |
| * * * *  | *                       |

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved: December 30, 1996.

Donald C. Lubick,

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 97-710 Filed 1-10-97; 8:45 am]

BILLING CODE 4830-01-U

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CO-001-0007; FRL-5669-5]

**Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection, contained in Section VI of the document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements," as submitted by the Governor with a letter dated August 23, 1996. The revision incorporates into the SIP, among other things, emissions reduction requirements for the Hayden Station (a coal-fired steam generating plant located near the town of Hayden, Colorado) that are based on a consent decree addressing numerous air pollution violations at the plant. The SIP revision is expected to remedy Hayden Station's contribution to visibility impairment in the Mt. Zirkel Wilderness Area and, therefore, make reasonable progress toward the Clean Air Act National visibility goal with respect to such contribution. On October 3, 1996, EPA published a notice of proposed rulemaking that proposed to approve this SIP revision and provided a thirty-day period for public comment. EPA received one set of generally supportive comments regarding the proposed revision, and is therefore finalizing the proposal without modification.

**EFFECTIVE DATE:** This action is effective February 18, 1997.

**ADDRESSES:** Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405; Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Vicki Stamper at (303) 312-6445.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 169A of the Clean Air Act (CAA or Act),<sup>1</sup> 42 U.S.C. section 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas<sup>2</sup> (referred to herein as the "National goal" or "National visibility goal"). Section 169A calls for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its State Implementation Plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. section 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

EPA promulgated regulations that require affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10-15 years) strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300-307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the long-term strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs, and that the State provide a report to the public and EPA that includes an assessment of the State's progress

<sup>1</sup> The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

<sup>2</sup> Mandatory class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a "Federal land manager" (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the Act, 42 U.S.C. 7602(i).

toward the National visibility goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), EPA disapproved the SIPs of states, including Colorado, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). EPA also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. section 7410(c)(1).

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 for general plan requirements, monitoring strategy, and long-term strategies. EPA approved this SIP revision in an August 12, 1988 Federal Register document (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP.

The Governor of Colorado submitted a subsequent SIP revision for visibility protection with a letter dated November 18, 1992. This revision was made to fulfill the requirements to periodically review and, as appropriate, revise the long-term strategy for visibility protection. EPA approved that long-term strategy revision on October 11, 1994 (59 FR 51376).<sup>3</sup>

Since Colorado's 1992 long-term strategy review, the U.S. Forest Service (USFS) certified visibility impairment in Mt. Zirkel Wilderness Area (MZWA) and named the Hayden and Craig Generating Stations in the Yampa Valley of Northwest Colorado as suspected sources. The USFS is the FLM for MZWA. This certification was issued on July 14, 1993.

Hayden Station, which is the focus of this SIP revision, is located 19 miles upwind from MZWA. The facility consists of two units as follows: Unit 1 is a 180 megawatt steam generating unit completed in 1965 and Unit 2 is a 260 megawatt steam generating unit completed in 1976. The facility is currently uncontrolled for sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) and operates electro-static precipitators to control particulate pollution. The 1995 emissions inventory for Hayden

Station indicated that the plant emitted 16,000 tons of SO<sub>2</sub> and 14,000 tons of NO<sub>x</sub>. Particulate emissions have been more difficult to estimate due to control equipment malfunction.

On August 18, 1993, the Sierra Club sued the owners of the Hayden Station in United States District Court, alleging over 16,000 violations of the State's opacity standards and arguing that the alleged violations resulted in a number of air quality impacts in MZWA. On July 21, 1995, the Court found the Hayden Station owners liable for over 19,000 violations of the opacity standards between 1988 and 1993. See *Sierra Club v. Public Service Company of Colorado, et al.*, 894 F. Supp. 1455 (D. Colo. 1995). In October 1995, the Sierra Club, the Colorado Air Pollution Control Division (APCD), and the Hayden Station owners entered into negotiations to try to reach a "global settlement" of the various issues facing the power plant. These issues included the Sierra Club lawsuit and the USFS certification of impairment in MZWA. In January 1996, EPA issued a Notice of Violation (NOV) to the owners of the Hayden Station for continuing opacity violations and joined in the settlement negotiations.

On May 22, 1996, the parties to the negotiations (EPA, Sierra Club, State of Colorado, and the Hayden Station owners) filed a signed Consent Decree with the United States District Court for the District of Colorado, in Civil Action No. 93-B-1749. The United States published notice of the settlement in the Federal Register and provided a thirty-day public comment period. The United States responded to comments in a motion to the Court to approve the Consent Decree. The Court approved the Consent Decree on August 19, 1996. The Consent Decree resolves a number of issues, including the Sierra Club and EPA enforcement actions, and, as part of that resolution, requires substantial reductions in air pollutants that are intended to resolve Hayden Station's contribution to visibility impairment in MZWA. The Consent Decree contemplates incorporation into the SIP of the visibility protection-related requirements of the Consent Decree. The terms "Hayden Consent Decree" or "Consent Decree" are used herein to refer to this judicially-enforceable settlement.

## II. Revision Submitted August 23, 1996

With a letter dated August 23, 1996, the Governor of Colorado submitted a revision to the long-term strategy portion of Colorado's SIP for Visibility Protection; this revision is contained in Section VI of the August 15, 1996

document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Visibility Protection, Part I: Hayden Station Requirements" (referred to below as "Long-Term Strategy Document"). The revision was made to fulfill, with respect to Hayden Station's contribution to visibility impairment in MZWA, the Federal and Colorado requirements to revise the long-term strategy as appropriate following the three-year periodic review.<sup>4</sup> The State reviewed the long-term strategy in light of the USFS's certification of visibility impairment, the results of the Mt. Zirkel Visibility Study<sup>5</sup> and other technical data, and the Hayden Consent Decree. Based on this review, the State concluded that a revision to the long-term strategy was necessary to remedy Hayden Station's contribution to visibility impairment at MZWA and to ensure reasonable progress toward the National visibility goal.

Only Part C of Section VI of the Long-Term Strategy Document contains provisions that are enforceable against the Hayden Station owners. Part C incorporates relevant portions of the Hayden Consent Decree into the long-term strategy. The remainder of the SIP revision contains provisions that are explanatory and analyses that are required by section 169A of the CAA, Federal visibility regulations (40 CFR 51.300 to 51.307), and/or the Colorado Visibility SIP.

On October 3, 1996, EPA published a notice of proposed rulemaking in the Federal Register (61 FR 51659) that proposed to approve the revision to the long-term strategy portion of Colorado's SIP for Visibility Protection that the Governor submitted on August 23, 1996. EPA provided a thirty-day public comment period and received one set of comments on the proposal. These comments and EPA's responses are provided in section III. of this document.

<sup>4</sup>The report resulting from this review was specific to Hayden Station, and the State reviewed the components of the Long-Term Strategy as they relate to Hayden Station only. According to a November 14, 1996 letter from Margie Perkins, Colorado Air Pollution Control Division, to Richard Long, EPA, the State intends to address Colorado's remaining visibility issues in "Part II" of the long-term strategy review and report, to be considered by the Colorado Air Quality Control Commission (AQCC) at a public hearing in March 1997. The State had previously projected a December 1996 AQCC public hearing on "Part II," but found this schedule impossible to meet.

<sup>5</sup>This collaborative study was spearheaded by the State to collect additional information regarding visibility conditions in the Mt. Zirkel Wilderness Area and to identify potential sources of impairment. The final report is available at the addresses listed in the beginning of this document. The study was completed on July 15, 1996.

<sup>3</sup>As a matter of clarification to EPA's October 11, 1994 action, please note that the September 1 due date referred to by EPA as the reporting deadline for Colorado's long-term strategy three-year reviews applies to the Colorado Air Pollution Control Division's responsibility to provide its review, and revision as appropriate, of the long-term strategy to the Colorado Air Quality Control Commission, with a submittal to EPA made by November 1 of each three-year cycle.

### A. Part C of Section VI: Provisions from the Hayden Consent Decree

The State incorporated into its Visibility SIP revision provisions of the Hayden Consent Decree pertinent to visibility, including Definitions, Emission Controls and Limitations, Continuous Emission Monitors, Construction Schedule, Emission Limitation Compliance Deadlines, and Reporting.<sup>6</sup> Such provisions must be met by the Hayden Station owners and are enforceable. The Consent Decree numbering scheme was retained to avoid confusion between the SIP and the Consent Decree, but only those sections pertinent to visibility, necessary to ensure enforceability of the requirements related to visibility, and necessary to assure reasonable progress in remedying Hayden Station's contribution to visibility impairment at MZWA were adopted into the SIP. Some changes were made to Consent Decree language to conform to a SIP framework. Finally, changes were made to the force majeure provisions of the Consent Decree to ensure that a demonstration of reasonable progress could be made at this time. Provisions of particular interest incorporated from the Hayden Consent Decree are summarized below.<sup>7</sup>

#### SO<sub>2</sub> Emission Limitations

As described below, the SO<sub>2</sub> emission limitations will result in at least an 82% reduction in SO<sub>2</sub> from Hayden Station. The Hayden Station owners must install a Lime Spray Dryer (LSD) system to meet the emissions limitations. The following emissions limitations apply:

- No more than 0.160 lbs SO<sub>2</sub> per million Btu heat input on a 30 boiler operating day rolling average basis;
- No more than 0.130 lbs SO<sub>2</sub> per million Btu heat input on a 90 boiler operating day rolling average basis;
- At least an 82% reduction of SO<sub>2</sub> on a 30 boiler operating day rolling average basis (to make sure that substantial reductions occur and that control equipment is run optimally even if lower sulfur coal is used); and
- A unit cannot operate for more than 72 consecutive hours without any SO<sub>2</sub>

<sup>6</sup>The Consent Decree also includes requirements for NO<sub>x</sub> emission controls and limitations; however, since these controls and limits do not have a direct relationship to visibility, they are not being incorporated into this Visibility SIP revision nor will any detailed discussion be provided. The NO<sub>x</sub> requirements were included in the Consent Decree to address acid deposition concerns.

<sup>7</sup>Pursuant to the provisions of the Hayden Consent Decree and the SIP, the Hayden Station owners have elected to continue burning coal at Hayden Station. Thus, although the Consent Decree and the SIP contain provisions applicable to a switch to natural gas, the summary contained herein only addresses Consent Decree requirements applicable to coal combustion.

emissions reductions; that is, it must shut down if the control equipment is not working at all for three days (to prevent the build-up of SO<sub>2</sub> emissions that may lead to visibility impairment events).

Since SO<sub>2</sub> is a chemical precursor to visibility-impairing sulfate particles or aerosols, the State concluded that these SO<sub>2</sub> emissions limitations will help remedy the facility's contribution to visibility impairment in MZWA.

#### Particulate Emission Limitations

The Hayden Station owners must install and operate a Fabric Filter Dust Collector (known as a baghouse or FFDC) on each unit. Particulate emissions should be virtually eliminated. Particulate emission limitations for each unit are:

- No more than 0.03 lbs of primary particulate matter per million Btu heat input; and
- No more than 20.0% opacity, with certain limited exceptions, as averaged over each separate 6-minute period within an hour as measured by continuous opacity monitors.

#### Compliance with Emissions Limits

All required controls must be designed to meet enforceable emission limits. Compliance with the SO<sub>2</sub> and opacity emission limits shall be determined by continuous emission monitors.

#### Schedule—Coal as Primary Fuel

The schedule for constructing control equipment is as follows:

##### Unit 1

- Commencement of physical, on-site construction of control equipment by 6/30/97
- Commencement of start-up testing of FFDC and SO<sub>2</sub> control equipment by 12/31/98

##### Unit 2

- Commencement of physical, on-site construction of control equipment by 6/30/98
- Commencement of start-up testing of FFDC and SO<sub>2</sub> control equipment by 12/31/99

The schedule for commencement of compliance with the emissions limitations is as follows:

##### SO<sub>2</sub>

- For Unit 1, within 180 days after flue gas is passed through the SO<sub>2</sub> control equipment, or by July 1, 1999, whichever date is earlier.
- For Unit 2, within 180 days after flue gas is passed through the SO<sub>2</sub> control equipment, or by July 1, 2000, whichever date is earlier.

##### Particulates

- For Unit 1, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 1999, whichever date is earlier.
- For Unit 2, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 2000, whichever date is earlier.

These construction deadlines and emission limitation compliance deadlines are subject to the "force majeure" provisions of the Consent Decree, which are being included in this SIP revision. A force majeure event refers to an excused delay in meeting construction deadlines or in meeting emission limitation compliance deadlines due to certain limited circumstances wholly beyond the control of the Hayden Station owners.

To help ensure that reasonable progress continues to be made, the State has committed to reopen the SIP (with public notice and hearing) as soon as possible after it is determined that a construction schedule or an emission limitation schedule has been, or will be, delayed by more than 12 months as a result of a force majeure determination or determinations. The State will re-evaluate the SIP at that time to determine whether revisions are necessary to continue to demonstrate reasonable progress. Necessary revisions may include the adoption of new construction or compliance deadlines as necessary to ensure that the emission limitations are met. In addition, the SIP also contains a clarification that the force majeure provisions are not to be construed to authorize or create any preemption or waiver of the requirements of State or Federal air quality laws, or of the requirements contained in the SIP or Consent Decree.

EPA believes that the language of the SIP should assure reasonable progress toward the National visibility goal with respect to Hayden Station's contribution to visibility impairment in the MZWA. In general, if deadlines extend more than twelve months, EPA fully expects the State to revise the SIP.

### B. Remainder of SIP Revision

#### 1. Analysis of Reasonable Progress

Congress established as a National goal "the prevention of any future, and the remedying of any existing" anthropogenic visibility impairment in mandatory Class I Federal areas. The statute does not mandate that the national visibility goal be achieved by a specific date but instead calls for "reasonable progress" toward the goal. Section 169A(b)(2) of the CAA requires EPA to issue implementing regulations requiring visibility SIPs to contain such

"emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the National goal."

EPA's implementing regulations provided for an initial round of visibility SIP planning which included a long-term strategy to make reasonable progress toward the National goal. See 40 CFR 51.302(c)(2)(I) and 51.306. The regulations also provide that the affected FLM may certify to a State at any time that visibility impairment exists in a mandatory Class I Federal area. See 40 CFR 51.302(c)(1). Recognizing the need to periodically evaluate the effectiveness of the long-term strategy in protecting visibility, EPA required States to review their long-term strategies at least every three years. See 40 CFR 51.306(c). This requirement ensures that States will periodically assess their visibility-related air quality planning in light of a certification of impairment from the FLM, information about visibility conditions and sources gathered from the visibility monitoring requirements, or other relevant information. A central aspect of the periodic assessment is to evaluate "[a]dditional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national goal." See 40 CFR 51.306(c)(4).

Section 169A(g)(1) of the CAA specifies factors that must be considered in determining reasonable progress including: (1) the costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of the source. Protection of visibility in a mandatory Class I Federal area is the objective.

In this unique case, the Hayden Station owners have agreed in the context of a judicially-enforceable Consent Decree to meet emissions limitations that are expected to reduce Hayden Station's contribution to visibility impairment in MZWA to below perceptible levels. The State analyzed the emission reductions provided for in the Consent Decree in light of the statutory factors for determining reasonable progress and the ultimate objective of protecting visibility. The State concluded that the measures assure reasonable progress by remedying Hayden Station's contribution to perceptible visibility impairment in MZWA and submitted a visibility SIP revision containing these measures.

Further, in a June 24, 1996 letter from Elizabeth Estill, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the

USFS concluded that the magnitude of the emission reductions for particulates and sulfur oxides contained in the Consent Decree should effectively address the USFS's concerns with visibility impairment in MZWA associated with the Hayden Station. Based in part on this letter, the State concluded that the pertinent provisions of the Hayden Consent Decree, as embodied in the SIP revision, effectively resolve the USFS certification of impairment in MZWA in relation to Hayden Station.

EPA has reviewed the State's SIP revision and supporting information in light of the statutory and regulatory requirements and is approving it. EPA believes the State has reasonably concluded that the emission reduction measures at Hayden Station required in the judicially-enforceable Consent Decree and contained in this visibility SIP revision will remedy Hayden Station's contribution to perceptible visibility impairment at MZWA<sup>8</sup>, with reasonable costs, an expeditious compliance schedule, and no significant adverse energy or non-air quality environmental impacts. The State's August 15, 1996 SIP revision and accompanying information, available at the addresses listed at the beginning of this document, provide a detailed analysis of each of the "reasonable progress" considerations. EPA's summary and evaluation of the State's analysis can be found in EPA's October 3, 1996 notice of proposed rulemaking (see 61 FR 51662-51664).

#### 2. Six Factors Considered in Developing the Long-Term Strategy

The State considered the six factors contained in 40 CFR 51.306(e) when developing this revision to its long-term strategy. Please refer to EPA's October 3, 1996 notice of proposed rulemaking for a discussion of these six factors (see 61 FR 51664-51665).

#### C. Additional Requirements

The State met the requirements for FLM consultation prior to adopting the SIP. The SIP also meets EPA requirements related to enforceability. Please refer to EPA's October 3, 1996 notice of proposed rulemaking for a discussion of these requirements (see 61 FR 51665).

<sup>8</sup>It should be noted that current Hayden Station emissions are not expected to contribute to visibility impairment under all meteorological conditions and that regional haze from outside Colorado, emissions from sources outside Colorado, and emissions from other Colorado sources could also be contributing to visibility impairment in MZWA.

#### III. Public Comments and EPA Responses

EPA received only one set of comments—from the Hayden Station owners. A summary of their comments, and EPA's responses, are provided below.

*Comment:* The Hayden Station owners indicate their strong support for EPA's proposed approval of the August 23, 1996 revision of the Colorado State Implementation Plan incorporating the requirements for Hayden Station and urge EPA to act quickly in granting final approval of the proposed rule.

*Response:* EPA notes the Hayden Station owners' support for the proposed action.

*Comment:* The Hayden Station owners take issue with some of EPA's statements in the discussion accompanying the proposed SIP revision. Although the Hayden Station owners indicate these statements do not impact the Hayden Station owners' support for the proposed rule, EPA is providing responses to the Hayden Station owners' comments. The Hayden Station owners made the following comments that fall in this category:

1. The Hayden Station owners take issue with EPA's statement in the notice of proposed rulemaking that if a force majeure delay lasts more than 12 months, EPA fully expects the State to revise the SIP. The Hayden Station owners claim that EPA has misstated the necessary consequences of a reopening of the SIP in the event that a force majeure delay lasts more than 12 months, and that the State may take action other than revising the SIP in response to a delay greater than 12 months.

*Response:* In making this statement in the notice of proposed rulemaking, EPA was indicating its expectation that, in general, a delay greater than 12 months will require a SIP revision to ensure reasonable progress. EPA acknowledges that there may be situations—for example, where the delay is not likely to last much longer than 12 months—in which a SIP revision may not be necessary.

2. The Hayden Station owners state that EPA has alleged that malfunctions of existing opacity control equipment have caused primary particulate matter plumes which have degraded visibility in the MZWA. Although the Hayden Station owners do not object to the inclusion of opacity and particulate matter standards in the SIP revision, they state that they are unaware of any data that indicate that primary particulate matter has caused any perceptible change in visibility in the

MZWA. They further state that the MZWA visibility study confirms that primary particulate matter is not a source of visibility impairment in the MZWA.

*Response:* The Hayden Station owners have mischaracterized EPA's statements in the notice of proposed rulemaking. In the relevant section of the notice of proposed rulemaking, EPA summarizes conclusions made by the State (see 61 FR 51663-51664). The State indicates that particulate plumes may be a source of visibility impairment in the MZWA. EPA agrees with this conclusion and believes the MZWA visibility study supports it. Referring to an episode during which a primary particulate plume emanated from the Hayden Station, the study states, "On one occasion in 1995, a clearly defined, coherent plume from the Hayden generating station could be seen in a west-facing video view from a camera on Storm Peak (which is south of the Wilderness boundary). The plume was moving toward Storm Peak at nearly the same elevation as the camera. The extent to which the plume reached or rose over the Continental Divide could not be determined because it could not be seen in views to the north. However, it is clear that the potential existed for the plume to reach the Storm Peak area. This was the only occasion when a clearly-defined, coherent generating station plume was documented coming close to the Wilderness." This episode shows that particulate plumes are capable of moving from Hayden Station to a distance as far away as the Wilderness boundary. Under the right meteorological and plant operating conditions, EPA believes it is reasonable to expect that particulate plumes may occasionally impair visibility within MZWA. Given the limited duration of the MZWA visibility study and the relatively sparse monitoring network, EPA believes it is unreasonable to conclude, as the Hayden Station owners have suggested, that "the MZWA visibility study confirms that primary particulate matter is not a source of visibility impairment in the MZWA."

3. The Hayden Station owners assert that EPA's analysis of rate impacts is oversimplified and probably inaccurate.

*Response:* In its notice of proposed rulemaking, EPA was summarizing the State's analysis of the potential impact on rates, not performing its own analysis (see 61 FR 51663). EPA believes the State's analysis was adequate to estimate the potential costs of controls for purposes of this action. Given that the calculation of rates is a complex process, EPA does not assert that the

ultimate impact on rates will be exactly consistent with the State's analysis.

#### IV. Final Action

EPA has reviewed the adequacy of the State's revision to the long-term strategy portion of Colorado's SIP for Class I Visibility Protection, contained in Section VI of the August 15, 1996 document entitled "Long-Term Strategy Review and Revision of Colorado's SIP for Class I Visibility Protection, Part I: Hayden Station Requirements," as submitted by the Governor with a letter dated August 23, 1996. EPA is approving this revision, which includes the incorporation of certain requirements from the Hayden Consent Decree. This SIP revision replaces the previous existing impairment portion of the long-term strategy as it relates to the MZWA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### V. Administrative Requirements

##### A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air 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 (1976); 42 U.S.C. 7410(a)(2).

##### C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 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. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

##### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by March 17, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 10, 1996.  
Kerrigan Clough,  
*Acting Regional Administrator.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

**Subpart G—Colorado**

2. Section 52.320 is amended by adding paragraph (c)(79) to read as follows:

**§52.320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(79) On August 23, 1996, the Governor of Colorado submitted a revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection. The revision was made to incorporate into the SIP, among other things, emissions reduction requirements for the Hayden Station (a coal-fired steam generating plant located near the town of Hayden, Colorado) that are based on a consent decree addressing numerous air pollution violations at the plant. This SIP revision replaces the previous existing impairment portion of the long-term strategy as it relates to the Mt. Zirkel Wilderness Area.

(i) Incorporation by reference.

(A) Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection Part I: Hayden Station Requirements, as follows:

Section VI., effective on August 15, 1996.

[FR Doc. 97-1043 Filed 1-15-97; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 82**

**Protection of Stratospheric Ozone**

*CFR Correction*

In title 40 of the Code of Federal Regulations, parts 81 to 85, revised as of July 1, 1996, § 82.32 (e)(1) and (2) was incorrectly revised. The corrected text should read as follows.

**§ 82.32 Definitions.**

\* \* \* \* \*

(e)(1) Properly using means using equipment in conformity with Recommended Service Procedures and Recommended Practices for the Containment of R-12 (CFC-12) set forth in appendix A or appendix B to this subpart, as applicable. In addition, this term includes operating the equipment in accordance with the manufacturer's guide to operation and maintenance and using the equipment only for the controlled substance for which the machine is designed. For equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner. For equipment that only recovers refrigerant, properly using includes the requirement to recycle the refrigerant on-site or send the refrigerant off-site for reclamation.

(2) Refrigerant from reclamation facilities that is used for the purpose of recharging motor vehicle air conditioners must be at or above the standard of purity developed by the Air-conditioning and Refrigeration Institute (ARI 700-93) (which is codified at 40 CFR part 82, subpart F, appendix A, and is available at 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203). Refrigerant may be recycled off-site only if the refrigerant is extracted using recover only equipment, and is subsequently recycled off-site by equipment owned by the person that owns both the recover only equipment and owns or operates the establishment at which the refrigerant was extracted. In any event, approved equipment must be used to extract refrigerant prior to performing any service during which discharge of refrigerant from the motor vehicle air conditioner can reasonably be expected. Intentionally venting or disposing of

refrigerant to the atmosphere is an improper use of equipment.

\* \* \* \* \*

[FR Doc. 97-55573 Filed 1-15-97; 8:45 am]

BILLING CODE 1505-01-D

**DEPARTMENT OF ENERGY**

**48 CFR Parts 904, 906, 908, 915, 923, 925, 945, 952, and 970**

RIN 1991-AB34

**Acquisition Regulation; Technical Amendments**

AGENCY: Department of Energy (DOE).

ACTION: Final rule, technical amendments.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to perform "housekeeping" duties such as conforming certain sections of the DEAR to recent Federal Acquisition Regulation changes, updating organizational and other references, correcting dates in contract clauses, and clarifying certain text. These corrections and changes are technical in nature and none of them raises substantive issues or represents changes in policy.

**EFFECTIVE DATE:** This final rule will be effective February 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** P. Devers Weaver, Office of Policy (HR-51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0705, 202-586-8250.

**SUPPLEMENTARY INFORMATION:**

- I. Explanation of Revisions
- II. Procedural Requirements
  - A. Procedural Determinations
  - B. Review Under Executive Order 12612
  - C. Review Under Executive Order 12866
  - D. Review Under Executive Order 12988
  - E. Review Under the National Environmental Policy Act
  - F. Review Under the Paperwork Reduction Act
  - G. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
  - H. Review Under the Unfunded Mandates Reform Act of 1995

I. Explanation of Revisions

None of the revisions in this rule is substantive. However, readers may benefit from an explanation of some of the revisions.

The authority citations for Parts 925 and 952 have been conformed to those used for all other parts of the regulation

(except for Part 970, which requires a different citation).

Subpart 904.6, Contract Reporting, is deleted because the approach used in the referenced DOE order has been discontinued in conjunction with streamlining initiatives of the Department.

Subsection 906.303-70, Exemption, is removed because it references Special Research Contracts which are no longer addressed in the regulation.

Section 915.401 is revised to delete reference to Special Research Contracts, now obsolete.

Subsection 952.202-1, Definitions, is updated to conform the DEAR to the Federal Acquisition Regulation (FAR) for this subsection.

Subsections 952.211-72 and 952.211-73, sections 970.0406, and subsection 970.5204-50 are deleted because the approaches used in the referenced DOE Directives have been discontinued in conjunction with streamlining initiatives of the Department.

Subsection 970.5204-60 is revised by deleting two paragraphs which referenced DOE Directives that are no longer in existence.

## II. Procedural Requirements

### A. Procedural Determinations

Pursuant to the Department of Energy Organization Act and the Administrative Procedure Act, DOE hereby waives prior notice and opportunity for public comment as unnecessary because the regulatory amendments are purely technical and largely non-discretionary. 42 U.S.C. 7191(b)(3), 5 U.S.C. 553(b)(3).

### B. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

### C. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant

regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

### D. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

### E. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500-1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an

environmental impact statement or environmental assessment.

### F. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

### G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

### H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking only affects private sector entities, and the impact is less than \$100 million.

List of Subjects in 48 CFR Parts 904, 906, 908, 915, 923, 925, 945, 952, and 970

#### Government procurement.

Issued in Washington, D.C., on January 3, 1997.

Richard H. Hopf,

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 904, 906, 908, 915, 923, and 945 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. The authority citation for Parts 925 and 952 is revised to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254).

**PART 904—ADMINISTRATIVE MATTERS**

**904.6 [Removed and Reserved]**

4. Subpart 904.6, Contract Reporting, is removed and reserved.

**904.702 [Amended]**

5. Section 904.702, Applicability, is amended in paragraph (b) by revising the phrase "Chapter V of DOE Order 1324.2 (see current version)," to read "applicable DOE Directives in the records management series".

**PART 906—COMPETITION REQUIREMENTS**

**906.303-70 [Removed]**

6. Subsection 906.303-70, Exemption, is removed.

**PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

**908.7121 [Amended]**

7. Section 908.7121, Special materials, is amended in paragraph (b) in the first sentence by inserting the acronym "DOE" between the words "The" and "Oak" and in the third sentence by inserting the words "The DOE" before "Oak Ridge."

**PART 915—CONTRACTING BY NEGOTIATION**

**915.401 [Amended]**

8. Section 915.401, Applicability, is amended by deleting the words "Special Research Contracts (See 917.71)" and the comma immediately after the parenthetical phrase "(See 917.72)."

**PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**923.7002 [Amended]**

9. Section 923.7002, Contract clauses, is amended in paragraph (d), the fourth sentence, by revising "The Principal Deputy Assistant Secretary for Environment, Safety and Health" to read "The Assistant Secretary for Environment, Safety and Health (or designee)."

**PART 945—GOVERNMENT PROPERTY**

10. Subsection 945.608-2 is amended by revising paragraph (b)(1)(ii) to read as follows:

**945.608-2 Standard screening.**

(b)(1) \* \* \*

(ii) Excess screening documents and Address Notification forms shall be submitted to the Office of Contractor Management and Administration,

within the Headquarters procurement organization.

**PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

11. Subsection 952.202-1 is amended by revising the introductory text of paragraph (b) and by redesignating clause paragraph (d) as clause paragraph (h) to read as follows:

**952.202-1 Definitions.**

\* \* \* \* \*

(b) The following shall be added as paragraph (h) except it will be designated paragraph (g) if Alternate I of the FAR clause is used.

\* \* \* \* \*

12. Subpart 952.2, Text of Provisions and Clauses, is amended to correct the parenthetical dates following clause titles wherever they appear in accordance with the following table:

*Subpart 952.2—Text of Provisions and Clauses*

| Clause at 48 CFR Chapter 9 (DEAR) | Change the date in the parentheses following the clause title from | to read    |
|-----------------------------------|--|------------|
| 952.204-2 ..                      | (APR 1984)   | (APR 1994) |
| 952.204-71                        | (APR 1984)   | (APR 1994) |
| 952.204-72                        | (APR 1984)   | (APR 1994) |
| 952.204-73                        | (APR 1984)   | (APR 1994) |
| 952.224-70                        | (APR 1984)   | (APR 1994) |
| 952.227-75                        | (APR 1984)   | (APR 1994) |
| 952.227-76                        | (APR 1984)   | (APR 1994) |
| 952.227-77                        | (APR 1984)   | (APR 1994) |
| 952.227-78                        | (APR 1984)   | (APR 1994) |
| 952.227-79                        | (APR 1984)   | (APR 1994) |
| 952.227-82                        | (APR 1984)   | (APR 1994) |
| 952.235-70                        | (APR 1984)   | (APR 1994) |
| 952.236-71                        | (APR 1984)   | (APR 1994) |
| 952.249-70                        | (APR 1984)   | (APR 1994) |

**952.211-72 [Removed and Reserved]**

13. Subsection 952.211-72, Uniform Reporting System, is removed and reserved.

**952.211-73 [Removed and Reserved]**

14. Subsection 952.211-73, Cost and schedule control systems criteria, is removed and reserved.

**952.216-15 [Amended]**

15. Subsection 952.216-15, Predetermined indirect cost rates, is amended by inserting "(APR 1994)" between the word "Alternate" and the colon.

**952.247-70 [Amended]**

16. Subsection 952.247-70 is amended by revising the parenthetical date following the clause title to read "FEB 1997" and in the last sentence of

clause paragraph (a) by inserting "Mexico" between "Canada" and "and."

**PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

**970.0404-3 [Amended]**

17. Subsection 970.0404-3, Responsibilities of contracting officers, is amended in paragraph (a) by revising the phrase "as noted in DOE Order 5631.2" to read "in accordance with applicable DOE Directives in the safeguards and security series." Also, in paragraph (b) the phrase "provisions of DOE Orders (See current versions.) 5634.1; 5635.1; and 5632.2" is revised to read "applicable DOE Directives in the safeguards and security series."

**970.0406 [Removed and Reserved]**

18. Section 970.0406, Uniform reporting system, is removed and reserved.

**970.2273 [Amended]**

19. Section 970.2273, Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities, is amended in paragraph (a)(3) by deleting the words "defined as" and the words "in 922.470(e)." Paragraphs (a)(4), (a)(5), and (a)(6) are amended by removing the last parenthetical sentence "(See 922.403-7302(g) and 920.2273(c).)" Paragraph (c)(1) introductory text is amended by deleting the quotation marks around the words "incidental amount," and deleting the words "as defined in 922.470(e)."

**Subpart 970.29—Taxes**

20. Section 970.2903 is revised to read as follows:

**970.2903 Contract clause.**

Contracting officers shall include the clause Taxes, at 970.5204-23, in management and operating contracts.

*Subpart 970.41—[Added]*

21. A new subpart 970.41, Acquisition of Utility Services, is added. Section 970.0803 is transferred to that subpart and redesignated 970.4100, General. In paragraph (a) of newly designated 970.4100, the citation "FAR 8.301" is revised to read "FAR 41.101." In paragraph (c) the citation "FAR subpart 8.3" is revised to read "FAR part 41." Paragraph (d) is removed.

**970.52 [Amended]**

22. Subpart 970.52, Contract Clauses for Management and Operating Contracts is amended to correct the parenthetical dates following clause titles in accordance with the following table:

| Clause at 48 CFR Chap-ter 9 (DEAR)   | Change the date in the parentheses following the clause title from | to read    |
|--------------------------------------|--|------------|
| 970.5204-12                          | (APR 1984)   | (JUL 1994) |
| 970.5204-15                          | (SEP 1991)   | (APR 1994) |
| 970.5204-16                          | (JAN 1991)   | (JUL 1991) |
| 970.5204-17                          | (JUNE 1988)  | (JAN 1996) |
| 970.5204-18                          | (JUL 1991)   | (APR 1994) |
| 970.5204-20                          | (JAN 1992)   | (AUG 1993) |
| 970.5204-21                          | (APR 1984)   | (OCT 1995) |
| 970.5204-24                          | (APR 1984)   | (OCT 1995) |
| 970.5204-26                          | (APR 1984)   | (SEP 1991) |
| 970.5204-31                          | (JUL 1991)   | (APR 1994) |
| 970.5204-33(a) and (b) [two places]. | (JUNE 1987)  | (APR 1994) |
| 970.5204-35                          | (APR 1984)   | (JUL 1994) |
| 970.5204-38                          | (APR 1984)   | (APR 1994) |
| 970.5204-41                          | (APR 1984)   | (APR 1994) |
| 970.5204-43                          | (APR 1984)   | (APR 1994) |
| 970.5204-45                          | (APR 1984)   | (OCT 1995) |
| 970.5204-54                          | (JUL 1991)   | (APR 1994) |
| 970.5204-55                          | (JUL 1991)   | (APR 1994) |
| 970.5204-56                          | (JUL 1991)   | (APR 1994) |
| 970.5204-57                          | (AUG 1992)   | (APR 1994) |
| 970.5204-61                          | (DEC 1993)   | (APR 1994) |

**970.5204-23 [Amended]**

23. Subsection 970.5204-23 is amended in the introductory sentence by revising "970.2902" to read "970.2903".

**970.5204-32 [Amended]**

24. In subsection 970.5204-32 paragraphs (a) and (b) are amended by revising the introductory text and adding a heading immediately before the clause text to read as follows:

(a) In contracts with nonprofit contractors use the following clause:

Required Bond and Insurance—Exclusive of Government Property (Nonprofit) (APR 1994)

\* \* \* \* \*

(b) In contracts with profit making contractors use the following clause:

Required Bond and Insurance—Exclusive of Government Property (Profit Making) (APR 1994)

\* \* \* \* \*

**970.5204-44 [Amended]**

25. Subsection 970.5204-44, Flowdown of contract requirements to subcontracts, is amended by revising the date following the clause title to read "(FEB 1997)" and in clause paragraph (b)(11) "40 CFR part 60" is revised to read "41 CFR part 60."

**970.5204-50 [Removed and Reserved]**

26. Subsection 970.5204-50, Cost and schedule control systems, is removed and reserved.

27. Subsection 970.5204-52 is revised to read as follows:

**970.5204-52 Foreign travel.**

When foreign travel may be required under the contract, insert the clause at 952.247-70.

**970.5204-60 [Amended]**

28. Subsection 970.5204-60, Facilities management, is amended by revising the date "August 30, 1993" following the clause title to read "(FEB 1997)" and by deleting clause paragraphs (c), Maintenance Management, and (e), Capital Assets Management. Paragraphs (d), Energy Management, and (f), Subcontract Requirements, are redesignated as paragraphs (c) and (d), respectively.

**970.7105 [Amended]**

29. Section 970.7105, Purchasing from contractor affiliated sources, is amended in paragraph (a)(3) by deleting the parenthetical reference "(See 970.7101(c))".

[FR Doc. 97-938 Filed 1-15-97; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

RIN 1018-AC84

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Laguna Mountains Skipper and Quino Checkerspot Butterfly**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) and quino checkerspot butterfly (*Euphydryas editha quino*) to be endangered species throughout their respective ranges in southwestern California and northwestern Baja California, Mexico, pursuant to the Endangered Species Act of 1973, as amended (Act). The Laguna Mountains skipper occupies montane meadow habitats in a very restricted range within San Diego County, California. The quino checkerspot is locally distributed in sunny openings within chaparral and coastal sage shrublands in portions of Riverside and San Diego counties, California, and northwestern Baja California, Mexico. These taxa are threatened by one or more of the following factors—loss and degradation and fragmentation of habitat due to grazing, urban development, and fire

management practices; over-collection and other human disturbance; and naturally occurring events such as fire or weather extremes. This rule implements Federal protection provided by the Act for the Laguna Mountains skipper and quino checkerspot butterflies.

**EFFECTIVE DATE:** January 16, 1997.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marjorie Nelson, Biologist, at the above address (telephone 619/431-9440).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Laguna Mountains skipper (*Pyrgus ruralis lagunae*) is a small butterfly in the skipper family (Hesperiidae). It has a wingspan of about 3 centimeters (cm) (1 inch (in.)) and is distinguished from the rural skipper (*P. ruralis ruralis*) by extensive white wing markings that give adults, particularly males, an overall appearance of white rather than mostly black, and by the banding patterns on the hind wings (Scott 1981, Levy 1994). The Laguna Mountains skipper is found in montane meadow habitats.

The Laguna Mountains skipper is one of two recognized subspecies of the rural skipper, *Pyrgus ruralis*. Scott (1981) described *P. ruralis lagunae* from a collection made in 1956 by F. Thorne in the Laguna Mountains of San Diego County, California, based upon population isolation and color differentiation. The Laguna Mountains skipper is restricted to the Laguna Mountains and Mount Palomar in San Diego County. The other subspecies of the rural skipper (*P. ruralis ruralis*) ranges from the mountains of British Columbia and Alberta, Canada, south to the coast ranges and Sierra Nevada of central California, as well as Nevada, Utah, and northern Colorado (Stanford and Opler 1993; John Brown, Dudek and Associates, *in litt.*, 1992) and has darker wings than the Laguna Mountains skipper.

Three other species in the genus *Pyrgus* occur in San Diego County: the common checkered skipper (*P. communis*), the small checkered skipper (*P. scriptura*), and the western checkered skipper (*P. albescens*). The Laguna Mountains skipper can be distinguished from all three of these species by the whitish appearance of the adults and the use of a single larval host

plant, *Horkelia clevelandii* (Cleveland's horkelia), in the rose family (Rosaceae) (Garth and Tilden 1986, Scott 1986). In addition, the western checkered skipper and southern California populations of the small checkered skipper are restricted to desert areas (Garth and Tilden 1986).

The Laguna Mountains skipper population in the Laguna Mountains in San Diego County (J. Brown, *in litt.*, 1992) was not seen during a relatively extensive survey in 1994 (Levy 1994) but was seen in 1995 (Jack Levy, pers. comm., 1995). Prior to that observation, it was last seen in the Laguna Mountains in 1986 occupying a small area along a fence in a U.S. Forest Service (USFS) campground (Levy 1994; Murphy 1990; D. Hogan, San Diego Biodiversity Project, pers. comm., 1993;). The Laguna Mountains population was estimated to consist of fewer than 100 individuals (Murphy 1990; Brown 1991; J. Brown, *in litt.*, 1992).

The Laguna Mountains skipper is currently found at four sites in the Mount Palomar region of San Diego County (Levy 1994). It was detected and collected on Mount Palomar in 1991 by D. Lindsley (J. Brown, *in litt.*, 1992; J. Brown, pers. comm., 1993). Two additional populations were located in 1994 (Levy 1994). The largest of the Mount Palomar populations is estimated to comprise 240 individuals (Levy 1994).

*Horkelia clevelandii* is the larval host plant of the Laguna Mountains skipper. This plant occurs in meadows, under pines, and on granite in the Laguna, Cuyamaca, Palomar, and San Jacinto Mountains of southwestern California and northwestern Baja California, Mexico, from 1,200 to 2,500 meters (m) (4,000 to 8,000 feet (ft)) in elevation (Hickman 1993). Although the distribution of a butterfly is primarily defined by the presence of its larval host plant, the butterfly may be further restricted by other physiological or ecological constraints. The Laguna Mountains skipper is currently found in a few open meadows of yellow pine forest between 1,200 and 2,000 m (4,000 and 6,000 ft) in elevation. Historically, this skipper may have occurred throughout the higher elevations of San Diego County (Murphy 1990; Brown 1991; J. Brown, *in litt.*, 1992). Murphy (1990) reported that there were at least six populations of this taxon in the Laguna Mountains in the 1950's and 1960's; however, current information indicates only one extant population. Until its rediscovery in 1983 by J. Emmel and subsequent sightings in 1986 and 1995, this skipper had not

been seen in the Laguna Mountains since 1972 (J. Brown, *in litt.*, 1992).

Historically, the Mount Palomar populations were small compared to the populations in the Laguna Mountains. Only five specimens have been collected from Mount Palomar in this century (J. Brown, *in litt.*, 1992). Prior to specimens collected in 1991 and the additional populations found in 1994, the last known sightings from Mount Palomar were from 1980 and, prior to that, from 1939 (Brown 1991; Levy 1994; J. Brown, *in litt.*, 1992).

The Laguna Mountains skipper is apparently bivoltine (two generations per year). The adult flight season occurs from April to May with a second smaller flight in late June to late July (Brown 1991, Levy 1994). The Laguna Mountains skipper may have evolved a unique mechanism for coping with the low daytime temperatures it encounters during its spring flight, which is unusually early for butterflies in the Laguna Mountains (Brown 1991). It is assumed that the life history of the Laguna Mountains skipper is similar to that of the nominate subspecies (*Pyrgus ruralis ruralis*), which diapauses (maintains a state of suspended activity) as a full grown larva and lives 10 to 20 days in the adult stage (J. Brown, *in litt.*, 1992).

The quino checkerspot, *Euphydryas* (= *Occidryas*) *editha quino* is a small member of the brush-footed butterfly family (Nymphalidae). It has about a 3 cm (1 in.) wingspan and is checkered with dark brown, reddish, and yellowish spots. It is one of 12 recognized subspecies of *E. editha* (*editha* checkerspot) (Miller and Brown 1981, Ferris 1989). The quino checkerspot can be distinguished from other subspecies of *E. editha* in that the quino checkerspot tends to be larger with redder wings, and the light spots on the wings tend to be fewer and more discrete (Garth and Tilden 1986). This taxon also looks similar to two other species of butterfly that occur within its range. The Chalcedon checkerspot (*E. chalcedona*) is yellow and slightly larger, with sharper forewings, than the quino checkerspot. Gabb's checkerspot (*Chlosyne gabbii*) is smaller than the quino checkerspot and has orange rather than red markings (Orsak 1977).

The quino checkerspot was first described in 1863 by Hans Herman Behr, an entomologist with the California Academy of Sciences in San Francisco, as *Melitaea quino*, based on a specimen from coastal San Diego County. It was subsequently recognized by Comstock (1927) as a full species of the genus *Euphydryas*. *Euphydryas editha quino* was then inappropriately

identified as *E. e. wrightii*, thereby confusing it with earlier taxonomic treatments of the desert checkerspot, *E. chalcedona hennei* (formerly ssp. *quino*) (Scott 1981). This error was rectified by J. Emmel, based on a study of Behr's notes and available specimens (Allen 1990; Dennis Murphy, Stanford University, *in litt.*, 1988). The genus *Euphydryas* is also referred to as *Occidryas*, but most authors retain the former name (Scott 1986, Harrison *et al.* 1988, Murphy 1990, Brown 1991).

Adult quino checkerspot butterflies live from 4 to 8 weeks. The flight season occurs from mid-January to late April and peaks between March and April. The eggs hatch in about 10 days and the larvae begin to feed immediately. Fourth instar (development stage) larvae enter an obligatory diapause as summer approaches and their larval food plant dries up. Extended periods of diapause may occur during times of drought (Greg Ballmer, University of California at Riverside, *in litt.*, 1990). Post-diapause larvae develop through four more instars and then pupate to emerge as adults in the early spring (Murphy and White 1984).

The quino checkerspot is restricted to open grassland and sunny openings within shrubland habitats of the interior foothills of southwestern California and northwestern Baja California, Mexico (G. Ballmer, *in litt.*, 1991). Like the Laguna Mountains skipper, its distribution is defined primarily by that of its larval host plant. The primary larval food plant of the quino checkerspot is *Plantago erecta* (dwarf plantain) in the plantain family (*Plantaginaceae*). However, the larvae may also use *Plantago ovata* and *Castilleja exserta* (owl's-clover in the figwort family (*Scrophulariaceae*)) (White 1974; G. Ballmer, pers. comm., 1993). These plants grow in or near meadows, vernal pools, and lake margins, and spread to upland shrub communities of sparse chaparral and coastal sage scrub. This butterfly is generally found at sites where high densities of the host plants occur (J. Johnson, *in litt.*, 1989; David Hawks, University of California at Riverside, *in litt.*, 1992) and at a variety of elevations from about sea level to about 900 m (3,000 ft). Within these areas, the quino checkerspot may be preferentially selecting sites where exposure to winter sun is greatest (Weiss *et al.* 1987, Allen 1990). These habitats, like the quino checkerspot, were once common along coastal bluffs, mesas, and inland foothills (Brown and Faulkner 1984).

The quino checkerspot may have been one of the most abundant butterflies in San Diego, Orange, and western

Riverside counties during the early part of the 20th century (Murphy 1990). The original range of the quino checkerspot extended as far south as Valle de la Trinidad in northwestern Baja California, Mexico (Brown *et al.* 1992) and as far north as Point Dume in Los Angeles County (Allen 1990). Currently, only seven or eight populations are known within the United States (the lack of an exact count is due to uncertainty as to whether sightings of very small numbers of butterflies in two areas represent one or two populations). All known extant populations in the United States occur in southwestern Riverside and north-central San Diego counties (G. Ballmer, *in litt.*, 1990 and 1991, pers. comm., 1994; D. Hawks, pers. comm., 1993; Marjorie Nelson, U.S. Fish and Wildlife Service (USFWS), pers. obs., 1994). One population near Upper Otay Lake in San Diego County (D. Murphy, *in litt.*, 1991) was last seen in 1990. In 1996, a very small group of quino checkerspots was sighted on Otay Mesa, but because of the very limited amount of available host plant, this occurrence is not expected to persist beyond 1996 (J. Brown, pers. comm., 1996). At least one population exists in Mexico, in the Sierra Juarez near Tecate (Brown 1991; D. Murphy, *in litt.*, 1991). Although no estimates of population sizes for the quino checkerspot are currently available, all but three populations are known to comprise fewer than five individuals.

#### Previous Federal Action

On June 3, 1991, the Service received a petition dated May 27, 1991, from Mr. David Hogan of the San Diego Biodiversity Project to list four butterfly taxa as endangered under the Act—the Laguna Mountains skipper (*Pyrgus ruralis lagunae*), Hermes copper (*Lycaena hermes*), Thorne's hairstreak (*Mitoura thornei*), and Harbison's dun skipper (*Euphyes vestris harbisoni*). The petition cited loss and degradation of habitat, through various causes, as the major threat to these butterflies. On July 12, 1993, the Service found that the petition contained substantial information indicating that the requested action may be warranted for the Laguna Mountains skipper, but not for the other three butterflies. The latter finding was made because sufficient information was not available regarding the threats to, and biological vulnerability of, those taxa. An announcement of these findings was published in the Federal Register on July 19, 1993 (58 FR 38549).

On September 30, 1988, the Service received a petition dated September 26,

1988, from Dr. Dennis Murphy of the Stanford University Center for Conservation Biology, to list the quino checkerspot butterfly (*Euphydryas editha quino*) as endangered under the Act. At the time the petition was submitted, this taxon had not been seen for several years and was thought to be extinct. Extant populations of the quino checkerspot were reported by Dr. Murphy in a letter dated August 1, 1991, which again requested the Service to consider the petitioned action. The status of the quino checkerspot has been under review by the Service since 1984 (May 22, 1984; 50 FR 37958) and it was classified as a candidate on November 21, 1991 (56 FR 58804), meaning that information in the Service's possession was sufficient to support a proposal to list it as endangered or threatened.

The proposed rule for these two taxa constituted the following findings—the final 12-month finding for the Laguna Mountains skipper that the petitioned action is warranted; the 90-day finding that the petition for the quino checkerspot butterfly presented substantial information that the action may be warranted; and the final 12-month finding for the quino checkerspot that the petitioned action is warranted. The proposed rule was published in the Federal Register on August 4, 1994 (59 FR 39868).

The processing of this final rule conforms with the Service's listing priority guidance published in the Federal Register on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events: 1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104-6), and 2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions. This rule has been updated to reflect any changes in distribution, status and threats since the effective date of the listing moratorium. This additional information was not of a nature to alter the Service's decision to list the species.

#### Summary of Comments and Recommendations

In the August 4, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule for the two butterfly taxa considered in this rule. Appropriate Federal and State agencies, county governments, scientific organizations and authorities, and other interested parties were contacted and requested to comment. A notice announcing a public hearing and extension of the public comment period was published in the Federal Register on September 26, 1994 (59 FR 49045). Newspaper notices inviting public comment were published in the following newspapers: *San Diego Union-Tribune*, *Orange County Register*, and *Riverside County Press-Enterprise*.

A public hearing was held in Rancho Bernardo, California, on October 19, 1994, in conjunction with two other proposals to list three taxa (San Diego fairy shrimp, Cuyamaca Lake downingia, and Parish's meadowfoam), and the comment period was extended to October 31, 1994, to accommodate additional comments. The transcript from this hearing is available for inspection (see ADDRESSES section).

The Service has reviewed the written and oral statements from the hearing and received during the comment period. A total of 21 commenters (from 2 Federal entities and 19 organizations or individuals) submitted 33 comments. Thirty of the comments were either not relevant to this listing action or non-substantive. The remaining comments provided additional information and/or were substantive comments. Two commenters submitted additional information, much of which has been incorporated into this final rule. The issues raised by the other commenters are presented here. Issues of a similar nature were grouped from the comments received and are addressed below.

#### Issue 1

Several commenters stated that the listing of these butterflies as endangered should be postponed until local multi-species planning efforts are completed. They stated that these actions will eliminate the need for listing by adequately providing for conservation while also permitting economic growth. Another commenter asserted that San Diego County multi-species efforts do not adequately cover the taxa in this rule.

*Service Response:* Current regional multi-species planning efforts do not

provide sufficient protection for either taxon to preclude their listing under the Act. The Laguna Mountains skipper is not now covered by, nor currently being considered for inclusion in, any local multi-species plan because its distribution lies outside ongoing regional planning areas.

In 1991, the State of California established the Natural Communities Conservation Plan (NCCP) program to address conservation needs throughout the State. The focus of current planning programs is the coastal sage scrub community in southern California, although other vegetation communities are being addressed in an ecosystem-level approach. The NCCP for the Central and Coastal Subregion of Orange County, signed into agreement on July 17, 1996, currently identifies the quino checkerspot as a "conditionally covered species;" however, the butterfly is not currently known to be extant within the planning area. The species coverage under the plan is conditional because quino checkerspot surveys have not been conducted within the planning area and newly discovered populations may have long-term conservation value. If quino checkerspots are found within the Central and Coastal Subregion of Orange County, participating landowners are permitted to "take" quino checkerspots, incidental to otherwise lawful activities, that occur in small and/or satellite populations, reintroduced populations, or populations that have expanded due to reserve system management. To offset any such take, a mitigation plan to be developed in coordination with the Service, California Department of Fish and Game (CDFG), and a non-profit corporation will oversee management of the subregional reserve system. That mitigation plan would (1) minimize impacts and provide appropriate feasible protection for the quino checkerspot, (2) provide for habitat restoration/enhancement for the butterfly; and (3) provide for monitoring and adaptive management of quino checkerspots and their habitat within the reserve system. No "take" is authorized under the permit for those populations that are considered to be essential to the butterfly's conservation.

Other planning efforts do not address the quino checkerspot, or may include the butterfly but have not been completed. The quino checkerspot may be addressed by a planning effort underway in southern Orange County; however, the target species list has not yet been determined. San Diego's Draft Multi-species Conservation Plan (MSCP) does not include quino checkerspot as a covered species because the risk of

impacts is unknown and the plan cannot assure protection for this species. A small group of quino checkerspot was sighted in 1996 on Otay Mesa within the MSCP planning area; however, because the amount of host plant available to this population is very low, this population is not expected to persist to 1997 (J. Brown, and M. Singer, pers. comms., 1996). The north-central San Diego County site is not included in any multi-species planning efforts. Only one of the Riverside County quino checkerspot populations occurs within the core reserve areas designated in the approved Stephens' Kangaroo Rat Habitat Conservation Plan (RCHCA 1995). The quino checkerspot apparently will be considered in the western Riverside County multi-species planning effort; however, this plan has not yet been prepared, funded, or approved for implementation.

The Service does not presently have reasonable evidence that conservation plans being implemented or developed will adequately conserve either butterfly within their historic ranges. These taxa would receive no legal protection while plans are being developed. For reasons explained under "Summary of Factors Affecting the Species" below, sufficient threats remain for the Service to justify a listing action.

#### Issue 2

Two commenters submitted information on three additional populations of Laguna Mountains skipper at Mount Palomar and speculated that the Laguna Mountains skipper has been extirpated from the Laguna Mountains.

*Service Response:* The Service acknowledges the efforts by the commenters to further determine the distribution and abundance of the Laguna Mountains skipper. The information submitted was used in the "Background" section above and the following "Summary of Factors Affecting the Species." The Service has determined that, although additional populations have been found, the Laguna Mountains skipper is still an extremely rare butterfly threatened by a number of complex factors. As demonstrated by the sightings in 1995, this butterfly is not completely extirpated from the Laguna Mountains. However, failure to locate the taxon in the Laguna Mountains during extensive 1994 survey efforts by Levy indicates extremely low population numbers.

#### Issue 3

One commenter questioned the extent to which livestock grazing is the main

reason for decline of the Laguna Mountains skipper, since the intensity of grazing on public lands has been reduced.

*Service Response:* Based on information provided by the petitioner and obtained from lepidopterists, *Horkelia clevelandii* plants are stunted in areas that are grazed. As noted by Levy (1994), *Horkelia* is an important nectar source and the loss of flowers to grazing would impact the reproductive success of adult Laguna Mountains skippers. The decline of the Laguna Mountains skipper has occurred over a number of decades, with much of the decrease occurring prior to acquisition of the land by a Federal agency. Additionally, as is stated in the "Background" section, butterflies are frequently more restricted than their larval host plant due to other ecological requirements. Given these considerations and the extreme rarity of this taxon, any incidental trampling or predation by cattle could significantly impact the taxon.

#### Issue 4

One commenter stated that there are more areas of *Horkelia* that are not grazed than was stated in the proposed rule.

*Service Response:* The information submitted by the commenter was incorporated into the "Background" and "Summary of Factors Affecting the Species." Subsequent to an analysis of the relevant maps provided by a commenter, the Service concludes that the majority of *Horkelia clevelandii* within the range of the Laguna Mountains skipper appears to be grazed. In addition, the Service concludes that the areas currently not subject to grazing were nonetheless previously grazed.

#### Issue 5

Two commenters stated that the Laguna Mountains skipper has an ecological need for habitat disturbance. Historically, this disturbance may have been due to a periodic fire regime. However, one of the commenters maintained that grazing represents a substitute for that fire disturbance.

*Service Response:* Livestock grazing does not replicate the type of disturbance that a fire would bring. Highly managed livestock grazing may be adequate to maintain populations of the host plant, *Horkelia clevelandii*; however, this plant is also a preferred fodder for livestock (Levy 1994). Additionally, the Laguna Mountains skipper is currently found in five areas, only two of which are grazed. The largest grazed habitat occupied by skippers is on both private and public

land, but the intensity of grazing has been reduced on the public land. Another population is in a campground where habitat extends onto a grazing allotment; the pasture closest to the campground is grazed one month per year. A third population is found in a finger of a meadow, across a road from, but not in, the grazed portion of the meadow.

Grazing as a management tool for butterflies must be carefully assessed and monitored for each butterfly species and a general statement cannot be made regarding its effectiveness as a substitute for fire. It is conceivable that if the numbers of Laguna Mountains skipper were higher, there would be a greater tolerance for certain schedules and intensities of livestock grazing. However, because the taxon's numbers are currently extremely low, the impacts of trampling and incidental predation from livestock grazing would likely be significant. Currently there is no empirical evidence that the Laguna Mountains skipper can tolerate grazing.

The Service solicited the expert opinions of seven appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy and biological and ecological information for these two taxa. The response received provided additional data that have been incorporated into this final rule.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Laguna Mountains skipper (*Pyrgus ruralis lagunae* J. Scott) and quino checkerspot butterfly (*Euphydryas editha quino* Behr) should be classified as endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Laguna Mountains skipper and the quino checkerspot are as follows.

##### A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The habitats and the ranges of the two taxa listed in this rule have been substantially reduced by urban and agricultural development and recreational activities, and are further

threatened with destruction, modification, and curtailment. The Laguna Mountains skipper and the quino checkerspot currently occur within very restricted ranges and are extremely localized in their present distributions. The habitat requirements for these two animals are primarily defined by their larval host plants. The removal or degradation of these plants, as well as that of nectar sources for adults, leads to the elimination of the affected population.

In the case of the Laguna Mountains skipper, *Horkelia clevelandii* is itself a rare species and is only found in the Laguna, Cuyamaca, and San Jacinto Mountains of southwestern California, and in northwestern Baja California, Mexico (Hickman 1993). Historic habitat destruction and degradation from overgrazing and trampling of *H. clevelandii* by domestic cattle is considered to be the primary factor responsible for its decline (Murphy 1990; D. Hogan, *in litt.*, 1991; J. Brown, *in litt.*, 1992).

Currently three of the five localities of Laguna Mountains skipper are not subject to livestock grazing. The fourth population occurs in the Laguna Mountains, in a campground area of the Cleveland National Forest bordering a grazing allotment (Murphy 1990; D. Hogan, pers. comm., 1993). The fifth is on a grazing allotment, with habitat that extends onto private lands. Although the magnitude of livestock grazing on this allotment has been reduced, any impacts from grazing would likely have a significant effect on the taxon due to the small numbers of Laguna Mountains skippers.

If there were greater numbers of individuals and more populations, the Laguna Mountains skipper might be able to tolerate certain levels and timing of livestock grazing. However, given the low numbers of this butterfly, any impacts to its habitat would be significant. The grizzled skipper (*Pyrgus malvae*) in England is able to tolerate grazing at a highly managed level (Levy 1994). The rare Dakota skipper (*Hesperia dacotae*) is sensitive to even light grazing (Royer and Marrone 1992, Moffat and McPhillips 1993). Some species of butterflies have habitat requirements that need a managed grazing scheme whereas others have habitat that recovers with reduced grazing. However, previous studies indicate that the use of grazing as a management tool for butterflies must be done carefully and at low intensities (Kulfan 1990, Thomas *et al.* 1992, Moffat and McPhillips 1993, Thomas and Jones 1993). A grazing plan for

management of the Laguna Mountains skipper has yet to be developed.

Fifty to seventy-five percent of the known range of the quino checkerspot has been lost since 1900 due to habitat degradation or destruction (Brown 1991). Sunny openings within chaparral and coastal sage scrub occupied by the quino checkerspot have been degraded by grazing and, to a lesser degree, destroyed by urban development. The primary larval food plant, *Plantago erecta*, can be displaced by exotic plants that invade once the ground is disturbed by discing, grading, and/or grazing (J. Johnson, *in litt.*, 1989; G. Ballmer, *in litt.*, 1990). The host plant then recolonizes in sites where grasses do not grow well, like cattle trails and road edges, where quino checkerspot larvae are subject to trampling (D. Hawks, pers. comm., 1993).

The encroachment of urban development in rural Riverside County potentially threatens two of the largest populations of quino checkerspot. This area is growing rapidly and is projected to be fully developed within the decade (Monroe *et al.* 1992). One population is in an area that is included in a local community plan that provides for subdivision of parcels into 9-hectare (ha) (20-acre (ac)) lots (M. Freitas, *in litt.*, 1993). Another population is on the site of an approved preliminary map for a housing development. The loss of these two populations is likely to preclude survival and recovery of the taxon.

The quino checkerspot population in southern San Diego County may be threatened by a proposed urban development project on Otay Mesa. The preferred alternative for the Otay Ranch New Town Plan (the largest planned community in the southwestern U.S.) would result in the loss of 5,600 ha (14,000 ac) of upland shrub communities, or about 52 percent of the extent of the plant communities within the project area. The effects of this project on the recently observed quino checkerspot population on Otay Mesa are not known at this time but are likely to be significant.

Additional development is expected to further reduce and degrade habitat of the quino checkerspot through construction of homes and roads, and increases in fire frequencies, unauthorized trash dumping, and the distribution and abundance of exotic plants. An existing recreational vehicle park and marina in the vicinity of quino checkerspot habitat attracts unauthorized use of off-road vehicles (ORV's) within natural habitat areas. ORV's increase erosion and fire hazards and destroy habitat by creating trails.

Evidence of ORV use is apparent at one of the quino checkerspot localities, where a recently created dirt road bisects the center of the habitat (G. Ballmer, *in litt.*, 1991). Quino checkerspot habitat at this locality has also been disced in part; these disturbed areas no longer support this taxon, while the surrounding undisturbed areas do (G. Ballmer, *in litt.*, 1991).

Bureau of Land Management (BLM)-administered lands and USFS Wilderness Areas are currently contiguous with some privately owned quino checkerspot habitat. As Riverside County becomes more densely populated, and these privately owned parcels are developed, fragmentation and degradation of this contiguous habitat is expected.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Over-collection is a potential threat to both the Laguna Mountains skipper and the quino checkerspot because of their value to butterfly collectors. There is an extensive commercial trade for many imperiled or rare butterflies (Chris Nagano, John Mendoza, and Cindy Schroeder, USFWS, pers. obs., 1992–95). Johnson (*in litt.*, 1989) has noted that as the number of quino checkerspot colonies is reduced, lepidopterists may collect individuals in order to include rare species in their collections and to obtain surplus specimens for exchange or sale to other collectors. The remaining populations of the quino checkerspot and the Laguna Mountains skipper continue to be threatened by over-collection.

In the spring of 1993, populations of the quino checkerspot were the subject of collections for voucher specimens and captive-rearing (D. Hawks, pers. comm., 1993). Although there are no studies of the impact of the removal of individuals on natural populations of either of the butterfly taxa in this rule, related studies of another endangered nymphalid butterfly (Gall 1984a and 1984b) and a lycaenid butterfly (Duffey 1968) suggest that the two taxa in this rule could be adversely affected given the isolation of their apparently small populations. Collecting from small colonies or repeated handling and marking (particularly of females or in years of low abundance) could seriously damage the populations through loss of individuals and genetic variability (Singer and Wedlake 1981, Gall 1984b, Murphy 1988). Collecting females dispersing from a colony can also reduce the probability that new colonies will be founded. Collectors pose a threat because they may be unable to recognize

when they are depleting already substantially reduced butterfly colonies below the thresholds of survival and/or recovery, especially when they lack appropriate biological training or visit the area for a short period of time (Collins and Morris 1985).

An additional significant threat to the survival of both taxa in this rule is the potential for vandalism by landowners who may view the presence of sensitive species as an obstacle to development. The habitat of the largest and densest quino checkerspot population in Riverside County was deliberately disced in 1984 or 1985 to eliminate the population (J. Johnson, *in litt.*, 1989).

#### C. Disease or Predation

Disease is not known to be a factor affecting the taxa listed in this rule. There are no documented observations of predation on the Laguna Mountains skipper. However, the CDFG has released and is proposing to continue releasing wild turkeys in the Palomar and Descanso Ranger Districts of the Cleveland National Forest for the purposes of recreational hunting. Alternative release sites are within historic Laguna Mountains skipper habitat and upstream from occupied habitat. Wild turkeys feed mostly on wild oats, insects, and acorns. During its first four weeks, 60 to 90 percent of a young turkey's diet consists of animal food, primarily insects. The adult diet consists of 15 to 25 percent animal food and turkeys are known to eat moth larvae (CDFG 1994). The Laguna Mountains skipper is also threatened by incidental predation from livestock grazing. The host plant is palatable to grazers (Levy 1994) and any feeding larvae could be incidentally eaten and/or trampled. This is a significant impact to the low population numbers of the Laguna Mountains skipper.

There is evidence that predation is a threat to the quino checkerspot. Preliminary studies (D. Hawks, pers. comm., 1993; G. Ballmer, pers. comm., 1994) indicate that predation has contributed to the decline of the quino checkerspot at sites where habitat has been invaded by non-native plant species, which may also harbor predatory arthropods. Sites within historical quino checkerspot habitat that have been heavily invaded by Mediterranean plant species also have high sowbug (*Armadillidium* sp. and *Porcellio* sp.) and earwig (*Euborellia annulipes* and *Forficula auricularia*) densities. Sowbugs and earwigs prey upon butterfly eggs. These predators are absent from natural sites currently occupied by the quino checkerspot (D. Hawks, pers. comm., 1993; G. Ballmer,

pers. comm., 1994). Argentine ants (*Iridomyrmex humilis*) are also a potential predator that co-occur with earwigs and sowbugs. The number of these introduced predators is expected to increase with the spread of development because these exotics thrive in irrigated horticultural environments which may be adjacent to natural quino checkerspot habitat.

In general, outbreaks of disease or parasitism are more likely to occur under conditions of high population densities. The Laguna Mountains skipper occurs in low population densities; most populations of the Quino checkerspot also occur at low densities. Although specific parasites are unknown for the Laguna Mountains skipper and the quino checkerspot, Johnson (*in litt.*, 1989) suggests that under certain conditions, parasitism can eliminate a butterfly colony by building the parasite load of a population, thus contributing to the crash of that population. This cycle can only continue if the affected area is recolonized by butterflies, which may be unlikely when the host-butterfly population is small, fragmented, and isolated. However, if alternative parasite hosts exist in areas occupied by the butterflies, populations of parasites can be maintained on those alternative hosts in sufficient numbers to affect butterfly populations.

#### D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that could provide some protection for both the Laguna Mountains skipper and the quino checkerspot include: (1) listing under the California Endangered Species Act; (2) adequate consideration under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA); (3) local laws and regulations; (4) occurrence with other species protected by the Federal Endangered Species Act; and (5) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations for the conservation of these taxa.

Neither of the taxa in this rule is under consideration for listing under the California Endangered Species Act. The CDFG is unable to protect insects under its current regulations (Pete Bontadelli, CDFG, *in litt.*, 1989).

The status of and threats to the Laguna Mountains skipper and the quino checkerspot, as discussed above, reflect the failure of CEQA, NEPA, and local laws and regulations to protect and provide for the conservation of these taxa. Although there are several regional

conservation planning efforts underway within the range of the quino checkerspot, they have either not been completed, approved, funded, or implemented, or they have not provided adequate protection for this taxon.

The Service is not aware of any overlap in distribution between the Laguna Mountains skipper and any State or federally listed animal species. At one or two localities it may overlap with Parish's meadowfoam (*Limnanthes gracilis* ssp. *parishi*), currently proposed for Federal listing as threatened (59 FR 39879). However, the listing of a plant does not afford the same level of protection as the listing of an animal (16 U.S.C. 1538 (a)) and the coincidental protection of the Laguna Mountains skipper would be minimal at best. At some localities, the quino checkerspot co-occurs with the coastal California gnatcatcher (*Polioptila californica californica*), a federally listed threatened species, and Stephens' kangaroo rat (*Dipodomys stephensi*), a federally listed endangered species. However, the habitat requirements for the quino checkerspot are different from either the coastal California gnatcatcher or Stephens' kangaroo rat. Additionally, the Stephens' Kangaroo Rat Habitat Conservation Plan (HCP) for western Riverside County provides protection for only one population of the quino checkerspot (RCHCA 1995). The NCCP/HCP for the Central and Coastal Subregion of Orange County may potentially provide some protection for the quino checkerspot; however, the butterfly is not known to be extant within the planning area and systematic surveys are lacking. The quino checkerspot is not considered adequately conserved by the MSCP in San Diego County.

Some protection is afforded to the Laguna Mountains skipper on USFS land. Considering the small population size and extremely limited distribution of the Laguna Mountains skipper, this protection is insufficient to conserve the taxon. In the case of the quino checkerspot, some protection may be provided to one population by its occurrence, in part, on BLM land in Riverside County. However, this Federal land is currently subject to ORV activity (G. Ballmer, *in litt.*, 1991).

No specific regulations protect the quino checkerspot in Mexico. However, all hunting and export of wildlife in Mexico is prohibited, except under permit (Fuller and Swift 1984; Secretaria de Agricultura y Ganaderia, Subsecretaria y de la Fauna, Departamento de Conservación de la Fauna, undated). Little is known of the status of the isolated populations in

Mexico (Allen 1990) and any protection afforded to these populations does not insure the survival of the taxon.

#### *E. Other Natural or Man-Made Factors Affecting its Continued Existence*

The extremely restricted range, localized distribution, and small population size of the Laguna Mountains skipper and the quino checkerspot make them vulnerable to the effects of habitat loss, degradation and fragmentation, especially with regard to naturally occurring events (e.g., see Gilpin and Soule 1986). For example, several populations of the butterflies listed in this rule are known to consist of fewer than 5 to 15 individuals. The occurrence of even one of the following naturally occurring events could easily extirpate these populations.

Although both butterflies occur in fire-adapted ecosystems, a single fire event could eliminate affected populations. Orsak (1977) reported that a quino checkerspot population near Hidden Ranch, Black Star Canyon in the Santa Ana Mountains of Orange County was apparently destroyed by a fire in 1967. The quino checkerspot may be extirpated from Orange County.

Fire may be a necessary component for the maintenance of Laguna Mountains skipper habitat. The diversity of montane meadow habitats may be fire-dependent, including the skipper's larval host plant (Levy 1994). Historically, the skipper may have experienced local extirpations and recolonizations following local fire events. However, the present discontinuity and low population numbers would not enable the Laguna Mountains skipper to tolerate local extirpations due to fire.

Periodic droughts, like those that have occurred in recent years in southwestern California, can adversely affect both of the taxa in this rule. Drought is known to decrease numbers of butterflies (Thorne 1963). In addition to killing larvae by desiccation, drought conditions may (1) cause the early senescence or death of the larval host plant prior to completion of larval development or (2) lower the nutritional quality of the host plant (e.g., water content). Drought can also reduce the quantity and quality of adult nectar sources. Larval starvation and extirpation of local populations during periods of drought have been documented for *Euphydryas editha* (White 1974, Ehrlich *et al.* 1980).

The quino checkerspot is somewhat adapted to unpredictable weather patterns but requires sufficient patches of suitable habitat to respond to this

environmental variability. The quino checkerspot's dispersal capabilities vary considerably depending upon rainfall patterns and the resulting availability of adult nectar sources and larval food plants. For example, a San Diego County population of the quino checkerspot exhibited an increase in numbers as a result of favorable weather (Murphy and White 1984). The greater number of larvae defoliated the larval food plants. This central core area was left without sufficient egg-laying sites for females, and adults dispersed greater distances in search of additional suitable habitat. Ideally these dispersing adults would have found marginally suitable areas and in subsequent generations would have returned to a central core area. In this case, the mass dispersal failed to restore populations in previously occupied habitat, and the butterflies have not re-colonized the original site (Murphy and White 1984; Murphy, *in litt.*, 1988).

Habitat fragmentation can affect the genetic heterogeneity of small isolated populations like those of the Laguna Mountains skipper and the quino checkerspot. A basic principle of genetics states that small, fragmented populations are subject to a higher frequency of genetic drift and inbreeding. As a consequence, genetic variation of the population and individual heterozygosity is decreased. That can lead to inbreeding depression and lowered fitness of individuals. Low genetic diversity may decrease the ability of a species to adapt to changing environmental conditions. Genetically homogenous populations may be at a greater risk of extinction from environmental or demographic variability (e.g., from fire or drought events) than are large, diverse populations that can more readily recover from such events. For example, variation in the length of diapause among butterfly offspring requires genetic heterogeneity (Seeger and Brockman 1987). If a population is variable in diapause length, it has a lower risk of losing an entire cohort to adverse environmental conditions during any given season. Individuals with prolonged diapause may survive if drought causes high mortality during the next season. A large population or metapopulation can maintain the genetic heterogeneity needed to maintain the population during these kinds of events, but small, isolated populations cannot.

Interconnected populations can act as reservoirs to maintain other populations that may be subject to periodic extirpation (Murphy and White 1984, Harrison *et al.* 1988). If a naturally

occurring event eliminates a population of either of these taxa, few, if any neighboring populations are available to recolonize the area. No information is available regarding the dispersal abilities of the Laguna Mountains skipper. The sedentary behavior of the quino checkerspot decreases the probability that natural, long-distance dispersal could re-establish most extirpated local populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these two taxa in determining to make this rule final. Based on this evaluation, the Service finds that the preferred action is to list the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) and the quino checkerspot (*Euphydryas editha quino*) as endangered. The range and habitat of these taxa has been substantially reduced by historical activities associated with urban and agricultural development and recreational activities. These two taxa are threatened by one or more of the following factors—habitat alteration and destruction resulting from urban and agricultural development, grazing, fire management practices, over-collection, recreational activities, and displacement of the larval host plant by exotic species. The extremely restricted range, localized distribution, and small population size of both butterflies makes them very vulnerable to extinction by the factors listed above as well as by naturally occurring events such as fire and drought. For these reasons, the Service finds that the Laguna Mountains skipper and the quino checkerspot are in imminent danger of extinction throughout all or a significant portion of their ranges. Threatened status would not accurately reflect the diminished status and the threats to these taxa. Other alternatives to this action were considered but not preferred because not listing these taxa would not provide adequate protection and would be inconsistent with the purposes of the Act. Critical habitat is not being proposed for these taxa for the reasons discussed below.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied

by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Laguna Mountains skipper and the quino checkerspot at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Publication of precise maps and descriptions of critical habitat for the quino checkerspot and the Laguna Mountains skipper could result in increased collection of specimens by collectors. The commercial trade in rare butterflies could increase demand for these taxa once they are listed as endangered and critical habitat maps could lead unscrupulous collectors to endangered populations. Additional habitat destruction through trampling, discing, grading, and vandalism could result as well. As discussed above under Factor B in "Summary of Factors Affecting the Species," habitat for one of the largest quino checkerspot colonies was graded in Riverside County to deliberately eliminate that population, and a number of quino checkerspot colonies have been subject to collection.

The additional protection provided by the designation of critical habitat to a species would be provided through section 7 of the Act. Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. The two taxa in this rule are confined to small geographical areas, and each population

is composed of so few individuals that the determinations for jeopardy to the species and adverse modification of critical habitat would be similar. Therefore, designation of critical habitat provides no benefits beyond those that these taxa would receive by virtue of their listing as endangered species, and would likely increase the risk of threat from collecting or other human activities. The Service concludes that the designation of critical habitat for the Laguna Mountains skipper and the quino checkerspot is not prudent at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies to use their authorities to further the purposes of the Act by carrying out programs for listed species. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with the Laguna Mountains skipper and the quino checkerspot include the USFS and BLM due to the presence of habitat and populations within their jurisdiction. The Laguna Mountains skipper occurs on private and State-owned land as well as USFS lands. The quino checkerspot mostly occurs on privately owned lands with little or no Federal involvement, although the BLM owns a portion of one

site. The USFS is currently conferencing with the Service under section 7 of the Act in order to address grazing impacts within the Cleveland National Forest on both the Laguna Mountains skipper and quino checkerspot.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. The Service is currently coordinating with the USFS regarding activities on lands under their jurisdiction that may affect the taxa in this rule. Activities that the Service believes could potentially harm the Laguna Mountains skipper and the quino checkerspot and result in take include, but are not limited to:

- (1) Unauthorized handling or collecting of the taxa;
- (2) Unauthorized destruction/alteration of their habitat, including unauthorized livestock grazing;
- (3) Unauthorized pesticide applications in violation of label restrictions.

Activities that the Service believes are unlikely to result in a violation of section 9 are:

- (1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, dead specimens of these taxa that were collected prior to the date of publication in the Federal Register of

the final regulation adding these taxa to the list of endangered species;

- (2) Roadkills or injuries by vehicles on designated public roads;

- (3) Normal, authorized recreational activities in designated campsites and on authorized trails.

Questions as to whether specific activities will constitute a violation of section 9 should be directed to the Service's Carlsbad Field Office (see **ADDRESSES** section).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing such permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations on listed wildlife and plants and inquiries on prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services—Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (telephone 503/231-6241; facsimile 503/231-6243).

Where applicable, the Service is encouraging private landowners to include the Laguna Mountains skipper and the quino checkerspot butterflies in habitat conservation plans developed as part of applications for incidental take permits. To date, one plan has included the quino checkerspot in the Central and Coastal Subregion of Orange County.

#### Reasons for Effective Date

The Service is concerned that issuance of a final rule for these animals that is not effective immediately upon publication will result in greatly intensified levels of collecting and commercial trade of the Laguna Mountains skipper and particularly the quino checkerspot (see Factor B above). In addition, any delay in the effective date of this rule provides an opportunity for vandalism by persons not wanting endangered species on their property. Because of the immediate threat posed by these activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental

Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

#### References Cited

A complete list of all references cited herein is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

#### Author

The primary author of this final rule is Marjorie Nelson of the Carlsbad Field Office (see **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

#### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

#### **PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife, to read as follows:

#### **§ 17.11 Endangered and threatened wildlife**

\* \* \* \* \*

(h) \* \* \*

| Species                       |                                 | Historic range      | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|-------------------------------|---------------------------------|---------------------|--|--------|-------------|------------------|---------------|
| Common name                   | Scientific name                 |                     |  |        |             |                  |               |
| *                             | *                               | *                   | *  | *      | *           |                  | *             |
| INSECTS                       |                                 |                     |  |        |             |                  |               |
| *                             | *                               | *                   | *  | *      | *           |                  | *             |
| Butterfly, quino checkerspot. | <i>Euphydryas editha quino.</i> | U.S.A. (CA), Mexico | NA .....   | E      | 604         | NA               | NA            |
| *                             | *                               | *                   | *  | *      | *           |                  | *             |
| Skipper, Laguna Mountains.    | <i>Pyrgus ruralis lagunae.</i>  | U.S.A. (CA) .....   | NA .....   | E      | 604         | NA               | NA            |
| *                             | *                               | *                   | *  | *      | *           |                  | *             |

Dated: December 24, 1996.  
 John G. Rogers,  
 Acting Director, Fish and Wildlife Service.  
 [FR Doc. 97-1111 Filed 1-15-97; 8:45 am]  
 BILLING CODE 4310-55-P

# Proposed Rules

Federal Register

Vol. 62, No. 11

Thursday, January 16, 1997

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 831 and 844

RIN 3206-AH68

### Revised Application Procedures for Disability Retirement Under CSRS and FERS

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing regulations to establish uniformity in the application procedures for disability retirement under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The regulations would allow employees to meet the filing deadline for disability retirement by submitting applications directly to their former employing agency or to OPM within 1 year after separation.

**DATES:** Comments must be received on or before March 17, 1997.

**ADDRESSES:** Send comments to John E. Landers, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington DC. Comments may also be submitted by electronic mail to [combox@opm.gov](mailto:combox@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Robert Girouard, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** Section 8337(b) of title 5, United States Code establishes the legal requirements for applying for disability retirement under the Civil Service Retirement System (CSRS), while section 8453 of title 5 establishes the application requirements for disability retirement under the Federal Employees Retirement System (FERS). Both laws state that a disability retirement claim may be allowed only if the "application is filed with the Office [of Personnel Management] before the employee or Member is separated from

the service or within 1 year thereafter." Both the CSRS and FERS laws allow extension of the time limit only in cases involving the employee's mental incompetence.

Office of Personnel Management (OPM) regulations implementing these provisions of law are found at sections 831.1204 (for CSRS) and 844.201 (for FERS) of Title 5, Code of Federal Regulations. The CSRS regulation requires an employee who is retiring on disability to file an application with OPM before separating from service, or within 1 year after separating. The FERS regulation requires an employee retiring on disability to file an application with his or her employing agency before separating from service, or to file the application with OPM within 1 year after departing.

The proposed revision of these two sections will allow OPM to accept a CSRS or FERS disability application filed with an employee's agency prior to separation, or with either the former employing agency or OPM within 1 year after separation. This revision is a delegation of authority by the Director of OPM under section 1104(a)(2) of title 5, United States Code, allowing an agency's receipt of a disability regulation to satisfy the filing requirement in the law.

Under the current rule, an application filed with the employing agency is not acceptable unless the agency forwards it to OPM in time to meet the 1-year filing deadline. Our proposed change will protect applicants who submit their applications to their employing agency within a year after separation. OPM instructions will require agencies to forward disability applications promptly to OPM for consideration.

In addition, we propose revising sections 831.1204 and 844.201 of Title 5, Code of Federal Regulations to bring the CSRS and FERS disability application filing requirements into conformity with each other, as regards OPM-prescribed disability retirement forms and informal filings. The proposed regulations includes a standard for determining the date of filing, which parallels the standard in regulations of the United States Merit Systems Protection Board at 5 CFR § 1201.4(1).

Finally, we propose revising Section 844.201(c) of Title 5, United States Code to clarify that in FERS, as in CSRS, an

agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions, but is not required to delay taking any appropriate personnel action.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement and insurance benefits of retired Government employees and their survivors.

### List of Subjects in Parts 831 and 844

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James B. King,

*Director.*

Accordingly, OPM proposes to amend 5 CFR parts 831 and 844 as follows:

### PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336 (d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104-8, 109 Stat. 102, as amended by section 153 of Pub. L. 104-134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964-1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339 (j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 410; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986 Pub. L. 99-251, 100 Stat. 23; § 831.1204 also issued under 5 U.S.C. 1104; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, 101 Stat. 1330-275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, 104 stat. 1388-328.

**Subpart L—Disability Retirement**

2. Section 831.1204 is revised to read as follows:

**§ 831.1204 Filing disability retirement applications: General.**

(a) Except as provided in paragraphs (c) and (d) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the employing agency or OPM within 1 year thereafter.

(b) An application for disability retirement that is filed with OPM or an employing agency by personal delivery is considered filed on the date on which OPM or the employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which the receiving office is closed for business. The date of filing by commercial overnight delivery is the date the application is given to the overnight delivery service.

(c) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(d) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(e) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

**PART 844—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—DISABILITY RETIREMENT**

3. The authority citation for part 844 is revised to read as follows:

Authority: 5 U.S.C. 8461; § 844.201 also issued under 5 U.S.C. 1104.

**Subpart A—General Provisions**

4. In section 844.201, paragraphs (a) and (c) are revised to read as follows:

**§ 844.201 General requirements.**

(a)(1) Except as provided in paragraphs (a)(3) and (a)(4) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the employing agency or OPM within 1 year thereafter.

(2) An application for disability retirement that is filed with OPM or an employing agency by personal delivery is considered filed on the date on which OPM or the employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which OPM or the employing agency, as appropriate, is closed for business. The date of filing by commercial overnight delivery is the date application is given to the overnight delivery service.

(3) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(4) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(c) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

[FR Doc. 97-1106 Filed 1-15-97; 8:45 am]  
BILLING CODE 6325-01-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 96-NM-269-AD]

RIN 2120-AA64

**Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. That AD was prompted by one report indicating that a diode failed, which resulted in battery drain and loss of the emergency DC bus power supply; and another report indicating that the circuit breaker of the transformer rectifier unit No. 3 tripped, which resulted in the loss of the emergency DC/AC bus power supply. This action would require a new terminating modification for the existing AFM revisions. This action would also require a new AFM revision to inform the flightcrew that, under certain conditions, an "EMER DC BUS" warning on the multi-function display unit (MFDU) will occur, and to take appropriate corrective actions. The actions specified by the proposed AD are intended to prevent failures of the emergency DC/AC bus power supply, which could reduce the ability of the flightcrew to control the airplane.

**DATES:** Comments must be received by February 25, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-269-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN

Schipol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-269-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-269-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

On October 4, 1995, the FAA issued AD 95-21-10, amendment 39-9396 (60 FR 53110, October 12, 1995), applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes. That AD requires revising the Abnormal and Normal Procedures Sections of the FAA-approved Airplane Flight Manual

(AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. That action was prompted by one report indicating that a diode failed, which resulted in battery drain and loss of the emergency DC bus power supply; and another report indicating that the circuit breaker of the transformer rectifier unit No. 3 tripped, which resulted in the loss of the emergency DC/AC bus power supply. The requirements of that AD are intended to ensure that the flightcrew is advised of the potential hazard related to failures of the emergency bus power supply, and the procedures necessary to address it.

In the preamble to AD 95-21-10, the FAA specified that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to positively address the unsafe condition. The FAA indicated that it may consider further rulemaking once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is necessary; this proposed AD follows from that determination.

**Actions Since Issuance of Previous Rule**

Since the issuance of that AD, Fokker has issued Service Bulletin SBF100-24-032, dated September 12, 1996, which describes procedures for modification of the DC bus transfer system. For certain airplanes, the modification involves removal of diode CR3; replacement of the DC bus 1 circuit breaker and TRU 3 circuit breaker of the DC emergency bus supply, and replacement of the essential circuit breaker of the AC bus supply. The modification also involves replacement of the two battery power contactors (BPC) with a single BPC and addition of a control relay to the DC emergency bus system. For all airplanes, the modification involves alteration of the wiring to detect a battery drain. The modification will improve the switching logic of the emergency DC bus. Accomplishment of this modification would eliminate the need for the AFM revisions required by AD 95-21-10.

In addition, Fokker has developed procedural information, for inclusion in the Abnormal Procedures Section of the AFM for the affected airplanes, to inform the flightcrew that an "EMER DC BUS" warning on the multi-function display unit (MFDU) will occur when the emergency DC bus is transferred to battery power, and to take appropriate corrective actions.

Accomplishment of the modification and the new AFM revision will positively address the unsafe condition identified as failures of the emergency DC/AC bus power supply, which could lead to loss of on-side displays, autopilot, pressure control, and all communications; this situation could reduce the ability of the flightcrew to control the airplane.

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, classified these service bulletins and the AFM revision as mandatory and issued Netherlands airworthiness directive (BLA) 1995-089/4 (A), dated September 30, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

**FAA's Conclusions**

These airplanes are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95-21-10. It would continue to require revising the Abnormal and Normal Procedures Sections of the FAA-approved AFM to include information that will enable the flightcrew to identify failures of the emergency DC/AC bus power supply and to take appropriate corrective actions. However, the proposed AD also would require modification of the DC bus transfer system, which would terminate the existing requirements for the AFM revisions. The modification would be required to be accomplished in accordance with the service bulletin described previously.

Following accomplishment of the modification, the proposed AD also would require revising the Abnormal Procedures Section of the AFM to inform the flightcrew that an "EMER DC BUS" warning on the multi-function

display unit (MFDC) will occur when the emergency DC bus is transferred to battery power, and to take appropriate corrective actions.

#### Cost Impact

There are approximately 132 Fokker Model F28 Mark 0100 and 0070 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 95-21-10, and retained in this proposed AD, would take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$7,920, or \$60 per airplane.

The modification of the DC bus transfer system that is proposed in this new AD would take approximately 17 (Part 1) or 5 (Part 2) work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. The cost of required parts could range from \$160 to as much as \$2,360 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be between \$460 and \$3,380 per airplane.

The AFM revision that is proposed in this new AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be \$7,920, or \$60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption

#### ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-9396 (60 FR 53110, October 12, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Fokker: Docket 96-NM-269-AD. Supersedes AD 95-21-10, Amendment 39-9396.

*Applicability:* All Model F28 Mark 0100 and 0070 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (g) 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 as indicated, unless accomplished previously.

To prevent failures of the emergency DC/AC bus power supply, which could reduce the ability of the flightcrew to control the airplane, accomplish the following:

RESTATEMENT OF ACTIONS REQUIRED BY AD 95-21-10, AMENDMENT 39-9396

Note 2: For Model F28 Mark 0070 series airplanes, on which the procedures specified in Fokker Service Bulletins SBF100-24-033 and SBF100-24-034 have been accomplished, the AFM revisions required by

paragraphs (a), (b), and (c) of this AD may be removed from the AFM.

Note 3: For Model F28 Mark 0100 series airplanes, on which the procedures specified in Fokker Service Bulletin SBF100-24-030 have not been accomplished, or on which the procedures specified in Fokker Service Bulletin SBF100-24-033 have been accomplished; the AFM revisions required by paragraphs (a), (b), and (c) of this AD may be removed from the AFM.

(a) For all airplanes: Within 7 days after October 27, 1995 (the effective date of AD 95-21-10, amendment 39-9396), revise the Abnormal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Add to Sub-section 4.04—Electrical Power

STANDBY ANNUNCIATOR PANEL RED AC SUPPLY LIGHT "ON"

On overhead electrical panel:

GEN LOAD.....CHECK

- If all generator loads are approximately zero:

LOSS OF AC SUPPLY

PROCEDURE .....APPLY

- If not all generator loads are approximately zero:

DC EMER BUS SUPPLY TRU3

CIRCUIT BREAKER.....CHECK

- If circuit breaker has tripped:

DC EMER BUS SUPPLY TRU3

CIRCUIT BREAKER.....RESET

- If reset is unsuccessful:

L and R AUDIO .....ALTN

Anticipate the effects of an eventual EMER DC BUS failure, see EMER DC BUS FAULT procedure.

- If circuit breaker has not tripped:

L and R AUDIO .....ALTN

Anticipate the effects of an eventual EMER DC BUS failure, see EMER DC BUS FAULT procedure."

(b) For all airplanes: Within 7 days after October 27, 1995, revise the Normal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 5—Normal Procedures

Insert in front of Sub-section 5.01.01—Take-off

- After engine start, select the Standby Annunciator Panel (SAP) backup mode ON via the BACKUP p/b at the SAP.

- Keep the SAP in the backup mode for the whole duration of flight until engine shutdown.

- Monitor the SAP.

Note: Failure conditions as presented on the SAP bypass the Flight Warning Computer (FWC) are not subject to alert inhibition. Be aware that the red LG light on the SAP will illuminate in case one or both thrustlever(s) are below the minimum take-off position and the landing gear is not down."

(c) For all Model F28 Mark 0070 series airplanes; and Model F28 Mark 0100 series

airplanes, in pre-SBF100-24-009 configuration or in post SBF100-24-030 configuration: Within 7 days after October 27, 1995, revise the Abnormal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

“Section 4—Abnormal Procedures

Add to Sub-section 4.04—Electrical Power

#### ERRATIC ELECTRICAL SYSTEM BEHAVIOR

In case of continuous rattling sound, caused by the fast switching of relays and accompanied by blanking or erratic behavior of the three displays on the electric panel:

BATTERIES—SELECT MOMENTARILY OFF, THEN ON

AFFECTED SYSTEMS—RESTORE IF REQD

If the red AC SUPPLY light on the SAP comes ON:

SAP RED AC SUPPLY LIGHT ‘ON’ PROCEDURE—APPLY”

#### NEW ACTIONS REQUIRED BY THIS AD

(d) For Model F28 Mark 0070 and 0100 series airplanes, as listed in Fokker Service Bulletin SBF100-24-032, dated September 12, 1996: Within 12 months after the effective date of this AD, modify the DC bus transfer system in accordance with Fokker Service Bulletin SBF100-24-032, dated September 12, 1996. Prior to further flight following accomplishment of this modification, accomplish paragraph (e) of this AD.

Note 4: For Fokker Model F28 Mark 0070 series airplanes, Fokker Service Bulletin SBF100-24-032 recommends prior or concurrent accomplishment of the procedures specified in Fokker Service Bulletin SBF100-24-034, dated October 17, 1995, or Revision 1, dated September 12, 1996 (which is currently required by AD 96-26-03, amendment 39-9866).

(e) Revise the Abnormal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

“Section 4—Abnormal Procedures

Sub-section 4.04.05—Electrical Power—Bus Equipment List

Insert a marker  in each Bus Equipment List table, at the top of the column marked: EMERGENCY—DC.

Add the following note at the beginning of the affected sub-section:

Note:  When an “EMER DC BUS” fault is presented on the multi-function display unit (MFDU), check whether the electric panel digital readouts are operative.

- If operative, the EMER DC bus is supplied from the battery chargers via the batteries for 90 minutes and all services connected to this bus will remain available. After this time period, batteries will start to discharge and the effects of an EMER DC BUS fault should then be expected.

- If inoperative, continue with the EMER DC BUS FAULT procedure.

At the bottom of each succeeding page (Bus Equipment List table) of sub-section 4.04.05, make a clear reference to the note marked

located at the beginning of sub-section 4.04.05.”

(f) Accomplishment of the modification in accordance with paragraph (d) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), and (c) of this AD. After the modification has been accomplished, the previously required AFM revision may be removed from the AFM.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 9, 1997.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97-1029 Filed 1-15-97; 8:45 am]

BILLING CODE 4910-13-U

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1210

#### Multi-Purpose Lighters; Advance Notice of Proposed Rulemaking; Request for Comments and Information

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Commission has reason to believe that unreasonable risks of injury and death may be associated with multi-purpose lighters that can be operated by children under age 5. Multi-purpose lighters are butane-fueled lighters with an extended nozzle from which the flame is emitted. These lighters typically are used to light devices such as charcoal and gas grills and fireplaces. The Commission is aware of 53 fires from January 1988 through October 1996 that were started by children under age 5 using multi-purpose lighters. These fires resulted in 10 deaths and 24 injuries. This advance notice of proposed rulemaking

(“ANPR”) initiates a rulemaking proceeding under the authority of the Consumer Product Safety Act (“CPSA”). One result of the proceeding could be the promulgation of a rule mandating performance standards for the child-resistance of the operating mechanism of multi-purpose lighters.

The Commission solicits written comments from interested persons concerning the risks of injury and death associated with multi-purpose lighters, the regulatory alternatives discussed in this notice, other possible means to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risks of injury and death described in this notice.

**DATES:** Written comments and submissions in response to this notice must be received by the Commission by March 17, 1997.

**ADDRESSES:** Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504-0800. Comments should be captioned “ANPR for Multi-Purpose Lighters.”

**FOR FURTHER INFORMATION CONTACT:** Barbara Jacobson, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0477, ext. 1206.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Multi-purpose lighters are butane-filled lighters with an extended nozzle, typically 4 to 8 inches long, from which the flame is emitted. The long nozzle allows the user to reach hard-to-light places and also keeps the user's hand away from the flames. Multi-purpose lighters are usually nonrefillable. The lighters are activated by applying pressure to a trigger or button mechanism, which initiates fuel flow and causes a piezo-electric spark. They are most commonly used to light charcoal or gas grills and fireplaces. The lighters also are used to light campfires, camp stoves, LP gas ranges in recreational vehicles, and pilot lights in household gas appliances. Most multi-purpose lighters now sold include some type of on/off switch. Usually, this is a two-position slider-type switch that

must be in the ON position before the lighter can be activated.

On July 12, 1993, the Commission published a consumer product safety standard that requires disposable and novelty cigarette lighters to have a child-resistant mechanism that makes the lighters difficult for children under 5 years old to operate.<sup>1</sup> 16 CFR 1210. The standard excludes lighters that are primarily intended for igniting materials other than cigarettes, cigars, and pipes. Based on the information currently available to the Commission, multi-purpose lighters are not primarily intended for igniting tobacco, and thus are not subject to the cigarette lighter standard. This conclusion could change if additional information shows use or distribution patterns demonstrating an intent for ignition of tobacco products.

During the development of the cigarette lighter standard, the Commission was not aware of any data indicating that multi-purpose lighters presented an unreasonable risk of injury. The on/off switch currently provided on multi-purpose lighters would not comply with the requirements for child-resistance in the cigarette lighter standard, since it is easy for young children to operate and does not reset to the OFF position automatically after each operation of the ignition mechanism of the lighter. 16 CFR 1210.3(b)(1).

In February 1996, Judy L. Carr petitioned the Commission to "initiate Rulemaking Proceedings to amend 16 CFR 1210 *Safety Standard for Cigarette Lighters* to include the Scripto® Tokai Aim 'n Flame™ disposable butane 'multi-purpose' lighter within the scope of that standard and its child resistant performance requirements." The petitioner provided information about eight incidents associated with the Aim 'n Flame™ lighter. One of the incidents involved the petitioner's child. Information about the other incidents was obtained through discovery in the petitioner's litigation with the product's manufacturer.

The petitioner's 4-year-old daughter was burned over 60 percent of her body when a 6-year-old boy triggered the lighter and ignited her clothing. The petitioner stated that the 6-year-old child was at a 3- to 4-year-old developmental level due to Downs Syndrome. The other seven incidents, all involving the Scripto® Tokai Aim 'n Flame™ lighter, occurred over the 6-year period from 1988 through 1993. In all, the eight incidents resulted in property damage, burn injuries to three

children and one adult, and one death. In an incident where a 4-year-old child died, the fire was started by his 5-year-old brother.

The petitioner alleged that the Aim 'n Flame's™ "gun-like shape and trigger with trigger guard makes it more attractive than a cigarette lighter as a play object." The petitioner highlighted information in four of the incidents provided with the petition that referenced the "gun-like" nature of the lighter. The petitioner also alleged that repeated operation of the trigger will cause the on/off switch to move from the OFF position to the ON position and that the on/off switch is easier to disengage than to engage.

On May 7, 1996 (61 FR 20503), the Commission published a Federal Register document soliciting comments on topics related to issues raised by the petition. The Commission received a total of nine comments, including four from lighter importers and one from the Lighter Association, Inc.

#### B. Incident Data

The Commission's staff searched all relevant CPSC data bases since 1985, when multi-purpose lighters first entered the market, to identify fires started with these lighters by children under 5 years old. These data sources included consumer complaints, newspaper clippings, death certificates, hospital emergency-room-treated injuries, and investigation reports. All incidents involving fires started by children under five that were submitted by the petitioner or by persons commenting on the May 7, 1996, Federal Register document are included in the analysis.

The Commission knows of 53 reported incidents involving fires started with multi-purpose lighters by children under age 5 from January 1988 through October 1996. These fires resulted in 10 deaths and 24 injuries. Although many of the reports did not indicate the amount of property damage, 12 reports cited property damage that exceeded \$50,000. Two additional incidents involved fires started by older children (ages 5 and 6) with Downs Syndrome, a condition that affects mental development. These children, while over 5 years old, might have been protected by a child-resistant lighter.

Children under age 5 typically are incapable of extinguishing a fire, which puts them and their families at special risk of injury. Almost all of the 10 fatalities were the children who started the fires. At least 3 of the 24 injured persons required hospitalization for treatment. One 15-month-old infant was hospitalized for second and third degree

burns over 80 percent of his body, after his 3-year-old brother ignited the playpen in which the infant was sleeping.

Among the 49 fires where the sex of the fire starter was known, 5 were girls and 44 were boys. Many of the children found the multi-purpose lighters in easily accessible locations, such as on kitchen counters or furniture tops. Others, however, obtained the lighters from more inaccessible locations, such as high shelves or cabinets, where parents tried to hide them. Three investigation reports indicated that the children involved (ages 3 and 4) demonstrated that they could operate the on/off switch.

Five or fewer fires from young children using multi-purpose lighters were reported each year from 1988 through 1994. In 1995, however, 11 fires from this cause were reported; these resulted in 3 injuries and 2 deaths. During 1996, through October, 22 such fires have resulted in 15 injuries and 4 deaths. And, there are likely additional fires, deaths, and injuries from this cause, since some multi-purpose lighter fires are reported only as "lighter" fires. In seven incidents, the involvement of a multi-purpose lighter was known only because there was a follow-up investigation.

The apparent increase in the number of fires may be related, in part, to the increase in sales of multi-purpose lighters. As discussed below, there were 1 million of these lighters sold in 1985. Since then sales have risen steadily. Total industry sales for 1995 were estimated at 16 million lighters.

Given the relatively limited number of known incidents, it is not possible to make a national estimate of the total number of fires and casualties at this time.

#### C. Market Information

##### *The Product*

The consumer type of multi-purpose lighter is sold at retail for \$2.50 to \$8 each, with an average retail price of about \$4. Another type of multi-purpose lighter has additional features, such as refillable fuel chambers, flexible extended nozzles, and piezo-electric spark mechanisms powered by replaceable batteries. These lighters retail for about \$40 and are most likely to be used in commercial applications, such as during installation or repair of gas appliances. This lighter may not be a consumer product that would be subject to a mandatory standard.

##### *Manufacturers*

The largest marketer of multi-purpose lighters is Scripto® Tokai, which

<sup>1</sup> 58 FR 37554. The standard became effective July 12, 1994.

imports its lighters from Mexico. The Pinkerton Group Inc. (Cricket® Lighters) imports its lighters from the Philippines. Both of these firms are members of the Lighter Association, Inc., a trade association located in Washington, D.C. About a dozen other firms market multi-purpose lighters under private labels. All of these privately labeled-lighters are produced by two Chinese manufacturers.

#### Sales

Multi-purpose lighters were introduced to the U.S. market in 1985, and about 1 million units were sold in the first year. Since 1985, sales have risen steadily. Scripto® Tokai estimated total industry sales of 16 million units for 1995. Scripto® Tokai and the Lighter Association, Inc., estimated total industry sales in excess of 100 million units since their introduction. These industry sources expect sales of multi-purpose lighters to continue to increase, at the rate of 5–10 percent annually, for the foreseeable future. For 1996, sales are projected at 17 to 18 million.

#### Lighters In Use

The service life of multi-purpose lighters depends on how they are used. Lighters used seasonally for fireplaces or for camping may have useful lives of two years or more. If used in everyday applications, the useful life would be similar to that of disposable butane lighters—i.e., less than one year. Based on an average useful life of one to two years and a linear estimation of sales growth from 1985 forward, there were an estimated 23–36 million multi-purpose lighters available for use at the end of 1995.

#### Product Substitutes

Readily available substitutes for multi-purpose lighters include matches and disposable butane lighters. The closest substitutes are probably long-stem matches, sometimes called fireplace matches. However, fireplace matches are substantially more costly per light than multi-purpose lighters. These matches commonly retail for about \$5 for a box of 50, or 10 cents per light (\$5/50 lights). This compares to an average retail price of \$4 for a multi-purpose lighter, or 0.4 cents per light (\$4/1000 lights). Although disposable butane lighters cost less per light than multi-purpose lighters, at 0.1 cents per light (\$1/1000 lights), they do not have features that allow the user to reach hard-to-light places or keep the user's hand away from the flames.

#### Preliminary Economic Considerations Regarding a Child-Resistant Mechanism

The Commission knows of 11 fires, 3 injuries, and 2 deaths from fires started during 1995 associated with children under age 5 using multi-purpose lighters. These incidents had an estimated societal cost of about \$10.3 million. If there were fires from this cause that are not known to the Commission, the actual societal cost, and the cost per lighter, of these fires would be higher.

It is unlikely that a child-resistant feature would eliminate all fires started by young children with multi-purpose lighters. In practice, some children would likely be able to operate even lighters that have a child-resistant mechanism.

Several factors determine the range of benefits that would result from including a child-resistant feature on multi-purpose lighters. One important factor is the reduction that could be achieved in the ability of young children to start fires by playing with these lighters. This reduction would be based on the expected improvement in the child-resistance of multi-purpose lighters caused by the child-resistant feature. By applying the same methodology the Commission used to estimate the incident reduction for child-resistant cigarette lighters, the Commission preliminarily estimates that requiring a child-resistant feature on multi-purpose lighters would reduce these fire incidents by between 73 and 82 percent.<sup>2</sup>

Another important factor in calculating the benefits per lighter from

<sup>2</sup> An initial estimate of the extent to which non-child-resistant multi-purpose lighters may resist operation by young children can be calculated from tests that were performed with children using non-child-resistant disposable cigarette lighters. That testing showed that 55 percent of children were able to operate non-child-resistant "roll and press" cigarette lighters ("baseline" child-resistance of 45 percent), and 84 percent were able to operate non-child-resistant "push-button" (including piezo-electric) cigarette lighters (baseline child-resistance of 16 percent). Similar tests have not been performed for multi-purpose lighters, but the Commission assumes for present purposes that the results would be within the range of those derived for cigarette lighters.

The minimum percent reduction in fires and resulting deaths and injuries would occur if all lighters just barely passed at the specified pass/fail criteria, which for cigarette lighters is 85 percent. The minimum percent reduction thus is calculated as follows: % reduction = [(% pass/fail criteria) - (% baseline CR)] × 100 ÷ (100 - % baseline CR). Therefore, the estimated injury reduction for push-button lighters would be 82 percent [(85 - 16)(100)/(100 - 16)]. The estimated injury reduction for roll-and-press lighters would be 73 percent [(85 - 45)(100)/(100 - 45)]. In reality, the child-resistance performance of many lighters may be substantially better than the pass/fail criteria. Therefore, the actual injury and death reductions may be significantly greater than estimated.

a child-resistant requirement for multi-purpose lighters is the useful life of such lighters. If multi-purpose lighters have a 1-year useful life, then there were 23 million such lighters in use in 1995. And, each of these 23 million lighters had an expected accident cost of about \$0.45 (\$10.3 million in societal costs ÷ 23 million lighters). If child-resistant multi-purpose lighters are 73 percent effective in reducing incidents, the benefits will be about \$0.33 per lighter (\$0.45 in accident costs × .73). If the lighters are 82 percent effective in reducing incidents, the benefits will be about \$0.37 per lighter (\$0.45 in accident costs × .82).

If these lighters have a 2-year useful life, then there were 36 million multi-purpose lighters in use. And, each lighter had an expected accident cost of about \$0.57 (\$10.3 million ÷ 36 million, for each of 2 years). Under this useful life assumption, the benefits will be about \$0.42 per lighter that is 73 percent effective in reducing incidents (\$0.57 in accident costs × .73), and about \$0.47 per lighter that is 82 percent effective (\$0.57 in accident costs × .82).

Industry sources estimate that a safety device that would comply with the requirements of the cigarette lighter standard could add \$0.20 to \$0.40 to the retail price of a multi-purpose lighter. This relatively high cost is attributed to the difficulty in designing a safety feature that would provide enough fuel to allow ignition at the end of the nozzle.

Thus, the preliminary estimate of the potential benefits, using 1995 data, are \$0.33 to \$0.47 per lighter, compared to the estimated costs, noted above, of \$0.20 to \$0.40 per lighter.

Incomplete data for 1996 show 22 fires, 15 injuries, and 4 deaths, for a societal cost of \$20.5 million, with sales that are projected at 17 to 18 million multi-purpose lighters. Therefore, the range of potentially achievable benefits per lighter based on the reported cases for 1996 through October—using the same methodology as above, including the .73 to .82 range of injury reduction—would be \$0.65 to \$0.93. Additionally, it is likely that national estimates of fires and casualties would be still greater than the number of incidents known for both 1995 and 1996. And, the lighters' child-resistance may be substantially exceed the standard's minimum requirement in many cases. Thus, the potential benefits are likely to be higher than estimated.

The costs per lighter of adding child-resistance to all multi-purpose lighters produced in 1996, however, would be the same as for 1995. The total cost for providing the feature in 1996 would be

only 5 to 10 percent greater than in 1995, reflecting the increase in the number of lighters produced. Thus, using 1996 data, benefits would likely far exceed costs.

#### D. Issues Raised by the Petitioner

1. *Issue: Manufacturer's Information.* The petitioner stated that Scripto® Tokai Corporation possessed critical fire and injury data concerning multi-purpose lighters that would have been useful to the Commission during development of the Safety Standard for Cigarette Lighters.

*Response:* Based on summary information submitted by the petitioner, Scripto® Tokai was aware of four fires started by young children with Aim 'n Flame™ lighters prior to publication of the Safety Standard for Cigarette Lighters on July 12, 1993. Two of these fires resulted in burn injuries, and two resulted in property damage. None of the incidents involved a death. The fact that Scripto® Tokai did not communicate information on these incidents to the Commission at that time did not affect the Commission's decision to grant Ms. Carr's petition for multi-purpose lighters.

2. *Issue: "Gun-Like" Shape.* The petitioner stated that the Aim 'n Flame's™ "'gun-like' shape and trigger with trigger guard makes it more attractive than a cigarette lighter as a play object." The petitioner highlights information in four of the incidents provided with the petition that reference the "gun-like" nature of the lighter.

*Response.* The Commission's human factors experts believe that, for some children, the combination of the "toy-like" shape of multi-purpose lighters and the size of the flame could enhance the attractiveness of these lighters over ordinary cigarette lighters or matches.

The appeal and attractiveness of the Aim 'n Flame™ and other multi-purpose lighters to children is based, in part, on the lighters' toy-like appearance. Available incident data indicate some children were first attracted to the product because of its shape. In one incident, a 3-year-old boy saw the lighter on a basement workbench and thought it was a toy gun. His mother reported the child called it a "trigger gun."

In addition to the shape, the flame of multi-purpose lighters is also an attractive feature to children. Children's curiosity about fire is a normal stage in their development. Fire appeals to young children because it is bright, warm, and exciting. In the case of multi-purpose lighters, the flame produced is larger than those of ordinary cigarette

lighters. This may heighten the multi-purpose lighter's appeal to children.

Thus, all multi-purpose lighters produce a flame that appeals to children. Furthermore, multi-purpose lighters other than the particular model addressed by the petitioner have been involved in fire incidents. Accordingly, this rulemaking applies to all multi-purpose lighters.

3. *Comment: On/off switch.* The petitioner stated that Scripto® Tokai has not notified the Commission under Section 15(b) of the Consumer Product Safety Act ("CPSA") that the Aim 'n Flame™ contains a defect that could create a substantial product hazard. The petitioner alleged that repeated operation of the trigger will cause the on/off switch to move from the OFF position to the ON position and that the on/off switch is easier to disengage than to engage.

*Response:* The issue of whether the Aim 'n Flame™ contains a defect because of these aspects of the on/off switch will be considered as a separate matter by the Commission's Office of Compliance.

#### E. Comments Received in Response to the May 7, 1996, Federal Register Document

The Commission received nine comments in response to the May 7, 1996, Federal Register document. Commenters included: lighter importers Scripto® Tokai, Pinkerton Group Inc. (Cricket®), Colibri Corporation, and Calico Brands, Inc.; the Lighter Association, Inc.; Vinson & Elkins, the petitioner's attorneys; Ms. Diane L. Denton, the petitioner for the cigarette lighter standard; Mr. Davis S. Carson, an attorney; and Dr. John O. Geremia, a lighter expert. Copies of the comments are available upon request from the Office of the Secretary.

Scripto® Tokai and Cricket®, both members of the Lighter Association, Inc., currently import multi-purpose lighters. Mr. Carson, Ms. Denton, and Calico Brands, Inc., wrote in support of including multi-purpose lighters in the current standard. The Commission's responses to the particular comments are given below.

1. *Comment: Incidents Limited to One Product.* The Pinkerton Group, Inc., commented that the incidents appear to be limited to one particular product on the market and questioned whether a rulemaking proceeding for all multi-purpose lighters was warranted.

*Response:* One manufacturer, who represents approximately 90 percent of U.S. sales, accounted for 20 of the 25 fires in which the product was identified. The other 5 fires were

associated with other manufacturers' lighters, establishing that the incidents are not limited to one product alone.

2. *Comment: Risk Associated with Multi-Purpose Lighters.* Scripto® Tokai and the Lighter Association, Inc., commented that there are very few fire incidents involving multi-purpose lighters relative to the number of units sold, and that these lighters present an extremely low risk compared to other open flame products.

*Response:* At this time, fire data involving multi-purpose lighters are obtained from sources that cannot be used to calculate a national estimate of the fire hazard or the per-unit risk associated with multi-purpose lighters. Even if the per-unit risk was identical for lighters, matches, and multi-purpose lighters, however, there would be many times more fires with matches and lighters, solely because of the larger number of these products in use. Yet, it appears that there may be a reasonable cost-effective standard for multi-purpose lighters that can reduce the risk from these products.

The relative risks of open-flame devices are discussed in the response to the next comment.

3. *Comment: Consumers Will Switch to More Dangerous Matches.* Scripto® Tokai states:

some consumers are switching to less safe means of lighting tobacco products, such as matches. \* \* \* [T]he number of fires started by children using matches has not declined and in fact may have even increased since the adoption of 16 CFR, Part 1210 [the Safety Standard for Cigarette Lighters]. \* \* \* More fires are started each year by children playing with matches than with any other source.

The Lighter Association, Inc. states, "[t]he difficulty in using child-resistant multi-purpose lighters may cause some users to move to long stem matches."

*Response:* Current data do not support the claim that more fires are started each year by children with matches than with any other source. In both 1993 and 1994, about the same number of child-play fires involved matches and lighters. In 1994, the most recent year for which fire data are available, matches were involved in an estimated 9,100 child-play fires, compared to 10,600 for lighters.

Because matches are not child-resistant, there is no reason to expect the number of child-play match fires to be declining. And, the Commission is not aware of any data that indicate that child-play fires have increased. As discussed in more detail below, the available data (through 1994) do not allow a determination of whether the number of child-play match fires has increased since the effective date of the

Safety Standard for Cigarette Lighters—  
July 14, 1994.

The commenters did not provide any supporting evidence that consumers are switching from child-resistant lighters to matches. Additionally, non-child-resistant cigarette lighters present a greater risk than matches. A CPSC study conducted in the late 1980's used the number of lighters in accessible locations and the number of boxes or books of matches in such locations as a measure of exposure to the products. The study found that, using this measure of exposure, lighters were 1.4 times as likely as matches to be involved in a child-play fire, 3.3 times as likely to be involved in a child-play death, and 3.9 times as likely to be involved in a child-play injury.

The Commission is finding that recently introduced child-resistant lighters are easier for adults to use than some of those sold when the rule first took effect. Based on this experience, the Commission believes that child-resistant mechanisms for multi-purpose lighters can be designed that are easy for most consumers to use. In addition, matches are a less convenient and more expensive source of flame. Accordingly, it is unlikely that many consumers would move from child-resistant multi-purpose lighters to long-stem matches.

4. *Comment:* Requiring Multi-Purpose Lighters To Be Child-Resistant May Create Other Hazards. Scripto® Tokai and the Lighter Association, Inc., commented that the automatic reset mechanism required for child-resistant cigarette lighters could be unsafe for multi-purpose lighters. The piezo-electric technology used in most multi-purpose lighters is not completely reliable in producing a flame each time it is activated. These commenters contend that the need to operate the child-resistant mechanism after each actuation could further delay ignition and increase the potential for mini-explosion or flashback fire from accumulated pressurized gas.

*Response:* The failure of piezo-electric mechanisms to light after each activation creates a potential for "mini explosion" or "flashback fire" under certain conditions. The probability and severity of this type of reaction depends on a number of variables, including whether the user turns the gas appliance on before obtaining a flame from the lighter (which seems unnecessary in any event), the length of time the gas flows, and the air circulation in the area where the gas is to be ignited. The addition of a properly designed child-resistant feature should not add significantly to the delay already inherent in the device. If the Commission decides to develop a

rule to require multi-purpose lighters to be child-resistant, this issue will be carefully evaluated.

5. *Comment:* Easy Operability of Multi-Purpose Lighters by Children. Diane Denton, who in April 1985 petitioned for the current standard on cigarette lighters, stated that multi-purpose lighters are easier to operate than small, more common lighters.

*Response:* While there are no comparison data on the ease of operability between these types of lighters, available incident reports show how easy it is for young children to operate multi-purpose lighters, most of which have a piezo-electric mechanism. After one fire, a mother found that both of her children, ages 2 and 4, could operate the lighter with little difficulty. In another incident, fire investigators asked a 3-year-old to demonstrate how he used the lighter. The child switched the ON/OFF switch to ON and pulled the trigger with one hand. The father said the ON/OFF switch was similar to that on some of his son's toys and the trigger pull action was similar to that of toy guns.

Also, among various types of non-child-resistant lighters tested during the development of the cigarette lighter standard, the piezo-electric mechanism was the easiest to operate. Forty-six out of 50 (92 percent) of the children on a test panel were able to operate the lighter. Multi-purpose lighters can easily be operated by children with one hand, while two hands are required for children to operate most disposable non-child-resistant lighters.

6. *Comment:* Accessibility of Multi-Purpose Lighters to Children. Scripto® Tokai claims that multi-purpose lighters are less accessible to children than disposable lighters and therefore, do not present a similar risk. According to Scripto® Tokai, multi-purpose lighters "are typically stored away in the same manner as tools or implements" and "are not carried in a pants or shirt pocket, or in a purse." In addition, Scripto® Tokai claims that multi-purpose lighters cost more than disposable lighters, and thus are "less likely to be left laying around."

*Response:* In the available reports of fire incidents, children found the multi-purpose lighters in a variety of locations, some easily accessible and others less accessible. Multi-purpose lighters are sometimes stored in accessible locations convenient to their use. For example, a 2-year-old boy was burned with a multi-purpose lighter that he took off a hook near a fireplace in his grandmother's home.

Storing multi-purpose lighters in the same manner as tools does not

necessarily make them inaccessible to children. In one incident, a 3-year-old boy took a multi-purpose lighter out of a relative's tool box and hid it in his toy box. Two weeks later he started a fire with the lighter in the family's living room. Children started fires with lighters that they retrieved from kitchen cabinets, the top of microwave ovens, a 6-foot-high cabinet, a garage shelf, a bathroom medicine chest, a bookcase, a bedroom dresser, a basement workbench, and the top of a water heater in a utility closet.

In addition, these devices are not necessarily "less likely to be left laying around" based on cost, as they are fairly inexpensive. In fact, in some of the incidents, the lighters were obtained free as part of a cigarette promotion. Further, since these lighters are not commonly carried in a pocket or purse, they are likely to be in their normal storage locations, some of which, as noted above, are accessible to children.

7. *Comment:* "False Sense of Security." The Lighter Association, Inc., commented that "there is always the possibility that parents and caretakers will be more careless with child-resistant lighters, erroneously thinking them child-proof." Similarly, Scripto® Tokai stated that child-resistant lighters "are viewed frequently as 'childproof' leading parents to a false sense of security."

*Response:* It is not likely that the issue of a "false sense of security" will prevent the expected reduction of child-play fires started with multi-purpose lighters. As detailed above, multi-purpose lighters are currently stored in accessible locations convenient to their use. Even when they are stored out of reach, in locations considered inaccessible, children seek them out.

The same argument about a "false sense of security" could be applied to child-resistant packaging used for drugs and household chemicals. However, an article published in the June 5, 1996, Journal of the American Medical Association, "The Safety Effects of Child-Resistant Packaging for Oral Prescription Drugs," demonstrates that child-resistant packaging has reduced childhood poisoning from oral prescription drugs for children under age 5 by about 45 percent since 1974, the year oral prescription drugs became subject to the child-resistant packaging requirements.

8. *Comment:* Education and Supervision. Scripto® Tokai commented that education and supervision are the "first line of defense" in lighter-related fires. They stated that parents must be "repeatedly reminded to keep fire sources out of the

reach of children, and never leave small children unsupervised." Scripto® Tokai further said warnings and labels must be used "to adequately inform consumers of applicable hazards." They claim that the Commission has ignored educational efforts and has narrowly focused on product design.

Colibri Corporation recommended that the Commission review educational materials on multi-purpose lighters.

Calico Brands, Inc., stated that they always place a label on their lighters and lighter packaging warning parents "to keep lighters out of the reach of children." However, they also acknowledge that they are aware the warning is not "foolproof" and that child-resistance is also necessary "to further protect the safety of our children."

The Lighter Association, Inc., stated that "ultimately the issue of fire safety is an issue of parental supervision." The Association recommended that the Commission consider whether this issue could be dealt with through educational efforts.

*Response:* Educational efforts, warning labels, and supervision are important. But, they are not the sole solution to the problem of child-play fires started with multi-purpose lighters. If a product can be designed at reasonable cost to address a hazard, that is the most effective approach.

Available information indicates that even when consumers were aware of the danger of these lighters and took precautions to keep them out of reach, children still managed to access the lighters. In some instances, it appeared that the lighter was normally stored in a relatively inaccessible space, but was not returned there after its latest use. This is a foreseeable scenario, since people can be expected to be forgetful.

Many children under age 5 are old enough to engage in play activities without being in the same room as a parent or guardian. At the time of the known incidents, the children were under reasonable levels of adult supervision. Fires were started while parents or guardians were in the house. One mother was downstairs fixing lunch at the time of the incident. In other cases, children started fires while a parent was showering or sleeping. These are also foreseeable scenarios, since people cannot be expected to stay in the same room as their children every moment of the day.

9. *Comment:* Safety Standard for Cigarette Lighters. A number of comments were received about how the Safety Standard for Cigarette Lighters might relate to a rulemaking proceeding

for multi-purpose lighters. These comments are discussed below.

a. Effectiveness of the current cigarette lighter standard. The Lighter Association, Inc., states that it is not aware of any data available for 1994 or 1995 to demonstrate the effectiveness of the current standard.

*Response:* The most recent year for which complete fire data are available is 1994. However, since the current standard became effective July 12, 1994—as to lighters manufactured in or imported into the United States on or after that date—non-child-resistant lighters remained in the channels of distribution throughout 1994 and 1995. The full effect of the cigarette lighter standard will not be achieved until the non-child-resistant cigarette lighters made before July 12, 1994, are no longer in use. It will not be possible to fully evaluate the standard's effectiveness until the previously produced non-child-resistant lighters are used up and fire data for a period after then are available.

However, based on tests of non-child-resistant and child-resistant cigarette lighters, the Commission estimates the cigarette lighter standard will eliminate 80 to 105 (53 to 70 percent) of the 150 deaths each year resulting from young children playing with cigarette lighters. The rationale for the cigarette lighter standard appears to also support a child-resistant requirement for multi-purpose lighters. The Commission believes it would not be in the public interest to delay an examination of the need for a standard for multi-purpose lighters until the effectiveness of the cigarette lighter standard can be fully evaluated. Such a delay would allow the deaths and injuries associated with child-play with this product to continue unabated.

b. Consumer resistance to the current standard. The Lighter Association, Inc., commented that there is strong adverse consumer reaction to cigarette lighters that comply with the current child-resistance standard. Since the standard went into effect on July 12, 1994, member companies have received tens of thousands of letters complaining about how difficult it is to operate the new child-resistant lighters.

Scripto® Tokai commented that child-resistant lighters generated daily letters and phone calls from puzzled and upset consumers expressing their frustration and resistance to the inconvenience. According to the commenter, senior citizens and people with disabilities, such as arthritis, found the new lighters difficult to operate. Consumers without children complained there is no choice. Some consumers even found ways to

disarm the lighters' child-resistant mechanisms.

*Response:* When the Safety Standard for Cigarette Lighters went into effect, some consumers wrote to CPSC expressing dissatisfaction and some manufacturers reported receiving complaints from consumers. This is similar to the initial reaction to the requirement for child-resistant packaging of prescription drugs under the Poison Prevention Packaging Act in the early 1970's. It appears that consumer dissatisfaction with child-resistant cigarette lighters has lessened substantially, since the Commission now rarely receives complaint letters.

Additionally, child-resistant mechanisms have been evolving during the period the standard has been in effect. Originally, most of the lighters used some type of lock that could be disabled by moving a lever so that the lighter could then be actuated. These designs were sometimes cumbersome and, for some people, may have required the use of two hands. While some of these lighters are still on the market, the trend now is toward more subtle movements to overcome the child-resistant mechanism, such as pressure on the flint wheel or pressing a button to disable the lock. The Commission expects consumer resistance to be minimized by these new lighters, which are easy for adults to operate but are still highly child resistant.

c. Products designed to defeat the child-resistant features of cigarette lighters. The Lighter Association, Inc., Scripto® Tokai, and Colibri Corporation discussed products that have been marketed that are designed to override the child-resistant features of cigarette lighters. The Association provided a copy of a patent for such a product issued to two inventors in Cottonwood, Arizona. Scripto® Tokai stated that CPSC failed to take action against a particular device that is marketed for overriding the child-resistant features of cigarette lighters.

*Response:* Although the marketing of tools designed to override the child-resistant features of disposable lighters does not violate any Commission regulation, the Commission has requested the manufacturer of the device referred to by Scripto® Tokai to discontinue its marketing of the device. Increased consumer satisfaction with child-resistant lighters as the designs become easier to operate should drastically reduce if not eliminate the market for such products.

d. CPSC enforcement of the cigarette lighter standard. Without giving details, the Lighter Association, Inc., and

Scripto® Tokai alleged that there were a number of violations of the stockpiling rule in the current cigarette lighter standard.<sup>3</sup> They believe that Chinese importers as a group brought in over 100 million non-child-resistant lighters above the permissible stockpiling limit. These commenters further claim that there are stores still stocking (and restocking) non-child-resistant lighters.

The Lighter Association, Inc., stated that some distributors apparently are buying child-resistant lighters, opening the master cartons, disengaging the child-resistant features, repacking the lighters, and selling the cartons at a substantial premium. Association members believe that some importers are fraudulently bringing in non-child-resistant lighters as child-resistant lighters using "contrived" testing or other ruses.

The Lighter Association, Inc., and Scripto® Tokai request tightening of the stockpiling requirements and stringent enforcement of any new rule relating to multi-purpose lighters.

*Response:* The Commission has aggressively enforced the requirements of both the safety standard and the anti-stockpiling provisions. In cooperating with the U.S. Customs Service, the Commission has prevented the importation of millions of non-child-resistant lighters. The Commission will continue to vigorously enforce the standards and to investigate any specific reports of possible noncompliance brought to its attention.

e. *Comment:* Recommendations for requirements for multi-purpose lighters. Scripto® Tokai stated that the lessons learned from the disposable cigarette lighter experience must be applied to any effort to regulate new products. This company makes the following recommendations if such a standard is undertaken:

- The standard should include all multi-purpose lighters, whether disposable or refillable, long or short, expensive or inexpensive, or novelty or otherwise.
- Acceptable child-resistant mechanisms should be clearly defined.
- All importers should be required to submit base period and monthly reports

<sup>3</sup>Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of a consumer product safety rule and its effective date at a specified rate that is significantly greater than the rate at which such product was produced or imported during a specified base period before the promulgation of the consumer product safety rule. A stockpiling rule was issued as part of the Safety Standard for Cigarette Lighters. 16 CFR Part 1210, Subpart C.

to CPSC on importation of both child-resistant and non-child-resistant lighters, including specific manufacturing source information.

- Actions should be taken to insure that importers do not circumvent the stockpiling rules, including working closely with the United States Customs Service and through diplomatic channels.

- Enforcement measures should be applied evenly.

Dr. Geremia questioned the validity of allowing the industry to conduct its own certification tests.<sup>4</sup> He suggested that testing be conducted by CPSC or an independent organization not paid directly by the importers.

Dr. Geremia also recommends that lighters identify the manufacturer's name and address and have a date code.

*Response:* The Commission does strive to evenly enforce all of its regulations, and routinely works with the U.S. Customs Service as well as other government agencies.

The Safety Standard for Cigarette Lighters requires manufacturers to certify compliance through a reasonable testing program which includes (1) qualification tests on surrogates (non-flame-producing versions) of each model of lighter produced, (2) development of a specification of the characteristics of the surrogates found to meet the child-resistance requirements, and (3) tests performed of lighters from production to demonstrate that they continue to meet the original specifications.

The Commission expects companies to be able to demonstrate that they have a reasonable testing program that evaluates whether their lighters are in compliance. It does not appear that the Commission has express authority to require that certification tests be performed by non-industry testers, particularly absent evidence that industry testing is inadequate. However, the Commission may conduct its own tests and take action against any product that does not comply. The Commission conducts tests using an independent testing organization where appropriate.

Other suggestions specific to an amendment involving multi-purpose lighters will be considered if the Commission proceeds to develop a proposed rule for multi-purpose lighters.

f. Designs for child-resistant features for multi-purpose lighters. Dr. Geremia commented that the following child-resistant designs should be considered:

(i) A trigger guard similar to those used on firearms, except it would remain attached to the unit in some way.

(ii) A design which requires the burner nozzle and handle to be pushed toward each other and then twisted in order for gas to flow.

(iii) A false trigger in the present location, with the real trigger hidden at the base of the handle.

*Response:* Suggestions specific to child-resistant designs for multi-purpose lighters will be considered if the Commission decides to develop a proposed rule for multi-purpose lighters. It should be noted, however, that the Safety Standard for Cigarette Lighters does not specify product designs. Any design that meets the performance requirements of the testing protocol is acceptable. This allows industry greater flexibility and provides for market-driven solutions.

#### F. Existing Standards

Multi-purpose lighters are subject to the labeling requirements of section 2(p) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 (p), because they contain a hazardous substance that is intended or packaged in a form suitable for use in the household. The required statements include: "DANGER—EXTREMELY FLAMMABLE" "CONTENTS UNDER PRESSURE" "Keep out of the reach of children."

The only other existing mandatory standard that the Commission is aware of that may be relevant to this proceeding is the Safety Standard for Cigarette Lighters, which does not apply to lighters not primarily intended for lighting tobacco products. 16 CFR 1210.

#### G. Statutory Authority for This Proceeding

Three of the statutes administered by the Commission have at least some apparent relevance to the risk posed by non-child-resistant multi-purpose lighters. These are the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051–2084; the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471–1476; and the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1278. In issuing its standard for cigarette lighters, the Commission decided to use the authority of the CPSA. A full explanation of the Commission's reasons for that decision was published in the Federal Register on July 12, 1993. 58 FR 37554. See also 58 FR 37557 (July 12, 1993). For the reasons stated in those notices, the Commission expects that any rule regarding the child-resistance of multi-

<sup>4</sup>See the explanation of certification in the discussion of the CPSA in Section G of this document, "Statutory Authority."

purpose lighters also would be issued under the CPSA.

Before adopting a CPSA standard, the Commission first must issue an ANPR as provided in section 9(a) of the CPSA, 15 U.S.C. 2058(a). If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must then publish the text of the proposed rule, along with a preliminary regulatory analysis, in accordance with section 9(c) of the CPSA, 15 U.S.C. 2058(c). If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in section 9(f)(2) of the CPSA, 15 U.S.C. 2058(f)(2). And before issuing a final regulation, the Commission must make certain statutory findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. CPSC, section 9(f)(3), 15 U.S.C. 2058(f)(3).

#### H. Regulatory Alternatives Under Consideration

The Commission is considering alternatives to reduce the number of injuries and deaths associated with multi-purpose lighters. In addition to possible performance standards similar to those adopted for cigarette lighters, the potential for labeling requirements and information and education campaigns to reduce the risk will be considered. It is also possible that a voluntary standard could be developed that would adequately reduce the risk of child-play fires associated with this product. These alternatives are discussed below.

##### 1. Performance Standard

The Commission will consider issuing a mandatory performance standard for multi-purpose lighters similar to that for cigarette lighters.

##### 2. Labeling

Labeling to warn of the risk of child-play fires from multi-purpose lighters could be required, either instead of or in addition to a mandatory performance standard.

##### 3. Voluntary Standards

The Commission is not aware of any voluntary standards in effect that apply to the risk of children starting fires that is associated with this product. However, if such standards are developed and implemented, the Commission would take this into account in deciding whether a mandatory standard is necessary.

#### I. Solicitation of Information and Comments

This ANPR is the first step of a proceeding which could result in a mandatory performance or labeling standard for multi-purpose lighters to address the risk that young children will use these lighters to start fires. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. The types and numbers of multi-purpose lighters produced annually for sale in the U.S. from 1985 to the present;
2. The names and addresses of manufacturers and distributors of the product;
3. The number of persons injured or killed in fires started by children under the age of 5 years using multi-purpose lighters;
4. The circumstances under which these injuries and deaths occur, including the ages of the children who started the fires, the ages of the victims, the locations from which the children obtained the lighters, and physical descriptions of the products involved (including identification of the manufacturers and models, if available);
5. An explanation of designs that could be adapted to multi-purpose lighters to increase their child-resistance;
6. Characteristics of the product that could or should not be used to define which products might be subject to the requested rule;
7. Other information on the potential costs and benefits of the requested rule;
8. Steps that have been taken by industry or others to reduce the risk of injuries from the product;
9. The likelihood and nature of any significant economic impact on small entities;
10. The extent to which consumers turn on the gas flow to appliances before lighting a lighter or match to ignite the appliance;
11. The likely effects on fire incidents and on the multi-purpose lighter market of possible design changes to multi-purpose lighters;
12. The results of any tests on the child-resistance of multi-purpose lighters, whether or not the lighter has features intended to increase child-resistance;
13. The reasons why multi-purpose lighters sometimes require repeated actuations in order to light, and ways the performance of the lighters could be improved in this regard;
14. Designs of child-resistant lighters that would allow repeated actuations of

the lighter without substantially delaying ignition compared to non-child-resistant lighters; and

15. The costs and benefits of mandating a labeling requirement.

Also, in accordance with section 9(a) of the CPSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

2. Any existing standard or portion of a standard which could be issued as a proposed regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-0800. All comments and submissions should be received no later than March 17, 1997.

Dated: January 13, 1997.

Sayde E. Dunn,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 97-1110 Filed 1-15-97; 8:45 am]

BILLING CODE 6355-01-P

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

#### Proposed Rulemaking Concerning Contract Market Rule Review Procedures

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rulemaking; extension of comment period.

**SUMMARY:** On December 17, 1996, the Commodity Futures Trading Commission ("Commission") published in the Federal Register a proposed rulemaking that would amend the Commission's procedures for reviewing contract market rules that do not relate to contract terms and conditions (61 FR 66241). The proposal would shorten the Commission's time frame for reviewing complex rules and streamline the review process so that rule changes generally could be deemed approved or be permitted to be put into effect without Commission approval. The comment period for the proposed

rulemaking is scheduled to end on January 16, 1997. The Commission has determined, in this instance, to extend the comment period.

**DATES:** Comments on the proposed rulemaking must be received by January 31, 1997.

**ADDRESSES:** Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; transmitted by facsimile to (202) 418-5521; or transmitted electronically to [secretary@cftc.gov].

**FOR FURTHER INFORMATION CONTACT:** David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5490.

**SUPPLEMENTARY INFORMATION:** The Futures Industry Association ("FIA") has filed a petition requesting an extension of time to submit comments on the Commission's proposed rulemaking concerning the review of non-term and condition contract market rule changes. FIA requested a thirty-day extension of the comment period for the proposed rulemaking that currently is scheduled to close on January 16, 1997. FIA stated that it was requesting an extension of the comment period in order to ensure that its members had sufficient opportunity to consider the proposed rulemaking and to prepare any appropriate comment.

The Commission has determined to extend the comment period for the proposed rulemaking by fifteen days until January 31, 1997. The Commission believes that such an extension of the comment period should permit FIA, FIA's members and any other interested parties to evaluate fully the Commission's proposed rulemaking and to submit their comments to the Commission, while also allowing the Commission to deal with this rulemaking in an expeditious manner.

Issued in Washington, D.C. on January 9, 1997, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 97-1027 Filed 1-15-97; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-252665-96]

RIN 1545-AU82

#### Intangibles Under Sections 1060 and 338

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the Federal Register, the IRS amends the temporary regulations under sections 1060 and 338(b) of the Internal Revenue Code (Code) relating to purchase price allocations in taxable asset acquisitions and deemed asset purchases. The amendments revise the treatment of intangible assets in such acquisitions to take into account the enactment of section 197 by the Omnibus Budget Reconciliation Act of 1993. The regulations provide guidance to parties to taxable asset acquisitions and to deemed asset purchases resulting from elections under section 338. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments must be received by April 16, 1997. Outlines of topics to be discussed at the public hearing scheduled for Thursday, May 22, 1997, at 10 a.m. must be received by May 1, 1997.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG 252665-96), 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 (REG 252665-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Taxpayers may also submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Brendan O'Hara at (202) 622-7530; concerning submissions and the hearing, Michael Slaughter, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The temporary and final regulations published in the Rules and Regulations section of this issue of the Federal Register amend the current temporary regulations under sections 1060 (§ 1.1060-1T) and 338(b) (§§ 1.338(b)-2T and 1.338(b)-3T), and related examples in the final regulations under section 338 (§ 1.338-3), concerning the treatment of acquired intangible assets.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary and final regulations explains the reasons for the amendments.

The amendments only address the effect of the enactment of section 197. The IRS and Treasury also intend to study other aspects of the current regulations under sections 1060 and 338(b). The current regulations have been the subject of public comments. The IRS and Treasury welcome further comments on all issues raised by the current regulations concerning purchase price allocation under sections 338(b) and 1060.

##### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

##### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 22, 1997, at 10 a.m. in the Commissioner's Conference

Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by April 16, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic by May 1, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Brendan P. O'Hara, Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.338(b)-2 is added to read as follows:

#### § 1.338(b)-2 Allocation of adjusted grossed-up basis among target assets.

[The text of this section is the same as the text of the amendments to § 1.338(b)-2T published elsewhere in this issue of the Federal Register].

Par. 3. Section 1.338(b)-3 is added to read as follows:

#### § 1.338(b)-3 Subsequent adjustments to adjusted grossed-up basis.

[The text of this section is the same as the text of the amendments to § 1.338(b)-3T published elsewhere in this issue of the Federal Register].

Par. 4. Section 1.1060-1 is added to read as follows:

#### § 1.1060-1 Special allocation rules for certain asset acquisitions.

[The text of this section is the same as the text of the amendments to § 1.1060-1T published elsewhere in this issue of the Federal Register].

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

[FR Doc. 97-655 Filed 1-9-97; 2:53 pm]

BILLING CODE 4830-01-U

### 26 CFR Part 1

[REG-209709-94]

RIN 1545-AS77

#### Amortization of Intangible Property

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the amortization of certain intangible property. The proposed regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), and affect taxpayers who acquired intangible property after August 10, 1993, or made a retroactive election to apply OBRA '93 to intangibles acquired after July 25, 1991. This document also provides notice of a public hearing on the proposed regulations.

**DATES:** Comments must be received by April 16, 1997. Requests to appear and outlines of oral comments to be presented at the public hearing scheduled for May 15, 1997, must be received by April 24, 1997.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG-209709-94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209709-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the Tax Regs option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in the Commissioner's Conference Room (Room 3313), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, John

Huffman at (202) 622-3110; concerning submissions and the hearing, Michael Slaughter at (202) 622-8452 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed regulations under sections 167(f) and 197. These provisions were added to the Internal Revenue Code of 1986 (the Code) by section 13261 of OBRA '93, and apply to intangible property acquired after August 10, 1993 (or after July 25, 1991, if a valid retroactive election to apply OBRA '93 to intangibles has been made pursuant to § 1.197-1T).

The proposed regulations provide definitions and rules for amortization of intangible property subject to sections 197 and 167(f). On June 24, 1994, the IRS published Announcement 94-92 (1994-28 I.R.B. 139) in the Federal Register (59 FR 32670) inviting comments under section 197 relating to the amortization of goodwill and certain other intangibles that should be addressed in proposed regulations. The IRS has reviewed these comments and has addressed certain issues raised in the comments in the proposed regulations. However, because these comments were received in anticipation of the issuance of these proposed regulations, and because these regulations are subject to further comment and a public hearing, no attempt has been made to describe all of the principal comments that are not reflected in these regulations or the reasons therefor.

#### Explanation of Provisions

##### 1. General Overview

Sections 167(f) and 197 provide comprehensive rules for the depreciation and amortization of many intangible assets. Intangible assets subject to section 197 are broadly defined to include most intangible assets acquired in connection with the acquisition of a trade or business and certain other separately acquired intangible assets. The adjusted basis of an amortizable section 197 intangible must be amortized over a 15-year period. Certain other intangible assets are excluded from section 197 for various reasons. In some cases, such as stock and partnership interests, the asset is property of a character that is not subject to an allowance for depreciation because it represents a permanent investment that can only be recovered through disposition of the asset (including worthlessness). In other cases, such as computer software,

purchased mortgage servicing rights, service and supply contracts, and certain other contracts or rights with a fixed duration, other cost recovery methods were prescribed by the OBRA '93 amendments. In still other cases, such as motion picture films, television series, books, and sound recordings, other cost recovery methods that were in effect prior to OBRA '93 are more appropriate under the circumstances. Section 167(f) provides alternative methods of depreciation for certain of the intangibles excluded from the application of section 197.

The proposed regulations provide guidance for certain intangible property subject to sections 167(f) and 197. The section 167(f) proposed regulations provide rules for intangible property subject to the allowance for depreciation under section 167 and specifically excluded from section 197. These intangible assets include certain computer software, rights to receive tangible property or services, rights of fixed duration, patents, copyrights, and mortgage servicing rights. These proposed regulations reserve guidance on the method of depreciating the cost of separately acquired rights to receive tangible property or services where the amount of the property or services to be received is not specified. The IRS invites comments on possible methods of depreciation in these cases.

Because section 197 provides a method of amortization and, except in the case of certain covenants not to compete, governmental licenses, permits and other rights, and contracts for the use of section 197 intangibles, does not alter the rules for determining the basis of an asset, section 197 generally does not apply to amounts that would otherwise be deductible. For example, section 197 does not generally apply to the costs of advertising because, in most cases, these costs are deductible under other provisions of the Code. See Rev. Rul. 92-80 (1992-2 C.B. 57). In addition, section 197 does not apply to costs that would not, under general principles of Federal income tax law, be included in the basis of a section 197 intangible. For example, if a taxpayer borrows money to purchase the assets of a trade or business (including amortizable section 197 intangibles) and incurs fees in connection with the loan, these costs are generally amortized over the term of the loan rather than under the rules of sections 167(f) and 197. As a further example, if the amortizable section 197 intangibles acquired in the transaction include a favorable supply contract, the amortizable basis in the contract does not include amounts

required to be paid for goods to be received pursuant to the contract.

In addition, section 197 does not apply to any amount for which a deduction would be disallowed under other provisions of the Code, such as section 162(k) (relating to amounts paid or incurred by a corporation in connection with the acquisition of its stock or the stock of a related person).

No inference should be drawn from any provision in the proposed regulations concerning the classification of any section 197 intangible as property, or whether any section 197 intangible is treated as tangible or intangible property, for other purposes of the Code. Furthermore, no inference should be drawn from any provision in the proposed regulations regarding (a) whether any section 197 intangible that is not an amortizable section 197 intangible may be amortized or depreciated under any provision of the Code other than section 197, or (b) the proper method for determining any allowance therefor. Finally, no inference should be drawn from any provision in the proposed regulations concerning whether any section 197 intangible (or any interest therein) has been purchased, leased, or licensed for Federal income tax purposes.

## 2. Section 197 Intangibles

The proposed regulations define section 197 intangibles (subject to certain exceptions) as goodwill, going concern value, workforce in place, information base, know-how, customer- and supplier-based intangibles, governmental licenses and permits, covenants not to compete and other similar arrangements, franchises, trademarks, trade names, and contracts for the use of the foregoing assets.

### A. Covenants Not to Compete

Some commentators in response to Announcement 94-92 suggested that a covenant not to compete relating to the redemption of stock or a partnership interest from a departing stockholder or partner should be excluded from section 197 because this situation does not involve the acquisition of a trade or business. The legislative history provides, however, that section 197 applies to a covenant not to compete acquired with the assets of a trade or business, the stock in a corporation, or an interest in a partnership engaged in a trade or business. Consequently, the proposed regulations do not provide for this exception. In this regard, the proposed regulations provide that for purposes of section 197(f)(1)(B), the disposition or cancellation of redeemed stock of a corporation will not cause the covenant to be written off faster than

over the 15-year amortization period provided for under section 197 (in the case of a covenant to which section 162(k) does not apply).

### B. Contracts for the Use of Section 197 Intangibles

Some commentators also requested guidance on the extent to which contracts for the use of section 197 intangibles would be subject to section 197, in some cases suggesting that an intangible was not subject to section 197 unless the taxpayer obtained ownership of property for Federal income tax purposes. However, it is sometimes difficult to determine whether the terms of an agreement confer ownership, for Federal income tax purposes, of property, and the IRS and Treasury believe that the purposes of section 197 could be circumvented through the use of such agreements. Accordingly, the proposed regulations provide that contracts for the use of section 197 intangibles will also be treated as section 197 intangibles. Contracts that are so treated may, however, be excluded under either section 197(e)(4)(B) or (D) on the basis that they are contracts for the receipt of property or services, contracts having a fixed duration, or contracts having a fixed amount and recovered on a unit-of-production method or other similar method.

## 3. Intangibles Excluded From Section 197

### A. Computer Software

Section 197 intangibles do not include computer software that is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified. The proposed regulations provide a safe harbor for purposes of determining whether computer software has been substantially modified. Under the safe harbor, computer software has not been substantially modified if its capitalized cost does not exceed the greater of \$2,000 or 125 percent of the price at which the unmodified version of the software is readily available to the general public.

The proposed regulations incorporate some of the provisions of Revenue Procedure 69-21 (1969-2 C.B. 303), involving the treatment of costs of computer software, and modify other provisions to the extent necessary to conform to the amortization rules provided under sections 197 and 167(f). Consequently, if costs for developing computer software that the taxpayer has elected to treat as deferred expenses

under section 174(b) result in the development of a self-created intangible excluded under section 197(c)(2) and subject to the allowance for depreciation under section 167(a), deductions for the unrecovered expenditures are subject to section 167(f)(1). Computer software costs included, without being separately stated, in the cost of the computer hardware (bundled software) continue to be capitalized and depreciated as part of the computer hardware. The proposed regulations also continue to treat as currently deductible software costs properly and consistently treated as deductible (not capitalized) under § 1.162-11.

#### B. Certain Separately Acquired Intangibles

Certain intangibles are excepted from section 197 if they are not acquired as part of a purchase of a trade or business. The proposed regulations clarify that, for purposes of section 197, a group of assets constitutes a trade or business if their use would constitute a trade or business under section 1060; that is, if goodwill or going concern value could under any circumstances attach to the assets. Temporary and proposed regulations under section 1060, in turn, provide that a group of assets constitutes a trade or business for purposes of section 1060 if the use of such assets would constitute an active trade or business for purposes of section 355. However, in appropriate cases, even if the use of a group of assets would not constitute an active trade or business for purposes of section 355, such assets may nevertheless constitute a trade or business for purposes of section 1060. See § 1.1060-1T(b)(2).

The IRS intends to provide additional guidance as to the circumstances under which the acquisition of a group of assets constitutes a trade or business for purposes of section 1060 in regulations under that section. Accordingly, the proposed regulations do not provide substantive guidance on this question, except to the extent that the considerations are unique to the application of section 197. The IRS invites comments on the extent to which additional rules under section 197 may be necessary.

#### C. Certain Contracts and Governmental Rights

While section 197 intangibles include licenses, permits, and other rights granted by a governmental unit or an agency or instrumentality thereof (section 197(d)(1)(D)), certain rights granted by these governmental entities are excluded from section 197 pursuant to section 197(e)(4) (B) and (D), subject

to the conditions and limitations therein. Because a particular right may be described in two or more of these provisions, the proposed regulations provide guidance regarding the potential conflict between, or overlap with, these provisions. Thus, a right that would be subject to section 197 pursuant to section 197(d)(1)(D) may nevertheless be excluded if it is also described in section 197(e)(4) and meets all of the requirements for exclusion. Furthermore, a right that meets the requirements of either section 197(e)(4)(B) or section 197(e)(4)(D) is excluded from section 197 even if it fails to meet one of the requirements for the other exclusion. In addition, any license, permit, or other right granted by a governmental unit that otherwise meets the definition of a franchise under section 197(d)(1)(F), such as an FCC broadcast license or cable television franchise, is treated as a franchise under the regulations. Accordingly, these licenses do not qualify for any of the exceptions from section 197 provided under section 197(e)(4).

#### 4. Special Rules of Application

##### A. Loss Disallowance Provisions

The proposed regulations contain rules for the loss disallowance provisions set forth in section 197(f)(1). In particular, the proposed regulations provide that a taxpayer may not circumvent the loss disallowance rules, for example, by transferring some intangibles, whose adjusted basis is greater than their fair market value, to a corporation in exchange for stock in the corporation in a transaction described in section 351, while retaining other intangibles acquired in the same or related transaction, and then selling the stock. Special rules are also provided for the application of the loss disallowance provisions in cases where a taxpayer has disposed of all of the amortizable section 197 intangibles acquired in a single transaction but is treated as having retained other amortizable section 197 intangibles solely by virtue of the retention of amortizable section 197 intangibles by a related person.

##### B. Transactions Involving Partnerships

The proposed regulations provide rules and examples relating to the treatment of section 197 intangibles acquired or transferred in certain partnership transactions, including terminations under section 708(b)(1), and the application of section 197 to the special basis adjustments of partnership property for which a section 754 or section 732(d) election is in effect.

Guidance is also provided regarding the effect of curative and remedial allocations and the application of the anti-churning rules to certain partnership transactions.

In the case of the termination of a partnership under section 708(b)(1)(B) (relating to a sale or exchange of an interest), the rules contained in the proposed regulations are based on recently proposed regulations under that section, pursuant to which the new partnership is treated as having directly acquired the assets of the old partnership in exchange for the assumption of its liabilities and the issuance of interests in the new partnership. Accordingly, for purposes of section 197, the consequences of the termination of a partnership under section 708(b)(1)(B) may not be the same as the consequences of such a termination under the rules in effect at the time section 197 was enacted.

##### C. Treatment of Contingent Payments

The proposed regulations clarify that, except in the case of contingent payments, amounts paid for section 197 intangibles are treated as amounts chargeable to capital account, and the entire principal amount is amortized ratably over the 15-year amortization period beginning with the later of the month in which the intangible is acquired or the date on which the active conduct of a trade or business begins. Contingent payments for section 197 intangibles paid or incurred after the taxable year in which the intangible is acquired are added to basis at such time and generally amortized ratably over the remaining months in the 15-year period as of the beginning of the month the amount is paid or incurred. However, in order to reduce the administrative burden that may result from a requirement to maintain separate amortization schedules for each month during the 15-year period, taxpayers are permitted to use certain simplifying conventions. In addition, any amount that is not properly included in the basis of an amortizable section 197 intangible until after the expiration of the 15-year period is amortized in full immediately upon the inclusion of the amount in the basis of the intangible. The proposed regulations refer to § 1.461-1(a)(1) for rules governing the time at which an amount may be taken into account by a taxpayer using the cash receipts and disbursements method. They refer to § 1.461-1(a)(2) for rules governing the time at which a liability is incurred and generally taken into account (for example, by treating the amount of the liability as a capital

expenditure) by an accrual basis taxpayer.

#### 5. *Anti-Churning Rules*

To be eligible for amortization, section 197 intangibles must qualify as amortizable section 197 intangibles. Generally, amortizable section 197 intangibles are section 197 intangibles that are acquired after August 10, 1993 (or acquired after July 25, 1991, and for which the taxpayer made a proper election under § 1.197-1T) and held in connection with the conduct of a trade or business or an activity described in section 212.

The proposed regulations provide anti-churning rules to prevent taxpayers from converting into amortizable section 197 intangibles existing goodwill, going concern value, and any other section 197 intangible for which amortization would not have been allowable prior to OBRA '93 through the use of related persons and certain other transactions. The proposed regulations define the term related person for purposes of these rules.

The proposed regulations also contain provisions for the exception to the anti-churning rules in situations where the seller elects to recognize gain and agrees to pay a specified amount of tax. The regulations reserve guidance on the manner of making this election. The IRS intends to issue a revenue procedure in order to provide interim guidance to taxpayers on the manner of making this election, and the final regulations will include the relevant provisions of this revenue procedure.

The proposed regulations contain both an anti-churning anti-abuse rule and a general anti-abuse rule that provide that the Commissioner may recast any transaction if one of its principal purposes is to avoid the purposes of section 197.

#### 6. *Assumption Reinsurance Transactions*

Section 197(f)(5) provides special rules for section 197 intangibles resulting from assumption reinsurance transactions. The proposed regulations reserve guidance on certain aspects of these transactions. The IRS invites comments on the extent to which additional guidance on the application of section 197 to these transactions may be necessary.

#### 7. *Proposed Effective Dates*

The regulations for sections 167(f) and 197 are proposed to be effective on the date on which the final regulations are published in the Federal Register. Regulations to implement section 197(e)(4)(D) (separately acquired

contracts of fixed duration or amount) are proposed to be effective August 11, 1993, for property acquired after August 10, 1993 (or July 26, 1991, if a valid retroactive election has been made under § 1.197-1T).

#### 8. *Accounting Method Changes*

A change in the method of depreciation or amortization of intangibles is a change in method of accounting that requires the consent of the Commissioner of Internal Revenue under section 446(e). To obtain this consent, a Form 3115, Application for Change in Accounting Method, generally must be filed within 180 days after the beginning of the taxable year in which the proposed change is to be made. Taxpayers that have adopted a method of accounting for certain intangibles may need to change their method of accounting to comply with the final regulations.

#### 9. *Basis Allocation Rules*

In separate notices the IRS and Treasury are issuing temporary and proposed amendments to the temporary regulations under sections 1060 and 338(b). The existing temporary regulations establish a four-class system for allocating basis to individual assets in the case of a direct acquisition of assets constituting a trade or business or a deemed acquisition of assets as the result of an election under section 338. Under this system, assets in the nature of goodwill and going concern value are included in Class IV, while other intangible assets, whether or not amortizable, are included in Class III. Each successive class is allocated basis under a residual method, subject to a fair market value limitation for all classes except Class IV. After basis has been allocated to each class in the aggregate, assets within each of the first three classes are allocated basis on a proportional method. This system is inconsistent with the policies of section 197, which prescribes uniform treatment for all amortizable section 197 intangibles. Accordingly, appropriate modifications are being proposed.

#### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C.

chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in ADDRESSES) timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 15, 1997, at 10 a.m. in the Commissioner's Conference Room (Room 3313), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic (in the manner described in ADDRESSES) by April 16, 1997. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is John Huffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1—INCOME TAXES**

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

Authority: 26 U.S.C. 7805 \* \* \*  
Section 1.197-2 also issued under 26 U.S.C. 197(g). \* \* \*

Par. 2. Section 1.167(a)-3 is amended by adding a sentence at the end to read as follows:

**§ 1.167(a)-3 Intangibles.**

\* \* \* See § 1.197-2 and § 1.167(a)-14 for amortization of goodwill and certain other intangibles acquired after August 10, 1993, or after July 25, 1991, if a valid retroactive election under § 1.197-1T has been made.

Par. 3. Section 1.167(a)-6 is amended by adding two sentences at the end of paragraph (a) to read as follows:

**§ 1.167(a)-6 Depreciation in special cases.**

(a) \* \* \* See § 1.167(a)-14(c)(4) for depreciation of a separately acquired interest in a patent or copyright described in section 167(f)(2) acquired after the date on which the final regulations are published in the Federal Register. See § 1.197-2 for amortization of interests in patents and copyrights that constitute amortizable section 197 intangibles.

\* \* \* \* \*

Par. 4. Section 1.167(a)-14 is added to read as follows:

**§ 1.167(a)-14 Treatment of certain intangible property excluded from section 197.**

(a) *Overview.* This section provides rules for the amortization of certain intangibles that are excluded from section 197 (relating to the amortization of goodwill and certain other intangibles). These excluded intangibles are specifically described in § 1.197-2(c)(4), (6), (7), (11), and (13) and include certain computer software and certain other separately acquired rights, such as rights to receive tangible property or services, patents and copyrights, rights of fixed duration or amount, and certain mortgage servicing rights. Intangibles for which an amortization amount is determined under section 167(f) and intangibles otherwise excluded from section 197 (for example, self-created intangibles described in § 1.197-2(d)(2)) are amortizable only if they qualify as property subject to the allowance for depreciation under section 167(a).

(b) *Computer software*—(1) *In general.* The amount of the deduction for computer software described in section 167(f)(1) and § 1.197-2(c)(4) is determined by amortizing the adjusted basis of the computer software using the straight line method described in § 1.167(b)-1 (except that its salvage value is treated as zero) and an amortization period of 36 months beginning with the month that the computer software is placed in service. If costs for developing computer software that the taxpayer properly

elects to defer under section 174(b) result in the development of property subject to the allowance for depreciation under section 167, the rules of this paragraph (b) will apply to the unrecovered costs. In addition, this paragraph (b) applies to the cost of separately acquired computer software where these costs are separately stated and the costs are required to be capitalized under section 263(a).

(2) *Exceptions.* Paragraph (b)(1) of this section does not apply to the cost of computer software properly and consistently treated as currently deductible (that is, not capitalized) under § 1.162-11. The cost of acquiring an interest in computer software that is included, without being separately stated, in the cost of the hardware or other tangible property is treated as part of the cost of the hardware or other tangible property that is capitalized and depreciated under other applicable sections of the Internal Revenue Code.

(c) *Certain interests or rights acquired separately*—(1) *Certain rights to receive tangible property or services.* The amount of the deduction for a separately acquired right to receive tangible property or services under a contract or from a governmental unit (specified in section 167(f)(2) and § 1.197-2(c)(6)) is determined as follows:

(i) *Amortization of fixed amounts.* The cost of acquiring a right to receive a fixed amount of tangible property or services is amortized for each taxable year by multiplying the basis (as determined under section 1011) of the right by a fraction, the numerator of which is the amount of tangible property or services received during the taxable year and the denominator of which is the total amount of tangible property or services received or to be received under the terms of the contract or governmental grant. For example, if a taxpayer acquires a favorable contract right to receive a fixed amount of raw materials during an unspecified period, the taxpayer must amortize the cost of acquiring the contract right by multiplying the total cost by a fraction, the numerator of which is the amount of raw materials received under the contract during the taxable year and the denominator of which is the total amount of raw materials received or to be received under the contract.

(ii) *Amortization of unspecified amount over fixed period.* The cost of acquiring a right to receive an unspecified amount of tangible property or services over a fixed period is amortized ratably over the period of the right.

(iii) *Amortization in other cases.*

[Reserved]

(2) *Rights of fixed duration or amount.* The amount of the deduction for a separately acquired right of fixed duration or amount received under a contract or granted by a governmental unit (specified in section 167(f)(2) and § 1.197-2(c)(13)) and not covered by paragraph (c)(1) of this section is determined as follows:

(i) *Rights of a fixed amount.* The cost of acquiring a right of a fixed amount is amortized for each taxable year by multiplying the cost of the right by a fraction, the numerator of which is the amount received or delivered during the taxable year and the denominator of which is the total amount to be received or delivered (including amounts received or delivered prior to the close of the taxable year) under the terms of the contract or governmental grant.

(ii) *Rights of unspecified amount and fixed duration of less than 15 years.* The cost of acquiring a right of an unspecified amount and a fixed duration of less than 15 years is amortized ratably over the period of the right.

(3) *Application of renewals.* (i) For purposes of paragraphs (c) (1) and (2) of this section, the duration of a right under a contract (or granted by a governmental unit) includes any renewal period if, based on all of the facts and circumstances in existence at any time during the taxable year in which the right is acquired, the facts clearly indicate a reasonable expectancy of renewal.

(ii) The mere fact that a taxpayer will have the opportunity to renew a contract right or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will generally not be taken into account in determining the duration of such right provided that the bidding produces a fair market value price comparable to the price that would be obtained if the rights were purchased immediately after renewal from a person (other than the person granting the renewal) in an arm's-length transaction.

(iii) The cost of a renewal not included in the terms of the contract or governmental grant is treated as the acquisition of a separate intangible asset.

(4) *Patents and copyrights.* The amount of the deduction for a separately acquired interest in a patent or copyright described in section 167(f)(2) and § 1.197-2(c)(7) is equal to the purchase price paid or incurred during the year if the purchase price is payable on at least an annual basis as either a

fixed amount per use or a fixed percentage of the revenue derived from the use of the patent or copyright. Otherwise, the cost or other basis of a separately acquired patent or copyright (or an interest therein) is depreciated ratably over its remaining useful life. If a patent or copyright becomes valueless in any year before its legal expiration, the adjusted basis may be deducted in that year.

(5) *Applicable rules and conventions.* The period of amortization under paragraphs (c)(1) through (c)(4) of this section begins when the intangible is placed in service. For other applicable rules, see § 1.197-2(f).

(d) *Mortgage servicing rights.* The amount of the deduction for mortgage servicing rights described in section 167(f)(3) and § 1.197-2(c)(11) is determined by using the straight line method described in § 1.167(b)-1 (except that the salvage value is treated as zero) and an amortization period of 108 months. Mortgage servicing rights are not depreciable to the extent the rights are stripped coupons under section 1286. An event that renders mortgage servicing rights wholly worthless is considered a disposition of the rights. For purposes of determining the deduction for mortgage servicing rights and any loss from the sale, exchange, or other disposition of the rights, rights to service a pool of mortgages are treated as a single asset. Thus, if some (but not all) mortgages in a pool prepay and the taxpayer retains rights to service the remaining mortgages in the pool, no loss is recognized by reason of the prepayment. The adjusted basis of the mortgage servicing rights is not affected by the unrecognized loss.

(e) *Effective date.* This section is applicable on the date final regulations are published in the Federal Register except that § 1.167(a)-14(c)(2) (depreciation of the cost of certain separately acquired rights) and so much of § 1.167(a)-14(c)(3) as relates to § 1.167(a)-14(c)(2) are applicable August 11, 1993 (or July 26, 1991, if a valid retroactive election has been made under § 1.197-1T).

Par. 5. Section 1.197-0 is added to read as follows:

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Par. 6. Section 1.197-2 is added to read as follows:

**§ 1.197-2 Amortization of goodwill and certain other intangibles.**

(a) *Overview—(1) In general.* Section 197 allows an amortization deduction for the capitalized costs of an *amortizable section 197 intangible* and prohibits any other depreciation or amortization with respect to that property. Paragraphs (b), (c), and (e) of this section provide rules and definitions for determining whether property is a *section 197 intangible*, and paragraphs (d) and (e) of this section provide rules and definitions for determining whether a section 197 intangible is an amortizable section 197 intangible. The amortization deduction under section 197 is determined by amortizing adjusted basis ratably over a 15-year period under the rules of paragraph (f) of this section. Section 197 also includes various special rules pertaining to the disposition of amortizable section 197 intangibles, nonrecognition transactions, anti-churning rules, and anti-abuse rules. Rules relating to these provisions are contained in paragraphs (g), (h), and (j) of this section. Examples demonstrating the application of these provisions are contained in paragraph (k) of this section. The effective date of the rules in this section is contained in paragraph (l) of this section.

(2) *Section 167(f) property.* Section 167(f) prescribes rules for computing the depreciation deduction for certain property to which section 197 does not apply. See § 1.167(a)-14 for rules under section 167(f) and paragraphs (c) (4), (6), (7), (11), and (13) of this section for a description of the property subject to section 167(f).

(3) *Amounts otherwise deductible.* Except as otherwise provided in section 197(f)(3) and paragraphs (b)(11) and (f)(3) of this section, section 197 does not apply to amounts that would be currently deductible without regard to section 197.

(4) *Relationship to other Internal Revenue Code provisions.* Section 197 does not apply to any amount paid or incurred for a section 197 intangible if a deduction for the amount would be disallowed under any provision of the Code other than section 263. (See, for example, section 162(k).)

(b) *Section 197 intangibles; in general.* Except as otherwise provided in paragraph (c) of this section, the term *section 197 intangible* means any property described in section 197(d)(1). The following rules and definitions provide guidance concerning property that is a section 197 intangible unless an exception applies:

(1) *Goodwill.* Section 197 intangibles include goodwill. Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any other factor.

(2) *Going concern value.* Section 197 intangibles include going concern value. Going concern value is the additional value that attaches to property by reason of its existence as an integral part of an ongoing business activity. Going concern value includes the value attributable to the ability of a trade or business (or a part of a trade or business) to continue functioning or generating income without interruption notwithstanding a change in ownership, but does not include any of the intangibles described in any other provision of this paragraph (b). It also includes the value that is attributable to the immediate use or availability of an acquired trade or business, such as, for example, the use of the revenues or net earnings that otherwise would not be received during any period if the acquired trade or business were not available or operational.

(3) *Workforce in place.* Section 197 intangibles include workforce in place. Workforce in place (sometimes referred to as agency force or assembled workforce) includes the composition of a workforce (for example, the

experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, the amount paid or incurred for workforce in place includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a highly-skilled workforce, an existing employment contract (or contracts), or a relationship with employees or consultants (including, but not limited to, any key employee contract or relationship). Workforce in place does not include any covenant not to compete or other similar arrangement described in paragraph (b)(9) of this section.

(4) *Information base.* Section 197 intangibles include business books and records, operating systems, and any other information base, including lists or other information of current or prospective customers (regardless of the method of recording the information). Thus, the amount paid or incurred for these items includes, for example, any portion of the purchase price of an acquired trade or business attributable to the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems. Other examples include the cost of acquiring customer lists, subscription lists, insurance expirations, patient or client files, or lists of newspaper, magazine, radio, or television advertisers.

(5) *Know-how, etc.* Section 197 intangibles include any patent, copyright, formula, process, design, pattern, know-how, format, package design, computer software (as defined in paragraph (c)(4) of this section), or interest in a film, sound recording, video tape, book, or other similar property. (See, however, the exceptions in paragraph (c) of this section.)

(6) *Customer-based intangibles.* Section 197 intangibles include any customer-based intangible. A customer-based intangible is any composition of market, market share, or other value resulting from the future provision of goods or services pursuant to contractual or other relationships in the ordinary course of business with customers. Thus, the amount paid or incurred for customer-based intangibles includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a customer base, a circulation base, an undeveloped market or market growth, insurance in force, the existence of a qualification to supply goods or services to a particular customer, a

mortgage servicing contract (as defined in paragraph (c)(11) of this section), an investment management contract, or other relationship with customers involving the future provision of goods or services. (See, however, the exceptions in paragraph (c) of this section.) In addition, customer-based intangibles include the deposit base and any similar asset of a financial institution. Thus, the amount paid or incurred for customer-based intangibles also includes any portion of the purchase price of an acquired financial institution attributable to the value represented by existing checking accounts, savings accounts, escrow accounts, and other similar items of the financial institution. However, any portion of the purchase price of an acquired trade or business attributable to accounts receivable or other similar rights to income for goods or services provided to customers prior to the acquisition of a trade or business is not an amount paid or incurred for a customer-based intangible.

(7) *Supplier-based intangibles.* Section 197 intangibles include any supplier-based intangible. A supplier-based intangible is the value resulting from the future acquisition, pursuant to contractual or other relationships with suppliers in the ordinary course of business, of goods or services that will be sold or used by the taxpayer. Thus, the amount paid or incurred for supplier-based intangibles includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a favorable relationship with persons providing distribution services (such as favorable shelf or display space at a retail outlet), the existence of a favorable credit rating, or the existence of favorable supply contracts. The amount paid or incurred for supplier-based intangibles does not include any amount required to be paid for the goods or services themselves pursuant to the terms of the agreement or other relationship. In addition, see the exceptions in paragraph (c) of this section, including the exception in paragraph (c)(6) of this section for certain rights to receive tangible property or services from another person.

(8) *Licenses, permits, and other rights granted by governmental units.* Section 197 intangibles include any license, permit, or other right granted by a governmental unit (including, for purposes of section 197, an agency or instrumentality thereof) even if the right is granted for an indefinite period or is reasonably expected to be renewed for an indefinite period. These rights

include, for example, a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license. The issuance or renewal of a license, permit, or other right granted by a governmental unit is considered an acquisition of the license, permit, or other right. (See, however, the exceptions in paragraph (c) of this section, including the exceptions in paragraph (c)(3) of this section for an interest in land, in paragraph (c)(8) of this section for an interest under a lease of tangible property, and in paragraphs (c) (6) and (13) of this section for certain rights granted by a governmental unit. See paragraph (b)(10) of this section for the treatment of franchises.)

(9) *Covenants not to compete and other similar arrangements.* Section 197 intangibles include any covenant not to compete, or agreement having substantially the same effect, entered into in connection with the direct or indirect acquisition of an interest in a trade or business or a substantial portion thereof. For purposes of this paragraph (b)(9), an acquisition may be made in the form of an asset acquisition (including a qualified stock purchase that is treated as a purchase of assets under section 338), a stock acquisition or redemption, and the acquisition or redemption of a partnership interest. An agreement requiring the performance of services or the provision of property or the use of property (other than property of the acquired trade or business) does not have substantially the same effect as a covenant not to compete to the extent that the amount paid under the agreement represents reasonable compensation for the services actually rendered or for the property or use of the property actually provided.

(10) *Franchises, trademarks, and trade names.* (i) Section 197 intangibles include any franchise, trademark, or trade name. The term *franchise* includes any agreement that provides one of the parties to the agreement with the right to distribute, sell, or provide goods, services, or facilities, within a specified area. (See section 1253(b)(1).) The term includes distributorships or other similar contractual arrangements pursuant to which the transferee is permitted or licensed to operate or conduct a trade or business within a specific area. The term *trademark* includes any word, name, symbol, or device, or any combination thereof, adopted and used by a manufacturer or merchant to identify goods or services and distinguish them from those manufactured or sold by others. The term *trade name* includes any name

used by a manufacturer or merchant to identify or designate a particular trade or business or the name or title used by a person or organization engaged in a trade or business. A license, permit, or other right granted by a governmental unit is a franchise if it otherwise meets the definition of a franchise. A trademark or trade name includes any trademark or trade name arising under statute or applicable common law, and any similar right granted by contract. The renewal of a franchise, trademark, or trade name is treated as an acquisition of the franchise, trademark, or trade name.

(ii) Notwithstanding the definitions provided in paragraph (b)(10)(i) of this section, any amount that is paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name and that is subject to section 1253(d)(1) is not included in the basis of a section 197 intangible. (See paragraph (g)(5) of this section.)

(11) *Contracts for the use of, and term interests in, other section 197 intangibles.* Section 197 intangibles include any right under a license, contract, or other arrangement providing for the use of property that would be a section 197 intangible under any provision of this paragraph (b) (including this paragraph (b)(11)) after giving effect to all of the exceptions provided in paragraph (c) of this section. Section 197 intangibles also include any term interest (whether outright or in trust) in such property.

(12) *Other similar items.* Section 197 intangibles include any other intangible property that is similar in all material respects to the property specifically described in section 197(d)(1)(C) and paragraphs (b)(3) through (b)(7) of this section. (See paragraph (g)(4) of this section for special rules regarding certain reinsurance transactions.)

(c) *Section 197 intangibles; exceptions.* The term *section 197 intangible* does not include property described in section 197(e). The following rules and definitions provide guidance concerning property to which the exceptions apply:

(1) *Interests in a corporation, partnership, trust, or estate.* Section 197 intangibles do not include an interest in a corporation, partnership, trust, or estate. Thus, for example, amortization under section 197 is not available for the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not the interests are regularly traded on an established market. (See paragraph (g)(3) of this section for special rules applicable to property of a partnership when a section

754 election is in effect for the partnership.)

(2) *Interests under certain financial contracts.* Section 197 intangibles do not include an interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract, whether or not the interest is regularly traded on an established market. However, this exception does not apply to an interest under a mortgage servicing contract, credit card servicing contract, or other contract to service another persons indebtedness, or an interest under an assumption reinsurance contract. (See paragraph (g)(4) of this section for the treatment of assumption reinsurance contracts. See paragraph (c)(11) of this section and § 1.167(a)–14(d) for the treatment of mortgage servicing rights.)

(3) *Interests in land.* Section 197 intangibles do not include any interest in land. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral right, timber right, grazing right, riparian right, air right, zoning variance, and any other similar right, such as a farm allotment, quota for farm commodities, or crop acreage base. An interest in land does not include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television service. The cost of acquiring a license, permit, or other land improvement right, such as a building construction or use permit, is taken into account in the same manner as the underlying improvement.

(4) *Certain computer software—(i) In general.* Section 197 intangibles do not include any interest in computer software that is (or has been) readily available to the general public on similar terms, is subject to a nonexclusive license, and has not been substantially modified for the user. Computer software will not be considered to have been substantially modified if its cost does not exceed the greater of 125 percent of the price at which the unmodified version of the software is readily available to the general public or \$2,000. For the purpose of determining whether computer software has been substantially modified—

(A) Integrated programs acquired in a package from a single source are treated as a single computer program; and

(B) Any cost incurred to install the computer software is not treated as a cost of the software.

(ii) *Separately acquired software.* Section 197 intangibles do not include an interest in computer software that is not acquired as part of a purchase of a

trade or business within the meaning of paragraph (e) of this section.

(iii) *Other exceptions.* Neither section 197 nor section 167(f) apply in the following cases:

(A) Any amount of the cost of an interest in computer software that is included, without being separately stated, in the cost of the hardware or other tangible property will be treated as part of the cost of the hardware or other tangible property.

(B) Any amount of the cost of an interest in computer software that would be deductible under any provision other than section 167(f) or 197 may be deducted and is not required to be capitalized.

(iv) *Computer software defined.* For purposes of this section, computer software is any program or routine (that is, any sequence of machine-readable code) that is designed to cause a computer (as defined in section 168(i)(2)(B)(ii)) to perform a desired function or set of functions, and the documentation required to describe and maintain those programs. It includes all forms and media in which the software is contained, whether written, magnetic, or otherwise. Computer programs of all classes, for example, operating systems, executive systems, monitors, compilers and translators, assembly routines, and utility programs as well as application programs, are included. Computer software also includes any incidental and ancillary rights that are necessary to effect the acquisition of the title to, the ownership of, or the right to use the computer software, and that are used only in connection with that specific computer software. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. For example, a trademark or trade name that is ancillary to the ownership or use of a specific computer software program in the taxpayer's trade or business and is not acquired for the purpose of marketing the computer software is included in the definition of computer software and is not included in the definition of trademark or trade name. Computer software does not include any data or information base described in paragraph (b)(4) of this section unless the data base or item is in the public domain and is incidental to a computer program. For this purpose, a copyrighted or proprietary data or information base is treated as in the public domain if its availability through the computer program does not contribute significantly to the cost of the program. For example, if a word-processing program includes a dictionary feature used to spell-check a

document or any portion thereof, the entire program (including the dictionary feature) is computer software regardless of the form in which the feature is maintained or stored.

(v) *Readily available to the general public.* Computer software will be treated as readily available to the general public if the software may be obtained on substantially the same terms by a significant number of persons that would reasonably be expected to use the software. The requirements of this paragraph (c)(4)(v) can be met even though the software is not available through a system of retail distribution.

(5) *Certain interests in films, sound recordings, video tapes, books, or other similar property.* Section 197 intangibles do not include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (such as the right to broadcast or transmit a live event) if the interest is not acquired as part of a purchase of a trade or business. A film, sound recording, video tape, book, or other similar property includes any incidental and ancillary rights (such as a trademark or trade name) that are necessary to effect the acquisition of title to, the ownership of, or the right to use the property and are used only in connection with that property. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. For purposes of this paragraph (c)(5), computer software (as defined in paragraph (c)(4)(iv) of this section) is not treated as other property similar to a film, sound recording, video tape, or book. (See section 167 for amortization of excluded intangible property or interests.)

(6) *Certain rights to receive tangible property or services.* Section 197 intangibles do not include any right to receive tangible property or services under a contract or from a governmental unit if the right is not acquired as part of a purchase of a trade or business. Any right that is described in the preceding sentence is not treated as a section 197 intangible even though the right is also described in section 197(d)(1)(D) and paragraph (b)(8) of this section (relating to certain governmental licenses, permits, and other rights) and even though the right fails to meet one or more of the requirements of paragraph (c)(13) of this section (relating to certain rights of fixed duration or amount). (See § 1.167(a)–14(c) (1) and (3) for applicable rules.)

(7) *Certain interests in patents or copyrights.* Section 197 intangibles do not include any interest (including an interest as a licensee) in a patent, patent

application, or copyright that is not acquired as part of a purchase of a trade or business. (See § 1.167(a)-14(c)(4) for applicable rules.)

(8) *Interests under leases of tangible property*—(i) *Interest as a lessor*. Section 197 intangibles do not include any interest as a lessor under an existing lease or sublease of tangible real or personal property. In addition, the cost of acquiring an interest as a lessor in connection with the acquisition of tangible property is taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants operating retail stores, any portion of the purchase price attributable to favorable lease terms is taken into account as part of the basis of the shopping center and in determining the depreciation deduction allowed with respect to the shopping center. (See section 167(c)(2).)

(ii) *Interest as a lessee*. Section 197 intangibles do not include any interest as a lessee under an existing lease of tangible real or personal property. For this purpose, an airline lease of an airport passenger or cargo gate is a lease of tangible property. The cost of acquiring such an interest is taken into account under section 178 and § 1.162-11(a). If an interest as a lessee under a lease of tangible property is acquired in a transaction with any other intangible property, a portion of the total purchase price may be allocable to the interest as a lessee based on all of the relevant facts and circumstances.

(9) *Interests under indebtedness*—(i) *In general*. Section 197 intangibles do not include any interest (whether as a creditor or debtor) under an indebtedness in existence when the interest was acquired. Thus, for example, the value attributable to the assumption of an indebtedness with a below-market interest rate is not amortizable under section 197. In addition, the premium paid for acquiring a debt instrument with an above-market interest rate is not amortizable under section 197. See section 171 for rules concerning the treatment of amortizable bond premium.

(ii) *Exceptions*. For purposes of this paragraph (c)(9), an interest under an existing indebtedness does not include the deposit base (and other similar items) of a financial institution. An interest under an existing indebtedness includes mortgage servicing rights, however, to the extent the rights are stripped coupons under section 1286.

(10) *Professional sports franchises*. Section 197 intangibles do not include any franchise to engage in professional baseball, basketball, football, or any

other professional sport, and any item (even though otherwise qualifying as a section 197 intangible) acquired in connection with such a franchise.

(11) *Mortgage servicing rights*. Section 197 intangibles do not include any right described in section 197(e)(7) (concerning rights to service indebtedness secured by residential real property that are not acquired as part of a purchase of a trade or business). (See § 1.167(a)-14(d) for applicable rules.)

(12) *Certain transaction costs*. Section 197 intangibles do not include any fees for professional services and any transaction costs incurred by parties to a transaction in which all or any portion of the gain or loss is not recognized under part III of subchapter C of the Code.

(13) *Rights of fixed duration or amount*. (i) Section 197 intangibles do not include any right under a contract or any license, permit, or other right granted by a governmental unit if the right—

(A) Is acquired in the ordinary course of business and not as part of a purchase of a trade or business;

(B) Is not described in sections 197(d)(1)(A), (B), (C) (ii), (iv), or (vi), (E), or (F); and

(C) Either—

(1) Has a fixed duration of less than 15 years; or

(2) Is fixed as to amount and the adjusted basis thereof is properly recoverable (without regard to this section) under a method similar to the unit-of-production method.

(ii) See § 1.167(a)-14(c) (2) and (3) for applicable rules.

(d) *Amortizable section 197 intangibles*—(1) *Definition*. Except as otherwise provided in this paragraph (d), the term *amortizable section 197 intangible* means any section 197 intangible acquired after August 10, 1993 (or after July 25, 1991, if a valid retroactive election under § 1.197-1T has been made), and held in connection with the conduct of a trade or business or an activity described in section 212.

(2) *Exception for self-created intangibles*—(i) *In general*. Except as provided in paragraph (d)(2)(iii) of this section, amortizable section 197 intangibles do not include any section 197 intangible created by the taxpayer (a self-created intangible).

(ii) *Created by the taxpayer*—(A) *Defined*. A section 197 intangible is created by the taxpayer to the extent the taxpayer makes payments or otherwise incurs costs for its creation, production, development, or improvement, whether the actual work is performed by the taxpayer or by another person under a contract with the taxpayer entered into

before the creation, production, development, or improvement occurs. For example, a technological process developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process is created by the taxpayer.

(B) *Contracts for the use of intangibles*. A section 197 intangible is not created by the taxpayer to the extent that it results from the entry into (or renewal of) a contract for the use of an existing section 197 intangible. Thus, for example, the exception for self-created intangibles does not apply to legal and other professional fees incurred by a licensee in connection with the entry into (or renewal of) a contract for the use of know-how or similar property.

(C) *Improvements and modifications*. If an existing section 197 intangible is improved or otherwise modified by the taxpayer or by another person under a contract with the taxpayer, the existing intangible and the improvements or other modifications are treated as separate section 197 intangibles for purposes of this paragraph (d).

(iii) *Exceptions*. (A) The exception for self-created intangibles does not apply to any section 197 intangible described in section 197(d)(1)(D) (relating to licenses, permits or other rights granted by a governmental unit), 197(d)(1)(E) (relating to covenants not to compete), or 197(d)(1)(F) (relating to franchises, trademarks, and trade names). Thus, for example, capitalized costs incurred in the development, registration, or defense of a trademark or trade name do not qualify for the exception and are amortized over 15 years under section 197.

(B) The exception for self-created intangibles does not apply to any section 197 intangible created in connection with the purchase of a trade or business (as defined in paragraph (e) of this section).

(C) If a taxpayer disposes of a self-created intangible and subsequently reacquires the intangible in an acquisition described in paragraph (h)(4)(ii) of this section, the exception for self-created intangibles does not apply to the reacquired intangible.

(3) *Exception for property subject to anti-churning rules*. Amortizable section 197 intangibles do not include any property to which the anti-churning rules of section 197(f)(9) and paragraph (h) of this section apply.

(e) *Purchase of a trade or business*. Several of the exceptions in section 197 apply only to property that is not acquired in (or created in connection with) a transaction or series of related

transactions involving the acquisition of assets constituting a trade or business or a substantial portion thereof. Property acquired in (or created in connection with) such a transaction or series of related transactions is referred to in this section as property acquired as part of (or created in connection with) a purchase of a trade or business. For purposes of section 197 and this section, the applicability of the limitation is determined under the following rules:

(1) *Goodwill or going concern value.* A group of assets constitutes a trade or business or a substantial portion thereof if their use would constitute a trade or business under section 1060 (that is, if goodwill or going concern value could under any circumstances attach to the assets). See § 1.1060-1T(b)(2). For this purpose, all the facts and circumstances, including any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of the assets, are taken into account in determining whether goodwill or going concern value could attach to the assets.

(2) *Customer-based intangibles.* Whether or not a group of assets is otherwise described in paragraph (e)(1) of this section, a group of assets constitutes a trade or business or a substantial portion thereof if the assets include any customer-based intangibles (as defined in paragraph (b)(6) of this section) or are acquired in a transaction or series of related transactions that involve the creation of any customer-based intangibles.

(3) *Franchise, trademark, or trade name—(i) In general.* The acquisition of a franchise, trademark, or trade name constitutes the acquisition of a trade or business or a substantial portion thereof.

(ii) *Exceptions.* For purposes of this paragraph (e)(3)—

(A) A trademark or trade name is disregarded if it is included in computer software under paragraph (c)(4) of this section or in an interest in a film, sound recording, video tape, book, or other similar property under paragraph (c)(5) of this section; and

(B) A franchise, trademark, or trade name is disregarded if its value is nominal or the taxpayer irrevocably disposes of it immediately after its acquisition.

(4) *Acquisitions to be included.* The assets acquired in a transaction (or series of related transactions) include only assets (including a beneficial or other indirect interest in assets where the interest is of a type described in paragraph (c)(1) of this section) acquired by the taxpayer and persons related to the taxpayer from another person and persons related to that other person. For

purposes of this paragraph (e)(4), persons are related only if their relationship is described in section 267(b) or 707(b) or they are engaged in trades or businesses under common control within the meaning of section 41(f)(1).

(5) *Substantial portion.* The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. The value of the assets acquired relative to the value of the assets retained by the transferor is not determinative of whether the acquired assets constitute a substantial portion of a trade or business.

(6) *Deemed asset purchases under section 338.* A qualified stock purchase that is treated as a purchase of assets under section 338 shall be treated as a transaction involving the acquisition of assets constituting a trade or business only if the direct acquisition of the assets of the corporation would have been treated as the acquisition of assets constituting a trade or business.

(f) *Computation of amortization deduction—(1) In general.* Except as provided in paragraph (f)(2) of this section, the amortization deduction allowable under section 197(a) is computed as follows:

(i) The adjusted basis (for purposes of determining gain) of an amortizable section 197 intangible is amortized ratably over the 15-year period beginning on the later of—

(A) The first day of the month in which the property is acquired; or

(B) In the case of property held in connection with the conduct of a trade or business, the first day of the month in which the active conduct of the trade or business begins.

(ii) Except as otherwise provided in this section, adjusted basis is determined under section 1011 and salvage value is disregarded.

(iii) Property is not eligible for amortization in the month of disposition.

(iv) The amortization deduction for a short taxable year is based on the number of months in the short taxable year.

(2) *Treatment of contingent amounts—(i) Amounts added to basis during 15-year period.* Any amount that is properly included in the basis of an amortizable section 197 intangible after the first month of the 15-year period described in paragraph (f)(1)(i) of this section and before the expiration of this period is amortized ratably over the

remainder of the 15-year period. For this purpose, the remainder of the 15-year period begins on the first day of the month in which the basis increase occurs. Any reasonable convention may be used to determine the month in which the basis increase incurs, provided that the method selected is used consistently for all amortizable section 197 intangibles acquired in the same transaction (or series of related transactions) and that it does not result in any amount being added to basis earlier than the midpoint of the period (for example, annual, semi-annual, or quarterly) selected.

(ii) *Amounts becoming fixed after expiration of 15-year period.* Any amount that is not properly included in the basis of an amortizable section 197 intangible until after the expiration of the 15-year period described in paragraph (f)(1)(i) of this section is amortized in full immediately upon the inclusion of the amount in the basis of the intangible.

(iii) *Time for including amounts in basis.* See § 1.461-1(a)(1) for rules governing the time at which an amount may be taken into account by a taxpayer using the cash receipts and disbursements method, and § 1.461-1(a)(2) for rules governing the time at which a liability is incurred and generally taken into account (for example, by treating the amount of the liability as a capital expenditure) by an accrual basis taxpayer.

(3) *Determination of amounts chargeable to capital account in certain cases—(i) Covenants not to compete, rights granted by governmental units, and contracts for the use of section 197 intangibles—(A) In general.* In the case of a covenant not to compete or other similar arrangement described in paragraph (b)(9) of this section, any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof described in paragraph (b)(8) of this section, or a contract for the use of a section 197 intangible described in paragraph (b)(11) of this section, the amount chargeable to capital account includes all amounts required to be paid pursuant to the agreement or right, whether or not any amount would be deductible under section 162 if the agreement or right were not a section 197 intangible.

(B) *Time for taking amounts into account.* For purposes of this paragraph (f)(3), in applying the provisions of §§ 1.461-1(a)(1) (in the case of a taxpayer using the cash receipts and disbursements method of accounting) and § 1.461-1(a)(2) (in the case of a taxpayer using an accrual method of

accounting), all amounts required to be paid under an agreement described in paragraph (b) (9) or (11) of this section shall be treated as amounts payable under the terms of a debt instrument issued in exchange for property. Contingent payments made under an agreement described in paragraph (b) (9) or (11) of this section will be included in adjusted basis under the rules of paragraph (f)(2) of this section.

(ii) *Franchises, trademarks, or trade names and licenses, permits, and other rights granted by governmental units.* The costs paid or incurred for the renewal of a franchise, trademark, or trade name or any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof are amortized over the 15-year period that begins with the month of renewal. Any costs paid or incurred for the issuance, or earlier renewal, continue to be taken into account over the remaining portion of the amortization period that began at the time of the issuance, or earlier renewal. Any amount paid or incurred for the protection, expansion, or defense of a trademark or trade name and chargeable to capital account is treated as an amount paid or incurred for a renewal.

(iii) *Certain reinsurance transactions.* See paragraph (g)(4)(ii) of this section for special rules regarding the adjusted basis of an insurance contract acquired through an assumption reinsurance transaction.

(4) *Transactions subject to section 338 or 1060.* In the case of a section 197 intangible deemed to have been acquired as the result of a qualified stock purchase within the meaning of section 338(d)(3), the basis shall be determined pursuant to section 338(b)(5) and the regulations thereunder. In the case of a section 197 intangible acquired in an applicable asset acquisition within the meaning of section 1060(c), the basis shall be determined pursuant to section 1060(a) and the regulations thereunder.

(g) *Special rules—(1) Treatment of certain dispositions—(i) Loss disallowance rules—(A) In general.* No loss is recognized on the disposition of an amortizable section 197 intangible acquired in a transaction or series of related transactions in which the taxpayer acquired other amortizable section 197 intangibles if, after the disposition, the taxpayer retains any of the other amortizable section 197 intangibles, or the right to use, or an interest in, any of the other amortizable section 197 intangibles (the retained intangibles). Except as otherwise provided in paragraph (g)(1)(iv)(B) of this section, the adjusted basis of each

of the retained intangibles is increased by the product of the loss that is not recognized solely by reason of this rule and a fraction, the numerator of which is the adjusted basis of the retained intangible on the date of the disposition and the denominator of which is the total adjusted bases of all the retained intangibles on that date. The abandonment of an amortizable section 197 intangible, or any other event rendering an amortizable section 197 intangible worthless, is treated as a disposition of the intangible for purposes of this paragraph (g)(1), and the abandoned or worthless intangible is disregarded (that is, it is not treated as a retained intangible) for purposes of applying this paragraph (g)(1) to the subsequent disposition of any other amortizable section 197 intangible.

(B) *Certain nonrecognition transfers.* The loss disallowance rule in paragraph (g)(1)(i)(A) of this section also applies when a taxpayer transfers an amortizable section 197 intangible from an acquired trade or business in a transaction in which the intangible is transferred-basis property and, after the transfer, retains other amortizable section 197 intangibles from the trade or business. Thus, for example, the transfer of an amortizable section 197 intangible to a corporation in exchange for stock in the corporation in a transaction described in section 351, or to a partnership in exchange for an interest in the partnership in a transaction described in section 721, when other amortizable section 197 intangibles acquired in the same transaction are retained, followed by a sale of the stock or partnership interest received, will not avoid the application of the loss disallowance provision to the extent the adjusted basis of the transferred intangible at the time of the sale exceeds its fair market value at that time.

(ii) *Separately acquired property.* Paragraph (g)(1)(i) of this section does not apply to an amortizable section 197 intangible that is not acquired in a transaction or series of related transactions in which the taxpayer acquires other amortizable section 197 intangibles (a separately acquired intangible). Consequently, a loss may be recognized upon the disposition of a separately acquired section 197 intangible. However, the termination or worthlessness of only a portion of an amortizable section 197 intangible is not the disposition of a separately acquired intangible. For example, neither the loss of several customers from an acquired customer list, the termination of several mortgages (not qualifying for the exception set forth in paragraph (c)(11) of this section) from an acquired

mortgage pool, nor the worthlessness of only some information from an acquired data base constitutes the disposition of a separately acquired intangible.

(iii) *Disposition of a covenant not to compete.* If a covenant not to compete or any other arrangement having substantially the same effect is entered into in connection with the direct or indirect acquisition of an interest in a trade or business, the disposition or worthlessness of the covenant or other arrangement will not be considered to occur until the disposition or worthlessness of all interests in that trade or business. For example, a covenant not to compete entered into in connection with the purchase of stock continues to be amortized on a 15-year straight-line basis (even after the covenant expires or becomes worthless) unless all the trades or businesses in which an interest was acquired through the stock purchase (or all the purchaser's interests in those trades or businesses) also are disposed of or become worthless.

(iv) *Taxpayers under common control—(A) In general.* Except as provided in paragraph (g)(1)(iv)(B) of this section, all persons that would be treated as a single taxpayer under section 41(f)(1) are treated as a single taxpayer under this paragraph (g)(1). Thus, for example, a loss is not recognized on the disposition of an amortizable section 197 intangible by a member of a controlled group of corporations (as defined in section 41(f)(5)) if, after the disposition, another member retains other amortizable section 197 intangibles acquired in the same transaction as the amortizable section 197 intangible that has been disposed of.

(B) *Treatment of disallowed loss.* If retained intangibles are held by a person other than the person incurring the disallowed loss, only the adjusted basis of intangibles retained by the person incurring the disallowed loss is increased, and only the adjusted basis of those intangibles is included in the denominator of the fraction described in paragraph (g)(1)(i)(A) of this section. If none of the retained intangibles are held by the person incurring the disallowed loss, the loss is allowed ratably, as a deduction under section 197, over the remainder of the period during which the intangible giving rise to the loss would have been amortizable, except that any remaining disallowed loss is allowed in full on the first date on which all other retained intangibles have been disposed of or become worthless.

(2) *Treatment of certain nonrecognition and exchange*

*transactions—(i) In general—(A) Transfer disregarded.* Except as otherwise provided in paragraph (h) of this section, if a section 197 intangible is transferred in a transaction described in paragraph (g)(2)(ii) of this section, the transfer is disregarded in determining—

(1) Whether, with respect to so much of the intangible's basis in the hands of the transferee as does not exceed its basis in the hands of the transferor, the intangible is an amortizable section 197 intangible; and

(2) The amount of the deduction under section 197 with respect to such basis.

(B) *Application of general rule.* If the intangible described in paragraph (g)(2)(i)(A) of this section was an amortizable section 197 intangible in the hands of the transferor, the transferee will continue to amortize its adjusted basis, to the extent it does not exceed the transferor's adjusted basis, ratably over the remainder of the transferor's 15-year amortization period. If the intangible was not an amortizable section 197 intangible in the hands of the transferor, the transferee's adjusted basis, to the extent it does not exceed the transferor's adjusted basis, cannot be amortized under section 197. In either event, the intangible is treated, with respect to so much of its adjusted basis in the hands of the transferee as exceeds its adjusted basis in the hands of the transferor, in the same manner for purposes of section 197 as an intangible acquired from the transferor in a transaction that is not described in paragraph (g)(2)(ii) of this section. The rules of this paragraph (g)(2)(i) also apply to any subsequent transfers of the intangible in a transaction described in paragraph (g)(2)(ii) of this section.

(ii) *Transactions covered.* The transactions described in this paragraph (g)(2)(ii) are—

(A) Any transaction described in section 332, 351, 361, 721, or 731; and

(B) Any transaction between corporations that are members of the same consolidated group immediately after the transaction.

(iii) *Certain exchanged-basis property.* This paragraph (g)(2)(iii) applies to property that is acquired in a transaction subject to section 1031 or 1033 and is permitted to be acquired without recognition of gain (replacement property). Except as otherwise provided in paragraph (h) of this section, replacement property is treated as if it were the property by reference to which its basis is determined (the predecessor property) in determining whether, with respect to so much of its basis as does not exceed the basis of the predecessor property,

the replacement property is an amortizable section 197 intangible and the amortization period under section 197 with respect to such basis. Thus, if the predecessor property was an amortizable section 197 intangible, the taxpayer will amortize the adjusted basis of the replacement property, to the extent it does not exceed the adjusted basis of the predecessor property, ratably over the remainder of the 15-year amortization period for the predecessor property. If the predecessor property was not an amortizable section 197 intangible, the adjusted basis of the replacement property, to the extent it does not exceed the adjusted basis of the predecessor property, may not be amortized under section 197. In either event, the replacement property is treated, with respect to so much of its adjusted basis as exceeds the adjusted basis of the predecessor property, in the same manner for purposes of section 197 as property acquired from the transferee in a transaction that is not subject to section 1031 or 1033. (See paragraph (h) of this section for the application of the anti-churning rules.)

(iv) *Transfers under section 708(b)(1)—(A) In general.* Paragraph (g)(2)(i) of this section applies to transfers of section 197 intangibles that occur or are deemed to occur by reason of the termination of a partnership under section 708(b)(1).

(B) *Termination by sale or exchange of interest.* In applying paragraph (g)(2)(i) of this section to a partnership that is terminated pursuant to section 708(b)(1)(B) (relating to a sale or exchange of an interest), the terminated partnership is treated as the transferor and the new partnership is treated as the transferee with respect to any section 197 intangible held by the terminated partnership immediately preceding the termination. (See paragraph (g)(3) of this section for the treatment of increases in the basis of property of the terminated partnership under section 743(b).)

(C) *Other terminations.* In applying paragraph (g)(2)(i) of this section to a partnership that is terminated pursuant to section 708(b)(1)(A) (relating to cessation of activities by a partnership), the terminated partnership is treated as the transferor and the distributee partner is treated as the transferee with respect to any section 197 intangible held by the terminated partnership immediately preceding the termination.

(D) *Anti-churning rules.* See paragraph (h) of this section for the application of the anti-churning rules.

(v) *Distributions to which section 732(d) applies.* Paragraph (g)(2)(i) of this section applies to a distribution of a

section 197 intangible to which section 732(d) (relating to special partnership basis to transferee) applies. For purposes of section 197, any increase in the basis of the distributed intangible under section 732(d) is taken into account by a partner as if the increased portion were attributable to the partner's acquisition of the underlying partnership property on the date of distribution from the transferor of the partnership interest or the deceased partner, as the case may be. For purposes of the effective date and anti-churning rules (paragraphs (d)(1) and (h) of this section), the intangible is treated as having been acquired by the transferee partner at the time of the transfer of the partnership interest described in section 732(d). For purposes of determining the amortization period under section 197 with respect to any increased basis, however, the intangible is treated as having been acquired by the transferee partner at the time of the distribution described in section 732(a). (See paragraph (h) of this section for the application of the anti-churning rules.)

(vi) *Curative and remedial allocations under section 704(c).* For purposes of paragraph (g)(2)(i) of this section, if a section 197 intangible is transferred to a partnership in a transaction described in section 721, the basis of the intangible in the hands of the transferor includes the amount of any curative or remedial allocations of amortization that are made to a noncontributing partner with respect to the contributed intangible under the curative or remedial methods for making allocations under section 704(c). Thus, for example, if a contributed intangible is not an amortizable section 197 intangible in the hands of the transferor, any remedial allocations of amortization made to a noncontributing partner with respect to the intangible are not amortizable under section 197. See § 1.704-3(c) and (d) for a description of the curative and remedial methods.

(3) *Application of section 754 to acquisitions of an interest in an intangible held through a partnership.* Any increase in the basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property) is taken into account under section 197 by a partner as if the increased portion of the basis were attributable to the partner's acquisition of the underlying partnership property and as if the property were acquired from the distributee partner on the date of the

distribution (in the case of a basis increase under section 734(b)) or from the transferor of the partnership interest on the date of the transfer (in the case of a basis increase under section 743(b)). (See paragraph (h) of this section for the application of the anti-churning rules.)

(4) *Treatment of certain reinsurance transactions*—(i) *In general.* Section 197 applies to any insurance contract acquired from another person through an assumption reinsurance transaction. For purposes of section 197, an assumption reinsurance transaction is—

(A) Any arrangement in which one insurance company (the reinsurer) becomes solely liable to policyholders on contracts transferred by another insurance company (the ceding company); and

(B) Any acquisition of an insurance contract that is treated as occurring by reason of an election under section 338.

(ii) *Determination of adjusted basis*—(A) *Acquisitions (other than under section 338) of specified insurance contracts.* The amount taken into account for purposes of section 197 as the adjusted basis of specified insurance contracts (as defined in section 848(e)(1)) acquired in an assumption reinsurance transaction that is not described in paragraph (g)(4)(i)(B) of this section is equal to the excess of—

(1) The amount paid or incurred (or treated as having been paid or incurred) by the reinsurer for the purchase of the contracts (as determined under § 1.817-4(d)(2)), over

(2) The amount of the specified policy acquisition expenses that are attributable to the reinsurer's net positive consideration for the reinsurance agreement (as determined under § 1.848-2(f)(3)).

(B) *Other acquisitions.* [Reserved]

(5) *Amounts paid or incurred for a franchise, trademark, or trade name.* If an amount to which section 1253(d) (relating to the transfer, sale, or other disposition of a franchise, trademark, or trade name) applies is described in section 1253(d)(1)(B) (relating to contingent serial payments), the amount is deductible under section 1253(d)(1) and is not included in the adjusted basis of the intangible for purposes of section 197. Any other amount, whether fixed or contingent, to which section 1253(d) applies is chargeable to capital account under section 1253(d)(2) and is amortizable only under section 197.

(6) *Amounts properly taken into account in determining the cost of property that is not a section 197 intangible.* Section 197 does not apply to an amount that is properly taken into account in determining the cost of property that is not a section 197

intangible. The entire cost of acquiring the other property is included in its basis and recovered under other applicable Internal Revenue Code provisions.

(7) *Treatment of amortizable section 197 intangibles as depreciable property*—(i) *In general.* An amortizable section 197 intangible is treated as property of a character subject to the allowance for depreciation under section 167. Thus, for example, an amortizable section 197 intangible is not a capital asset for purposes of section 1221, but if held for more than one year, it generally qualifies under section 1231 as property used in a trade or business. Also, an amortizable section 197 intangible is section 1245 property and section 1239 applies to any gain recognized upon its sale or exchange between related persons (as defined in section 1239(b)).

(ii) *Exceptions and limitations*—(A) *Unstated interest and original issue discount rules.* In the case of the acquisition of any amortizable section 197 intangible in a transaction that would not be treated as the sale or exchange of property by the person from which the intangible was acquired, paragraph (g)(7)(i) of this section shall not apply (and the amortizable section 197 intangible shall not be treated as property) for purposes of—

(1) Section 483(c) (relating to payments on account of the sale or exchange of property); and

(2) Section 1274(c) (relating to debt instruments given in consideration for the sale or exchange of property).

(B) *Treatment of other parties to transaction.* No person shall be treated as having sold, exchanged, or otherwise disposed of property in a transaction for purposes of any provision of the Internal Revenue Code solely by reason of the application of paragraph (g)(7)(i) of this section to any other party to the transaction.

(h) *Anti-churning rules*—(1) *Conversions of existing goodwill, going concern value, and certain other section 197 intangibles.* Except as otherwise provided in this paragraph (h), goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable prior to the enactment of section 197 may not be amortized as an amortizable section 197 intangible if the section 197 intangible is acquired by a taxpayer after August 10, 1993 (or after July 25, 1991, if a valid retroactive election pursuant to § 1.197-1T has been made) and either—

(i) The taxpayer or a related person held or used the intangible or an interest

therein at any time during the transition period;

(ii) The taxpayer acquired the intangible from a person that held the intangible at any time during the transition period and, as part of the transaction, the user of the intangible does not change; or

(iii) The taxpayer grants the right to use the intangible to a person (or a person related to that person) that held or used the intangible at any time during the transition period.

(2) *Amounts deductible under section 1253(d).* For purposes of paragraph (h)(1) of this section, deductions allowable under section 1253(d)(2) or deductions allowable pursuant to an election under section 1253(d)(3) (in either case as in effect prior to the enactment of section 197) are treated as deductions allowable for amortization.

(3) *Transition period.* For purposes of this paragraph (h), the transition period begins on July 25, 1991, and ends on August 10, 1993, except that for taxpayers that made a valid retroactive election pursuant to § 1.197-1T, the transition period is July 25, 1991.

(4) *Exceptions.* The anti-churning rules of this paragraph (h) do not apply to—

(i) The acquisition of an intangible by a taxpayer if the basis of the intangible is determined under section 1014(a); or

(ii) The acquisition of an intangible by a taxpayer that is an amortizable section 197 intangible in the hands of the seller (or transferor), but only if the acquisition by the taxpayer or sale by the seller (or transfer by the transferor) was not part of a transaction or a series of related transactions in which the seller (or transferor) previously acquired the intangible or interest therein.

(5) *Special partnership provisions*—(i) *Basis increases.* In determining whether the anti-churning rules of this paragraph (h) apply to any increase in the basis of partnership property under section 732, 734, or 743, the determinations are made at the partner level and each partner is treated as having owned and used the partner's proportionate share of the partnership property. Thus, for example, the anti-churning rules do not apply to an increase in the basis of partnership property under section 743(b) that occurs upon the acquisition of an interest in a partnership that has made a section 754 election if the person acquiring the partnership interest either is not related to the person transferring the partnership interest or acquired the interest upon the death of the former partner. Similarly, the anti-churning rules do not apply to a continuing partner's proportionate share of an increase in the

basis of partnership property under section 734(b) that occurs upon the distribution of property of a partnership that has made a section 754 election if the continuing partner is not related to the distributee partner.

(ii) *Curative and remedial allocations under section 704(c)*. In determining whether the anti-churning rules of this paragraph (h) apply, any curative or remedial allocation of amortization made to a noncontributing partner under the curative or remedial methods for making allocations under section 704(c) is treated in the same manner as a noncurative or nonremedial allocation of amortization. Thus, for example, if the anti-churning rules would apply to a nonremedial allocation of amortization to a noncontributing partner, the anti-churning rules apply to any remedial allocation of amortization. See § 1.704-3 (c) and (d) for a description of the curative and remedial methods.

(6) *Related person*—(i) *In general*. Except as otherwise provided in paragraph (h)(6)(iii) of this section, a person is related to another person for purposes of this paragraph (h) if—

(A) The person bears a relationship to that person that would be specified in section 267(b) (determined without regard to section 267(e)) and, by substitution, section 267(f)(1), if those sections were amended by substituting 20 percent for 50 percent; or

(B) The person bears a relationship to that person that would be specified in section 707(b)(1) if that section was amended by substituting 20 percent for 50 percent; or

(C) The persons are engaged in trades or businesses under common control (within the meaning of section 41(f)(1) (A) and (B)).

(ii) *Time for testing relationships*. For purposes of this paragraph (h), a person is treated as related to another person if the relationship exists—

(A) In the case of a single transaction, immediately before or immediately after the acquisition of the intangible involved; or

(B) In the case of a series of related transactions, at any time during the period beginning immediately before the earliest acquisition and ending immediately after the last acquisition of any intangible acquired in the series of transactions.

(iii) *De minimis rule*—(A) *In general*. Two corporations shall not be treated as related persons for purposes of this paragraph (h)(6) if—

(1) The corporations would (but for the application of this paragraph (h)(6)(iii)) be treated as related persons solely by reason of substituting “more

than 20 percent” for “more than 50 percent” in section 267(f)(1)(A); and

(2) The beneficial ownership interest of one corporation in the stock of the other corporation represents less than 10 percent of the total combined voting power of all classes of stock entitled to vote and less than 10 percent of the total value of the shares of all classes of stock outstanding.

(B) *Determination of beneficial ownership interest*. For purposes of this paragraph (h)(6)(iii), the beneficial ownership interest of one corporation in the stock of another corporation shall be determined under the principles of section 318(a), except that—

(1) In applying section 318(a)(2)(C), the 50 percent limitation contained therein shall not be applied; and

(2) Section 318(a)(3)(C) shall be applied by substituting “20 percent” for “50 percent”.

(7) *Special rules for entities that owned or used property at any time during the transition period and that are no longer in existence*. A corporation, partnership, or trust that owned or used property at any time during the transition period and that is no longer in existence is deemed to be in existence for purposes of determining whether the taxpayer that acquired the property is related to the corporation, partnership, or trust.

(8) *Special rules for section 338 deemed acquisitions*. In the case of a qualified stock purchase that is treated as a deemed sale and purchase of assets pursuant to section 338, the corporation that is treated as selling its assets as a result of an election thereunder (old target) is not considered related to the corporation that is treated as purchasing the assets (new target) if stock of old target meeting the requirements of section 1504(a)(2) is, or is deemed to have been, acquired by purchase after July 25, 1991. See § 1.338-2(d). Thus, for example, if a corporation (the purchasing corporation) makes a qualified stock purchase of the stock of another corporation (target) from unrelated third parties in July 1997, and a section 338 election is made by the purchasing corporation, the deemed asset purchase shall not be considered as an acquisition between related persons solely by virtue of the fact that old target and new target are treated as the same corporation for certain other purposes of the Code or that old target and new target are the same corporation under the laws of the State or other jurisdiction of its organization.

However, the anti-churning rules of this paragraph (h) may nevertheless apply to a deemed asset purchase resulting from a section 338 election because old target

and new target are otherwise treated as related parties within the meaning of paragraph (h)(6) of this section.

(9) *Exception to anti-churning rules where gain is recognized*—(i) *In general*. If a taxpayer would not be subject to paragraph (h) but for the substitution of 20 percent for 50 percent under paragraph (h)(6)(i)(A) of this section and the person (whether or not subject to Federal income tax) from which the taxpayer acquires the intangible elects to recognize gain on the disposition of the intangible and, notwithstanding any other provision of the Internal Revenue Code, agrees to pay an amount that, when added to any other Federal income tax, equals the gain on the disposition multiplied by the highest marginal rate of tax imposed by section 1 (for individuals, estates, or trusts) or 11 (for corporations), whichever is applicable, for the taxable year in which the gain is realized by the person from which the taxpayer acquires the intangible, then the anti-churning rules described in this paragraph (h) only apply to the extent the taxpayer's adjusted basis in the intangible exceeds the gain recognized.

(ii) *Manner of making election*.

[Reserved]

(iii) *Determination of highest marginal rate of tax*. For the purpose of determining the highest marginal rate of tax applicable to the person from which the taxpayer acquires the intangible, the following rules shall apply:

(A) *Noncorporate taxpayers*. In the case of an individual, estate, or trust, the highest marginal rate of tax shall be the highest marginal rate of tax in effect under section 1, determined without regard to section 1(h).

(B) *Corporations and tax-exempt entities*. In the case of a corporation or an entity that is exempt from tax under section 501(a), the highest marginal rate of tax shall be the highest marginal rate of tax in effect under section 11, determined without regard to any rate that is added to the otherwise applicable rate in order to offset the effect of the graduated rate schedule.

(iv) *Special rule for pass-through entities*. In the case of a partnership or S corporation, the election under paragraph (h)(9)(i) of this section—

(A) Shall be made by the entity rather than by its owners or members; and

(B) Shall constitute an election by each of the owners or members of the entity (rather than the entity itself) to pay a tax, determined as provided in this paragraph (h)(9), on the portion of the gain properly allocable to each such owner or member.

(v) *Coordination with other provisions*—(A) *In general*. For purposes

of applying any provision of chapter 1 or chapter 6 of the Code other than section 197(f)(9)(B), both the amount of gain subject to the tax determined under paragraph (h)(9)(i) of this section and the amount of the tax shall be disregarded. Thus, for example, the amount of the gain shall not be reduced by any net operating loss deduction under section 172(a), any capital loss under section 1212, or any other similar loss or deduction. The amount of tax determined under paragraph (h)(9)(i) of this section shall not be reduced by any credit of the taxpayer. In computing the amount of any net operating loss, capital loss, or other similar loss or deduction, or any credit that may be carried to any taxable year, any gain recognized, and any tax paid, under paragraph (h)(9)(i) of this section shall not be taken into account.

(B) *Section 1374.* No provision of paragraph (h)(9)(iv) of this section shall preclude the application of section 1374 (relating to a tax on certain built-in gains of S corporations) to any gain with respect to which the election described in paragraph (h)(9)(i) of this section is made. Neither paragraph (h)(9)(iv) nor paragraph (h)(9)(v)(A) of this section shall be treated as precluding a taxpayer from applying the provisions of section 1366(f)(2) (relating to treatment of the tax imposed by section 1374 as a loss sustained by the S corporation) in determining the amount of tax payable under paragraph (h)(9)(i) of this section.

(C) *Procedural and administrative provisions.* For purposes of subtitle F, the amount determined under paragraph (h)(9)(i) of this section is treated as a tax imposed by section 1 or 11, as appropriate.

(D) *Installment method.* The gain subject to the tax determined under paragraph (h)(9)(i) of this section may not be reported under the method described in section 453(a). Any such gain that would, but for the application of this paragraph (h)(9)(v)(D), be taken into account under section 453(a) shall be taken into account in the same manner as if an election under section 453(d) (relating to the election not to apply section 453(a)) had been made.

(10) *Transactions subject to both anti-churning and nonrecognition rules.* If a person acquires a section 197 intangible in a transaction described in paragraph (g)(2) of this section from a person in whose hands the intangible was an amortizable section 197 intangible, and as a result of the transaction, the person is or becomes related to any person described in paragraph (h)(1) of this section, the intangible ceases to be an amortizable section 197 intangible in the hands of the transferee unless the

exception provided in paragraph (h)(4)(ii) of this section applies. If a person acquires a section 197 intangible in anticipation of becoming related to any person described in paragraph (h)(1) of this section, the intangible is not an amortizable section 197 intangible in the hands of the transferee.

(11) *Anti-churning anti-abuse rule.* Section 197 does not apply to any intangible acquired by a taxpayer if the taxpayer acquires the intangible in a transaction one of the principal purposes of which is to avoid any of the anti-churning rules for intangibles described in paragraph (h)(1) of this section. Thus, for example, if section 197 intangibles are acquired in a transaction (or series of related transactions) in which options to acquire stock are issued to a party to the transaction, but the option is not treated as having been exercised for purposes of paragraph (h)(6) of this section, this paragraph (h)(11) may apply to the transaction.

(i) [Reserved].

(j) *General anti-abuse rule.* The rules in this section shall be interpreted and applied as necessary and appropriate to prevent avoidance of the purposes of section 197. If one of the principal purposes of a transaction is to achieve a tax result that is inconsistent with the purposes of section 197, the Commissioner can recast the transaction for Federal tax purposes as appropriate to achieve tax results that are consistent with the purposes of section 197, in light of the applicable statutory and regulatory provisions and the pertinent facts and circumstances.

(k) *Examples.* The following examples illustrate the application of this section:

*Example 1. Computer software.* (i) X purchases all of the assets of an existing trade or business from Y. One of the assets acquired is all of Y's rights in certain computer software previously used by Y under the terms of a nonexclusive license from the software developer. The software was developed for use by manufacturers to maintain a comprehensive accounting system, including general and subsidiary ledgers, payroll, accounts receivable and payable, cash receipts and disbursements, fixed asset accounting, and inventory cost accounting and controls. The software was not substantially modified for use by Y within the meaning of paragraph (c)(4)(i) of this section and was acquired directly by Y from the developer. The developer does not maintain wholesale or retail outlets but markets the software directly to ultimate users. Y's license of the software is limited to an entity that is actively engaged in business as a manufacturer.

(ii) Notwithstanding these limitations, the software is considered to be readily available to the general public for purposes of paragraph (c)(4)(i) of this section.

Accordingly, the software is not a section 197 intangible.

*Example 2. Governmental rights of fixed duration.* (i) City M operates a municipal water system. In order to induce X to locate a new manufacturing business in the city, M grants X the right to purchase water for 16 years at a specified price. X incurs legal fees and other costs for professional services in the amount of \$10x in connection with its efforts to obtain these rights.

(ii) The rights granted by M are described in section 197(e)(4)(B) and paragraph (c)(6) of this section and, thus, are not a section 197 intangible. This exclusion applies notwithstanding that the rights may not qualify for exclusion under section 197(e)(4)(D) and paragraph (c)(13) of this section or that they also may be described in section 197(d)(1)(D) and paragraph (b)(8) of this section and, as such, may not be treated as self-created intangibles eligible for exclusion under section 197(c)(2).

*Example 3. Advertising costs.* (i) Q manufactures and sells consumer products through a series of wholesalers and distributors. In order to increase sales of its product by encouraging consumer loyalty to its products and to enhance the value of the goodwill, trademarks, and trade names of the business, Q advertises its products to the consuming public. It regularly incurs costs to develop radio, television, and print advertisements. These costs generally consist of employee costs and amounts paid to independent advertising agencies. Q also incurs costs to run these advertisements in the various media for which they were developed. Except for the possible application of section 197, these costs would be ordinary and necessary expenses deductible under section 162.

(ii) The advertising costs are not subject to amortization under section 197 pursuant to paragraph (a)(3) of this section because they are otherwise deductible.

*Example 4. Covenant not to compete acquired in connection with stock redemption.* (i) R, a corporation, redeems all of its stock owned by A, an individual. R and A have no business relationships with each other except for the corporate-shareholder relationship. In connection with the stock redemption, R and A enter into an agreement containing a covenant not to compete. Under this agreement, A agrees that A will not compete with the business of R within a prescribed geographical territory for a period of three years after the date on which the stock redemption is completed. In exchange for this agreement, R pays A consideration in addition to the amount paid for the stock redeemed by R.

(ii) Because the agreement was entered into in connection with the reacquisition by R of its stock, section 162(k) provides that no deduction shall be allowed for any amount paid or incurred pursuant to the agreement. Accordingly, pursuant to paragraph (a)(4) of this section, section 197 does not apply to these amounts.

*Example 5. Substantial portion of trade or business.* (i) S owns and operates 100 restaurants in various locations. Each of these restaurants is operated using a well-established trade name made available to S

under the terms of a franchise agreement with F. S determined to cease operating one of the franchised restaurants. Accordingly, S sold to B all of the assets that it had used exclusively in connection with the operation of its restaurant at that location. B agreed to extend an offer of employment to all of the employees at that location. B acquired no rights to the franchise or to any of the trademarks or trade names that had been used by S.

(ii) The transaction between B and S is a transaction involving the acquisition of assets constituting a trade or business or a substantial portion thereof within the meaning of paragraph (e) of this section, notwithstanding that B did not acquire a franchise from S or that the assets did not represent a substantial portion of the assets used by S in that trade or business.

**Example 6. Separate acquisition of franchise.** (i) S is a franchisor of retail outlets for specialty coffees. On July 1, 1997, G enters into an agreement with S pursuant to which G is permitted to acquire and operate a store using the S trademark and trade name at the location specified in the agreement. G agrees to pay S \$100,000 upon execution of the agreement and also agrees to pay, on a monthly basis throughout the term of the franchise, a specified percentage of gross sales from the store. The agreement contains detailed specifications for the construction and operation of the business, but G is not required to purchase from S any of the materials necessary to construct the improvements at the location specified in the franchise agreement.

(ii) The franchise is a section 197 intangible within the meaning of paragraph (b)(10) of this section. The franchise does not qualify for the exclusion relating to self-created intangibles described in section 197(c)(2) and paragraph (d)(2) of this section because the franchise is described in section 197(d)(1)(F). In addition, because the acquisition of the franchise constitutes the acquisition of an interest in a trade or business or a substantial portion thereof, the franchise may not be excluded under section 197(e)(4). Thus, the franchise is an amortizable section 197 intangible, the basis of which must be recovered over a 15-year period. However, the amounts to be paid by G computed as a percentage of gross sales are not subject to the provisions of section 197 by reason of section 197(f)(4)(C) and paragraph (b)(10)(ii) of this section.

**Example 7. Acquisition and amortization of covenant not to compete.** (i) As part of the acquisition of a trade or business from C, B and C enter into an agreement containing a covenant not to compete. Under this agreement, C agrees that it will not compete with the business acquired by B within a prescribed geographical territory for a period of three years after the date on which the business is sold to B. In exchange for this agreement, B agrees to pay C \$90,000 per year for each year in the term of the agreement. The agreement further provides that, in the event of a breach by C of his obligations under the agreement, B may terminate the agreement, cease making any of the payments due thereafter, and pursue any other legal or equitable remedies available under

applicable law. Assume that the amounts payable to C under the agreement represent the value of C's obligations to B pursuant to the covenant and that the present fair market value of B's rights under the agreement is \$225,000. The aggregate consideration paid for all assets acquired in the transaction other than the covenant exceeds the sum of the amount of Class I assets and the aggregate fair market value of all Class II and Class III assets and all Class IV assets other than the covenant.

(ii) Because the covenant is acquired in an applicable asset acquisition (within the meaning of section 1060(c)), the basis of B in the covenant cannot exceed its fair market value. See § 1.1060-1T(e)(1). Under section 197(f)(3) and paragraphs (f)(3)(i) and (f)(4) of this section, the adjusted basis of B in the agreement, determined as of the date on which the agreement is entered into, is \$225,000. B's deduction for amortization with respect to the amounts to be paid under the agreement is \$1,250 per month, or \$15,000 per year, for each year in the 15-year period beginning on the date on which the agreement is entered into. The excess of the amounts payable pursuant to the agreement over the amount allocated to the covenant under § 1.1060-1T(e)(1), or \$45,000, is allocated to Class V assets.

**Example 8. Breach of covenant not to compete subsequent to acquisition.** (i) The facts are the same as in *Example 7*, except that at the end of the second year of the agreement, C breaches the agreement by competing against B. B and C enter into a settlement of all claims arising under the agreement and the subsequent breach by C by agreeing that B is not obligated to pay C the final installment of \$90,000.

(ii) Under paragraph (g)(1)(iii) of this section, the covenant is not treated as having been disposed of (or becoming worthless) because C has not disposed of all interests in the trade or business acquired in the same transaction as the covenant. The covenant is not a contingent income asset within the meaning of § 1.1060-1T(f)(4)(i). Accordingly, B must decrease the adjusted basis of any asset acquired from C by \$90,000 at the beginning of the third year of the agreement in the manner provided by § 1.1060-1T(f)(3)(i). To the extent that any decrease is allocated to an amortizable section 197 intangible, B must reduce the amount of its deduction for amortization under section 197 accordingly.

**Example 9. Loss disallowance rules involving related persons.** (i) Assume that X and Y are treated as a single taxpayer for purposes of paragraph (g)(1)(iv) of this section. In a single transaction, X and Y acquired from Z all of the assets used by Z in a trade or business. Z had operated this business at two locations, and X and Y each desired to acquire the assets used by Z at one of the locations. Three years after the acquisition, X sold all of the assets, including amortizable section 197 intangibles, to an unrelated purchaser at a loss of \$120,000.

(ii) Because X and Y are treated as a single taxpayer for purposes of the loss disallowance rules of section 197(f)(1) and paragraph (g)(1) of this section, X may not recognize its loss on the sale of the

amortizable section 197 intangibles. Under paragraph (g)(1)(iv) of this section, X must amortize its disallowed loss under section 197, and Y may not increase its adjusted basis in its amortizable section 197 intangibles by the amount of the realized loss of X that is disallowed. X must amortize the disallowed loss over the remainder of the amortization period for the amortizable section 197 intangibles it sold. Accordingly, X must amortize the disallowed loss at the rate of \$10,000 per year (or \$833 per month) for each of the 12 years remaining in the 15-year period.

**Example 10. Disposition of retained intangibles by related person.** (i) The facts are the same as in *Example 9*, except that 10 years after the acquisition of the assets by X and Y and seven years after the sale of the assets by X, Y sells all of the assets acquired from Z, including amortizable section 197 intangibles, to an unrelated purchaser.

(ii) Upon the sale of assets by Y, X may recognize a loss equal to the unamortized loss. Accordingly, pursuant to paragraph (g)(1)(iv) of this section, X may recognize a loss in the amount of \$50,000, the amount obtained by reducing the loss on the sale of the assets at the end of the third year (\$120,000) by the amount of amortization allowed for the fourth through the tenth years (\$70,000).

**Example 11. Acquisition of an interest in partnership with no section 754 election.** (i) A, B, and C each contribute \$1,500 for equal shares in general partnership P. On January 1, 1998, P acquires as its sole asset an amortizable section 197 intangible for \$4,500. P still holds the intangible on January 1, 2003, at which time the intangible has an adjusted basis to P of \$3,000, and A, B, and C each have an adjusted basis of \$1,000 in their partnership interests. D (who is not related to A) acquires A's interest in P for \$1,600. No section 754 election is in effect for 2003.

(ii) Pursuant to paragraph (h)(5)(i) of this section, there is no change in the basis or amortization of the intangible and D merely steps into the shoes of A with respect to the intangible. D's proportionate share of P's adjusted basis in the intangible is \$1,000, which continues to be amortized over the 10 years remaining in the original 15-year amortization period for the intangible.

**Example 12. Acquisition of an interest in partnership with a section 754 election.** (i) The facts are the same as in *Example 11*, except that a section 754 election is in effect for 2003.

(ii) Pursuant to section 197(f)(9)(E) and paragraph (h)(5)(i) of this section, for purposes of section 197, D is treated as if P owns two assets. D's proportionate share of P's adjusted basis in one asset is \$1,000, which continues to be amortized over the 10 years remaining in the original 15-year amortization period. For the other asset, D's proportionate share of P's adjusted basis is \$600 (the amount of the basis increase under section 743 as a result of the section 754 election), which is amortized over a new 15-year period beginning January 2003. With respect to B and C, P's remaining \$2,000 adjusted basis in the intangible continues to be amortized over the 10 years remaining in the original 15-year amortization period.

**Example 13. Payment to a retiring partner by partnership with a section 754 election.** (i) The facts are the same as in *Example 11*, except that a section 754 election is in effect for 2003 and, instead of D acquiring A's interest in P, A retires from P. A, B, and C are not related to each other within the meaning of paragraph (h)(6) of this section. A receives a payment under section 736 from P of \$1,600, all of which is in exchange for A's interest in the intangible asset owned by P.

(ii) Pursuant to paragraph (h)(5)(i) of this section, because of the section 734 adjustment, P is treated as having two amortizable section 197 intangibles, one with a basis of \$3,000 and a remaining amortization period of 10 years and the other with a basis of \$600 and a new amortization period of 15 years.

**Example 14. Termination of partnership under section 708(b)(1)(B).** (i) A and B are partners with equal shares in the capital and profits of general partnership P. P's only asset is an amortizable section 197 intangible, which P had acquired on January 1, 1994. On January 1, 1999, the asset had a fair market value of \$100 and a basis to P of \$50. On that date, A sells his entire partnership interest in P to C, who is unrelated to A, for \$50. At the time of the sale, the basis of each of A and B in their respective partnership interests is \$25.

(ii) The sale causes a termination of P under section 708(b)(1)(B). Under section 708, the transaction is treated as if P transfers its sole asset to a new partnership in exchange for the assumption of its liabilities and the receipt of all of the interests in the new partnership. Immediately thereafter, P is treated as if it is liquidated, with B and C each receiving their proportionate share of the interests in the new partnership. The contribution by P of its asset to the new partnership is governed by section 721, and the liquidating distributions by P of the interests in the new partnership are governed by section 731. However, C does not realize a special basis adjustment under section 743 with respect to the amortizable section 197 intangible unless P had a section 754 election in effect for its taxable year in which the deemed transfer of the asset to the new partnership occurred.

(iii) Under section 197, if P had a section 754 election in effect for its taxable year in which the deemed transfer of the asset to the new partnership occurred, C is treated as if the new partnership had acquired two assets from P immediately preceding its termination. Even though the adjusted basis of the new partnership in the two assets is determined solely under section 723, because the transfer of assets is a transaction described in section 721, the application of sections 743(b) and 754 to P immediately before its termination causes P to be treated as if it held two assets, for purposes of section 197, at this time. B's and C's proportionate share of the new partnership's adjusted basis is \$25 each in one asset, which continues to be amortized over the 10 years remaining in the original 15-year amortization period. For the other asset, C's proportionate share of the new partnership's adjusted basis is \$25 (the amount of the basis

increase resulting from the application of section 743 to the sale or exchange by A of the interest in P), which is amortized over a new 15-year period beginning in January 1999.

(iv) If P did not have a section 754 election in effect for its taxable year in which the sale of the partnership interest by A to C occurred, the adjusted basis of the new partnership in the amortizable section 197 intangible is determined solely under section 723, because the transfer is a transaction described in section 721, and P does not have a basis increase in its section 197 intangible. Under section 197(f)(2) and paragraph (g)(2) of this section, the new partnership continues to amortize the amortizable section 197 intangible over the 10 years remaining in the original 15-year amortization period. No additional amortization is allowable with respect to this asset under section 197.

**Example 15. Disguised sale to partnership.** (i) Assume that E and F are individuals who are unrelated to each other within the meaning of paragraph (h)(6) of this section. E has been engaged in the active conduct of a trade or business as a sole proprietor since 1990. E and F form EF Partnership. E transfers all of the assets of the business, having a fair market value of \$100x, to EF, and F transfers \$40x of cash to EF. E receives a 60 percent interest in EF and the \$40x of cash contributed by F, and F receives a 40 percent interest in EF, under circumstances in which the transfer by E is treated as a sale of property to EF under §1.707-3(b).

(ii) Under §1.707-3(a)(1), the transaction is treated as if E had sold to EF a 40 percent interest in each asset for \$40x and contributed the remaining 60 percent interest in each asset to EF in exchange solely for an interest in EF. Because E and F are related persons within the meaning of paragraph (h)(6) of this section, no portion of any transferred section 197 intangible that E held during the transition period (as defined in paragraph (h)(3) of this section) is an amortizable section 197 intangible pursuant to paragraph (h)(1) of this section. Section 197(f)(9)(E) and paragraph (h)(5) of this section do not apply to any portion of the section 197 intangible in the hands of EF because the basis of EF in these assets was not increased under any of sections 732, 734, or 743.

**Example 16. Acquisition by related person in nonrecognition transaction.** (i) A owns a nonamortizable intangible that A acquired in 1990. In 1997, A sells a one-half interest in the intangible to B for cash. Immediately after the sale, A and B, who are unrelated to each other, form partnership P as equal partners. A and B each contribute their one-half interest in the intangible to P.

(ii) P has a transferred basis in the intangible from A and B under section 723. The nonrecognition transfer rule under paragraph (g)(2)(i) of this section applies to A's transfer of its one-half interest in the intangible to P, and consequently P steps into A's shoes with respect to A's nonamortizable transferred basis. The anti-churning rules of paragraph (h)(1)(i) of this section apply to B's transfer of its one-half interest in the intangible to P, because A, who is related to P under paragraph (h)(6) of this section, held

B's one-half interest in the intangible during the transition period. Pursuant to paragraph (h)(10) of this section, these rules apply to B's transfer of its one-half interest to P even though the nonrecognition transfer rule under paragraph (g)(2)(i) of this section would have permitted P to step into B's shoes with respect to B's otherwise amortizable basis. Therefore, P's entire basis in the intangible is nonamortizable.

**Example 17. Acquisition of partnership interest following formation of partnership.** (i) The facts are the same as in *Example 16* except that, in 1996, A formed P with an affiliate and contributed the intangible to the partnership and except that thereafter, in an unrelated transaction, B purchases a 50 percent interest in P. P has a section 754 election in effect.

(ii) For the reasons set forth in *Example 14*(iii), B is treated as if P owns two assets. B's proportionate share of P's adjusted basis in one asset is the same as A's proportionate share of P's adjusted basis in that asset, which is not amortizable under section 197. For the other asset, B's proportionate share of the remaining adjusted basis of P is amortized over a new 15-year period.

**Example 18. Acquisition by related corporation in nonrecognition transaction.** (i) The facts are the same as *Example 16*, except that P is a corporation.

(ii) P has a transferred basis in the intangible from A and B under section 362. Pursuant to paragraph (h)(10) of this section, the application of the nonrecognition transfer rule under paragraph (g)(2)(i) and the anti-churning rules of paragraph (h)(1)(i) of this section to the facts of this *Example 18* is the same as in *Example 16*. Thus, P's entire basis in the intangible is nonamortizable.

**Example 19. Acquisition from corporation related to purchaser through remote indirect interest.** (i) X, Y, and Z are each corporations that have only one class of issued and outstanding stock. X owns 25 percent of the stock of Y and Y owns 25 percent of the outstanding stock of Z. No other shareholder of any of these corporations is related to any other shareholder or to any of the corporations. On June 30, 1997, X purchases from Z section 197 intangibles that Z owned during the transition period (as defined in paragraph (h)(3) of this section).

(ii) Pursuant to paragraph (h)(6)(iii)(B) of this section, the beneficial ownership interest of X in Z is 6.25 percent, determined by treating X as if it owned a proportionate (25 percent) interest in the stock of Z that is actually owned by Y. Thus, even though X is related to Y and Y is related to Z, X and Z are not considered to be related for purposes of the anti-churning rules of section 197.

**Example 20. Gain recognition election.** (i) B owns 25 percent of the stock of S, a corporation that uses the calendar year as its taxable year. No other shareholder of B or S is related to each other. S is not a member of a controlled group of corporations within the meaning of section 1563(a). S has section 197 intangibles that it owned during the transition period and was not permitted to amortize or depreciate under any other provision of the Code. S had a basis of \$25,000 in the intangibles. In 1997, S sells

these intangibles to B for \$75,000. S recognizes a gain of \$50,000 on the sale and has no other items of income, deduction, gain, or loss for the year, except that S also has a net operating loss of \$20,000 from prior years that it would otherwise be entitled to use in 1997 pursuant to section 172(b). As part of the transaction with B, S agrees to make the gain recognition election pursuant to section 197(f)(9)(B).

(ii) If the gain recognition election had not been made, S would have taxable income of \$30,000 for 1997 and a tax liability of \$4,500. As the result of the election, S must pay a total tax liability for the year of \$17,500 (35 percent of \$50,000), consisting of the sum of its regular tax liability of \$4,500 and the additional amount of \$13,000 pursuant to section 197(f)(9)(B).

(iii) Pursuant to paragraph (h)(9)(v)(A) of this section, S determines the amount of its net operating loss deduction in subsequent years without regard to the gain recognized on the sale of the section 197 intangible to B. Accordingly, the entire \$20,000 net operating loss deduction that would have been available in 1997 but for the gain recognition election may be used in 1998, subject to the limitations of section 172.

(iv) B has a basis of \$75,000 in the section 197 intangibles acquired from S. As the result of the gain recognition election by S, B may amortize \$50,000 of its basis under section 197. The remaining basis may not be amortized by B.

*Example 21. Section 338 election.* (i) P corporation makes a qualified stock purchase of the stock of T corporation from two shareholders in July 1997, and a section 338 election is made by P. One of the selling shareholders is an individual who owns 25 percent of the total value of the stock of each of the T and P corporation. No other shareholder of either T or P owns stock in both of these corporations, and no other shareholder is related to any other shareholder of either corporation.

(ii) Old target and new target (as these terms are defined in § 1.338-1(c)(13)) are members of a controlled group of corporations under section 267(b)(3), as modified by section 197(f)(9)(C)(i), and any section 197 intangible held by old target at any time during the transition period is not an amortizable section 197 intangible in the hands of new target. However, a gain recognition election under paragraph (h)(9)(i) of this section may be made with respect to this transaction.

(l) *Effective dates.* This section is applicable on the date final regulations are published in the Federal Register, except that § 1.197-2(c)(13) (exception from section 197 for separately acquired rights of fixed duration or amount) is applicable August 11, 1993 (or July 26, 1991, if a valid retroactive election has been made under § 1.197-1T).

Margaret Milner Richardson,  
Commissioner of Internal Revenue.

[FR Doc. 97-866 Filed 1-9-97; 2:53 pm]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 24

RIN 1018-AD97

#### Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to amend the regulations that establish designated ports for the importation, exportation, and reexportation of plants by adding the U.S. Department of Agriculture (USDA) ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, as designated ports for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Endangered Species Act of 1973, as amended (the Act), or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service also proposes to amend these same regulations by adding the USDA port at Port Huron, Michigan, as a port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES. The USDA has adequate facilities and personnel at these ports to qualify the ports as designated ports for the importation, exportation, and reexportation of plants under the terms of the Act and CITES. The addition of these ports to the list of designated ports would facilitate trade and the enforcement of the Act and CITES.

Additionally, the Service proposes to amend the regulations that establish designated ports for the importation, exportation, and reexportation of plants by removing Laredo, Texas, from the list of ports designated for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. The USDA no longer operates Laredo as a plant inspection station and has proposed to remove it from the list of plant inspection stations in its regulations. Because the Laredo plant inspection station has closed, it no longer is used as a designated port for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. However, the USDA has sufficient staff in place in

Laredo for the Service to add it instead as a designated port for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, as discussed in the above paragraph.

**DATES:** Comments must be submitted on or before March 17, 1997. Requests for a public hearing must be received by March 3, 1997.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Kenneth B. Stansell, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Comments and materials may be hand-delivered to the same address between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Kenneth B. Stansell, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358-2093.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538(f)) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Plants listed as endangered or threatened in 50 CFR 17.12 or in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the USDA ports listed in section 24.12(a) of the regulations. Certain other

USDA ports are designated for the importation, exportation, or reexportation of specific listed plants. Section 24.12(g) of the regulations contains a list of USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those ports.)

For the purposes of its enforcement of the Act and CITES, the Service requires that a port have personnel with expertise in identifying plants listed as endangered or threatened under the Act, or listed under CITES, to ensure that such plants are properly identified by their accompanying documentation. A port also must possess adequate facilities for holding live plants and plant material, since plants are subject to seizure if imported, exported, or reexported in violation of the Act or CITES. The Service further requires that, whenever possible, ports be located to coincide with established patterns of plant trade in order to help reduce shipping costs.

Effective November 16, 1995, saw-logs, sawn wood, and veneers of bigleaf mahogany (*Swietenia macrophylla*) from populations in the Americas (North America, South America, and the Caribbean) were listed on CITES Appendix III at the request of the government of Costa Rica. As a consequence of this listing, an export of the material included in the listing, from any country except Costa Rica, must be accompanied by a CITES certificate of origin issued by the government of that country. An export from Costa Rica of the material included in the listing must be accompanied by a CITES export permit issued by the Costa Rican government. Saw-logs, sawn wood, and veneers from listed trees currently may be imported into the United States through one of the ports listed in section 24.12(a), designated for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES; or through one of the ports listed in section 24.12(e), designated for the importation of logs and lumber from trees listed as endangered or threatened under the Act, or listed under CITES. [As part of this proposed rulemaking, the Service is, for the purposes of correctness and consistency, proposing to amend section 24.12(e) by replacing the term "logs and lumber" with the term "saw-logs, sawn wood, and veneers," which is the term

used in the CITES listings and in 50 CFR part 23.]

The USDA ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, are established ports of entry for bigleaf mahogany saw-logs, sawn wood, and veneers imported into the United States. Since bigleaf mahogany now is listed in the appendices to CITES, these four ports must, in order to avoid disrupting an established pattern of legitimate trade, be added to the list of ports designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES.

Therefore, the Service has been asked by the USDA to add the USDA ports at Laredo, Fort Lauderdale, Jacksonville, and Panama City to the list of ports in section 24.12(e), designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES. [Although the USDA port at Laredo is currently listed in section 24.12(a), the USDA no longer operates that port as a plant inspection station and has proposed (in 60 FR 13382; March 13, 1995) to remove it from the list of plant inspection stations in its regulations in 7 CFR 319.37-14. Because its plant inspection station has closed, Laredo no longer is used as a designated port for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. Therefore, in this proposed rule the Service is proposing to remove Laredo from the list of ports in section 24.12(a), adding it instead to the list of ports in section 24.12(e).]

The Service also has been asked by the USDA to allow the importation of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada through the USDA port of Port Huron, Michigan. In order to allow such importations, the Service must add Port Huron to the list of ports in section 24.12(d), designated for the importation from Canada and the exportation and reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES. Currently, the USDA ports at Detroit, Michigan; Buffalo and Rouses Point, New York; and Blaine, Washington, are the only ports specifically designated for those purposes. Adding Port Huron would facilitate trade by making an additional port of entry available to importers of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada.

After consultations with the USDA, the Service has determined that the USDA ports at Laredo, Fort Lauderdale, Jacksonville, Panama City, and Port Huron possess adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, these locations appear to coincide with established patterns of trade. Therefore, the Service proposes to add the ports at Laredo, Fort Lauderdale, Jacksonville, and Panama City to the list of designated ports for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, and to add the port at Port Huron to the list of designated ports for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES.

#### Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary confers designated port status on any port. Accordingly, the Service will accept public hearing requests within 45 days of the publication of this proposed rule. Send requests to the Service's Office of Management Authority at the address listed in the **ADDRESSES** section of this document.

#### Economic Effects

The USDA ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, are established primary ports of entry for bigleaf mahogany saw-logs, sawn wood, and veneers imported into the United States. Since bigleaf mahogany now is listed in the appendices to CITES, the addition of these four ports to the list of ports designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, would avoid disrupting an established pattern of legitimate trade by allowing operations at those ports related to the importation of bigleaf mahogany saw-logs, sawn wood, and veneers to continue with only minor procedural changes. Adding these ports would not have a significant economic impact on any private entities, nor on local or State governments. Also, adding these ports would not have a significant economic impact on the Federal Government, since the USDA already has adequate facilities and personnel at these ports to qualify them as designated ports.

However, without these ports being designated, the established legitimate

trade in bigleaf mahogany saw-logs, sawn wood, and veneers through these ports would cease. This would increase shipping costs on importers in the United States who have been using Laredo, Fort Lauderdale, Jacksonville, and Panama City as ports of import for bigleaf mahogany saw-logs, sawn wood, and veneers, by forcing these importers to travel out of their way to one of the current designated ports in order to legally import their bigleaf mahogany. The closest designated Mexican border port to the port of Laredo is Brownsville, Texas, about 150 miles away; the closest designated port to the port of Fort Lauderdale is Miami, Florida, about 30 miles away; the closest designated port to the port of Jacksonville is Orlando, Florida, about 125 miles away; and the closest designated port to the port of Panama City is Mobile, Alabama, about 150 miles away.

Adding the USDA port at Port Huron, Michigan, as a designated port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES, likewise would not have a significant economic impact on any private entities, nor on local or State governments. Also, adding this port would not have a significant economic impact on the Federal Government, since the USDA already has adequate facilities and personnel at the port to qualify it as a designated port. Adding Port Huron as a designated port would facilitate trade by making an additional port of entry available to importers of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada. Currently, the USDA ports at Detroit, Michigan; Buffalo and Rouses Point, New York; and Blaine, Washington, are the only ports specifically designated

for those purposes. However, Port Huron's designation is not expected to result in a significant increase in the importation of such plants from Canada.

Therefore, the Service has determined under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

This rulemaking would not have any direct effects on the States, in their relationship with the Federal Government, 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 rulemaking would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Service has determined and certifies pursuant to the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*) that this rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

The Department of the Interior has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Paperwork Reduction Act

The Service has examined this proposed rule under the Paperwork Reduction Act of 1995, and found it to contain no information collection requirements.

#### List of Subjects in 50 CFR Part 24

Endangered and threatened species, Exports, Harbors, Imports, and Plants.

Accordingly, the Service proposes to amend title 50, part 24 as follows:

#### **PART 24—[AMENDED]**

1. The authority citation for part 24 continues to read as follows:

Authority: Secs. 9(f)(1), 11(f), Pub. L. 93-205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

2. Section 24.12 would be amended by: Removing "Laredo, Texas" from paragraph (a),

b. Adding the words "and Port Huron" immediately following "Detroit" in paragraph (d), and

c. Revising paragraph (e) to read as follows:

#### **§ 24.12 Designated parts.**

\* \* \* \* \*

(e) The U.S. Department of Agriculture ports at Mobile, Alabama; Fort Lauderdale, Jacksonville, and Panama City, Florida; Savannah, Georgia; Baltimore, Maryland; Gulfport, Mississippi; Wilmington and Morehead City, North Carolina; Portland, Oregon; Philadelphia, Pennsylvania; Charleston, South Carolina; Laredo, Texas; Norfolk, Virginia; and Vancouver, Washington, are designated ports for the importation of saw-logs, sawn wood, and veneers from trees which are listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR part 17 or 23.

\* \* \* \* \*

Dated: December 5, 1996.

George T. Frampton,  
Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 97-702 Filed 1-15-97; 8:45 am]

BILLING CODE 4310-55-P

# Notices

Federal Register

Vol. 62, No. 11

Thursday, January 16, 1997

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.

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## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

January 10, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-6204 or (202) 720-6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

#### Agricultural Marketing Service

*Title:* Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping.

*OMB Control Number:* 0581-0110.

*Summary:* The dairy inspection program requires that records be kept for tests and analysis performed on milk and milk products.

*Need and use of the Information:* The dairy inspection program insures that dairy products are produced under sanitary conditions and buyers are purchasing a quality product.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 508.

*Frequency of Responses:* Recordkeeping.

*Total Burden Hours:* 1525.

#### Rural Housing Service

*Title:* 7 CFR 1951-A, "Account Servicing Policies."

*OMB Control Number:* 0575-0075.

*Summary:* Information is collected for account servicing of housing and farm credit type loans.

*Need and use of the Information:* The information is used for the handling of borrower payments and return of paid-in-full and satisfied notes.

*Description of Respondents:* Individuals or households; Business or other for-profit; Farms.

*Number of Respondents:* 518.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 130.

#### Forest Service

*Title:* Bid Form for National Forest Timber for Sale.

*OMB Control Number:* 0596-0066.

*Summary:* The National Forest Management Act prescribes that National Forest timber be sold at not less than appraised value.

Approximately 90 percent of National Forest timber is sold on a competitive basis in which prospective purchasers need to complete the bid form in order to qualify for bidding on the timber.

*Need and use of the Information:* The information is necessary to determine if a bidder submitting a bid to the National System timber sale program meets the requirements of the program.

*Description of Respondents:* Individuals or households; Business or other for-profit.

*Number of Respondents:* 5,000.

*Frequency of Responses:* Recordkeeping; Reporting: Quarterly.

*Total Burden Hours:* 1,250.

#### Agricultural Marketing Service

*Title:* Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas, Marketing Order No. 906.

*OMB Control Number:* 0581-0068.

*Summary:* The Market Order sets provisions regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas. Information is collected on production, handling and disposition of the crop.

*Need and use of the Information:* The information is used to develop a marketing policy each year to recommend seasonal quality regulations, to determine handler compliance, and to prepare annual reports.

*Description of Respondents:* Business or other for-profit; Farms.

*Number of Respondents:* 428.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Weekly; Annually.

*Total Burden Hours:* 345.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 97-1056 Filed 1-15-97; 8:45 am]

BILLING CODE 3410-01-M

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## ASSASSINATION RECORDS REVIEW BOARD

### Sunshine Act Meeting

**DATE:** January 29-30, 1997.

**PLACE:** ARRB, 600 E Street, NW, Washington, DC.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

**CONTACT PERSON FOR MORE INFORMATION:** Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530.

Telephone: (202) 724-0088; Fax: (202) 724-0457.

David G. Marwell,  
*Executive Director.*

[FR Doc. 97-1223 Filed 1-14-97; 12:28 pm]

BILLING CODE 6118-01-P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

[Docket No. 9610313067003-02]

RIN 0607-XX21

#### Survey of Plant Capacity

AGENCY: Bureau of the Census,  
Commerce.

ACTION: Notice of Determination.

**SUMMARY:** Notice is hereby given that the Bureau of the Census is conducting the Survey of Plant Capacity for the years 1995 and 1996 under the authority of Title 13, United States Code, Sections 182, 224, and 225. On the basis of information and recommendations received by the Bureau of the Census and other agencies, the data have significant application to the needs of the public and industry. Data will include the rates of use of manufacturing plants during the fourth quarter of the year, based on operating at full production capability and under a national emergency situation.

**FOR FURTHER INFORMATION CONTACT:** Elinor Champion, Chief, Special Studies Branch, Manufacturing and Construction Division, (301) 457-4683.

**SUPPLEMENTARY INFORMATION:** The survey results will be used by such agencies as the Federal Reserve Board, Federal Emergency Management Agency, International Trade Administration, and the Department of Defense. The data will be used to measure inflationary pressure and capital flows, understand productivity determinants, determine industry's ability to meet increasing demand for products in an emergency, and analyze and forecast economic and industrial trends. We will calculate utilization rates for each 4-digit standard industrial classification code in the manufacturing division. The series is the only comprehensive source of capacity utilization rates covering all manufacturing industries on a consistent basis.

The Bureau of the Census will select a sample of manufacturing plants in the United States. We will mail report forms to plants selected for the survey and require response in 30 days.

This survey has been approved by the Office of Management and Budget

(OMB) under OMB control number 0607-0175 in accordance with the Paperwork Reduction Act, Public Law 104-13. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Based on the foregoing determination, I have directed that the Survey of Plant Capacity be conducted for the purpose of collecting these data.

Dated: January 8, 1997.  
Martha Farnsworth Riche,  
*Director, Bureau of the Census.*  
[FR Doc. 97-1087 Filed 1-15-97; 8:45 am]  
BILLING CODE 3510-07-P

### National Oceanic and Atmospheric Administration

[I.D. 010797A]

#### Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of its Habitat Protection Committee (Committee).

**DATES:** This meeting will be held beginning at 10:00 a.m. on January 28, 1997, and ending at 3:00 p.m. on January 30, 1997.

**ADDRESSES:** This meeting will be held at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone: (504) 469-5000.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard L. Leard, Senior Fishery Biologist; telephone: (813) 228-2815.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting will be to review NMFS' guidelines regarding essential fish habitat (EFH). These guidelines are mandated by the recent passage of amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

The Committee intends to hold a round-table discussion and review what the Council's role should be with regard to the development and implementation of EFH guidelines. The Committee, on behalf of the Council, will develop comments and recommendations for consideration by NMFS.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by January 21, 1997.

Dated: January 9, 1997.  
Bruce Morehead,  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 97-1092 Filed 1-15-97; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 95-306]

#### Submission for OMB Review Entitled Collection of Historically Black Colleges and Universities/Minority Institutions Award Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new collection requirement.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat plans to submit to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Collection of Historically Black Colleges and Universities/Minority Institutions Award Data (FAR Case 95-306).

**DATES:** *Comment Due Date:* March 17, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 95-306 in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501-3775.

**SUPPLEMENTARY INFORMATION:****A. Purpose**

This collection of information is necessary to implement the reporting requirements of Executive Order 12928. The new information collection requirement consists of a new FAR solicitation provision to provide reporting of contract awards to Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs). The Executive Order requires all agencies to promote the participation of HBCUs and MIs in Federal procurement and requires periodic reporting to the President on the agencies' progress in complying with the laws and requirements addressed in the Executive Order. The proposed solicitation provisions will permit agency officials to report accurate information regarding contract awards to HBCUs and MIs.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents 9,328; responses per respondent, 1.2; total annual responses, 11,194; preparation hours per response, .05; and total response burden hours, 560.

**OBTAINING COPIES OF JUSTIFICATIONS:**

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRs), Room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite FAR case 95-306, Collection of Historically Black Colleges and Universities/Minority Institutions Award Data, in all correspondence.

Dated: January 13, 1997.

Sharon A. Kiser,  
FAR Secretariat.

[FR Doc. 97-1093 Filed 1-15-97; 8:45 am]

BILLING CODE 6820-EP-P

**Department of the Army**

**Notice of Availability of the Revised Final Environmental Impact Statement for the Disposal of Chemical Agents and Munitions Stored at Umatilla Chemical Depot, Oregon**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** This announces the Notice of Availability of the Revised Final Environmental Impact Statement (FEIS) on the construction and operation of the proposed chemical agent demilitarization facility at the Umatilla Chemical Depot, Oregon. The proposed facility will be used to demilitarize all stockpiled chemical agents and munitions currently stored at the Umatilla Chemical Depot. The Revised FEIS examines the potential impacts of on-site incineration, alternative sites within Umatilla Chemical Depot and the "no action" alternative. The "no action" alternative is considered to be a deferral of demilitarization with continued storage of agents and munitions at the Umatilla Chemical Depot.

**SUPPLEMENTARY INFORMATION:** In its Record of Decision (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. On February 6, 1989, the Department of the Army published a Notice of Intent (54 FR 5646) which announced that, pursuant to the National Environmental Policy Act and implementing regulations, it would prepare a draft site-specific EIS for the Umatilla chemical munitions disposal facility. In 1991, the Department of the Army prepared a Draft EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at the Umatilla Chemical Depot. In late 1991, preparation of a site-specific EIS for Umatilla was suspended pending the outcome of a National Research Council (NRC) study of alternative technologies for the destruction of chemical agents and munitions and the Army's review of that study. After completion of the NRC study in 1994 and an Army review, the draft EIS was revised. A Notice of Availability for this Revised Draft EIS was published on review, the draft EIS was revised. A Notice of Availability for this Revised Draft EIS was published on January 26, 1996 (61 FR 2508) and made available for public comment.

Comments on the Revised Draft EIS were considered and responses were included in the FEIS. A Notice of Availability for this FEIS was published on June 21, 1996 (61 FR 31939). After publication of this FEIS, the program performed an additional review and determined more detailed responses to

the public comments were necessary. These responses were incorporated into a Revised FEIS which is the subject of this Notice of Availability. After a 30-day waiting period the Army will publish a Record of Decision. Copies of the Revised FEIS may be obtained by writing to the following address: Program Manager for Chemical Demilitarization, ATTN: SFAE-CD-ME, Aberdeen Proving Ground, Maryland 21010-5401.

**ADDITIONAL INFORMATION:** The Environmental Protection Agency (EPA) will also publish a Notice of Availability for the Revised FEIS in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Above address, or Ms. Lori Geckle at (410) 671-1411/3629.

Dated: December 20, 1996.

Raymond J. Fatz,

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).*

[FR Doc. 97-1070 Filed 1-15-97; 8:45 am]

BILLING CODE 3710-08-M

**Department of the Navy**

**Revised Notice of Public Scoping Meetings for the Environmental Impact Statement for Developing Homeport Facilities for Three Nimitz-Class Aircraft Carriers in Support of the United States Pacific Fleet**

**SUMMARY:** The Department of the Navy announced its intent to prepare this Environmental Impact Statement (EIS) and open scoping in the Federal Register on December 3, 1996. The announcement was also mailed to identified interested parties. A separate notice to establish the schedule for public scoping meetings was published in the Federal Register on January 10, 1997.

This Revised Notice of Public Scoping Meetings supersedes the notice of January 10, 1997 and sets new dates for scoping meetings and a new meeting place in Hawaii.

The scope of the proposed actions is to: (1) determine the appropriate home port for two nuclear-powered aircraft carriers (CVNs) that will replace two conventionally-powered aircraft carriers (CVs) that are currently homeported at Naval Air Station (NAS) North Island in the Naval Complex San Diego, CA, and (2) reevaluate the current location of one CVN home port at Naval Station (NAVSTA) Everett in order to increase efficiency of support infrastructure, maintenance, and repair capabilities, to reduce costs, and to enhance crew quality of life. Decisions for facilities

development need to be made as soon as possible to accommodate planned arrival schedules of the CVNs to the Pacific Fleet (one as early as 2001) and to gain infrastructure benefits prior to upcoming ship maintenance periods (commencing in 1999).

There are three major U.S. areas of Navy concentration in the Pacific: San Diego, CA complex; Puget Sound, WA complex; and Pearl Harbor, HI complex. Naval Air Station (NAS) North Island in the San Diego Naval Complex and Puget Sound Naval Shipyard (PSNS) Bremerton and NAVSTA Everett in the Pacific Northwest are currently designated as CVN home ports. All three locations will be considered as alternative locations for the proposed actions. Although not currently designated as a CVN home port, Pearl Harbor is capable of accommodating deep-draft ships and will also be evaluated as a potential home port.

The EIS will analyze the potential environmental effects of the proposed actions at the alternative locations discussed above, including any associated facilities development and dredging, and other reasonable alternatives identified during the public scoping process. Environmental issues to be addressed in the EIS include: geology, topography, and soils; dredging, hydrology, and water quality; pollution prevention; biology and natural resources; noise; air quality; land use; historic and archeological resources; socioeconomics, schools, and housing; transportation/circulation/parking; public facilities and recreation; safety and environmental health; aesthetics; utilities; and environmental justice. Issue analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts associated with the proposed actions. No decision to implement the proposed actions will be made until the NEPA process is complete.

**ADDRESSES:** The Department of the Navy has initiated a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to these proposed actions. Public meetings to receive oral comments from the public will be held in the four primary areas of consideration (San Diego, CA; Bremerton, WA; Everett, WA; and Honolulu, HI). The dates and locations of these meetings are as follows: Bremerton, WA: February 3, 1997, 7:00 pm, Bremerton High School, 1500 13th Street, Bremerton, WA; Everett, WA: February 4, 1997, 7:00 pm, Snohomish County Administration/Courthouse Building, 3000 Rockefeller, Everett, WA;

Pearl Harbor, HI: February 6, 1997, 7:00 pm, Leeward Community College, 96-045 Ala Ike Street, Pearl City, HI; Coronado, CA: February 10, 1997, 7:00 pm, Village Hall, Village Elementary School, 600 6th Street, Coronado, CA. These meetings will also be announced in local area newspapers. Navy representatives will be available at the scoping meetings to receive comments from the public regarding issues of concern. A brief presentation describing the proposed actions and the NEPA process will precede a request for public comments. It is important that federal, state, and local agencies, as well as interested organizations and individuals, take this opportunity to identify environmental concerns that they feel should be addressed during the preparation of the EIS. Oral comments will be limited to three minutes. Agencies and the public are invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address. Written comments or questions regarding the scoping process and/or the EIS should be postmarked no later than February 28, 1997 and sent to the following address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan Muslin (Code 03PL), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132-5190; telephone (619) 532-3403.

Dated: January 13, 1997.  
D. E. Koenig,  
LCDR, JAGC, USN, *Federal Register Liaison Officer.*  
[FR Doc. 97-1112 Filed 1-15-97; 8:45 am]  
BILLING CODE 3810-FF-M

## DELAWARE RIVER BASIN COMMISSION

### Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 22, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10:00 a.m. at the same location and will

include presentations on the GIS and Commission Web Site, U.S. Geological Survey's National Water Quality Assessment Program for the Delaware River Basin and a review of Basin States' policies on discharges to intermittent streams.

In addition to the subjects listed below which are scheduled for public hearing at the business meeting, the Commission will also address the following matters: Minutes of the December 11, 1996 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions; a resolution to adopt the 1996-1997 Water Resources Program and public dialogue.

The subjects of the hearing will be as follows:

*Current Expense and Capital Budgets.* A proposed current expense budget for the fiscal year beginning July 1, 1997, in the aggregate amount of \$3,445,500 and a capital budget (Water Supply Storage Facilities Fund) reflecting revenues of \$2,187,500 and expenditures and transfers of \$2,074,500. Copies of the current expense and capital budget are available from the Commission on request by contacting Richard C. Gore.

*Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact*

1. *Manetas Farms, Inc. D-81-40 RENEWAL 3.* An application for the renewal of a ground water withdrawal project to supply up to 46.5 million gallons (mg)/30 days of water to the applicant's agricultural irrigation system from Pond Nos. 1, 2 and 3. Commission approval on June 19, 1991 was limited to five years. The applicant requests that the total withdrawal from all ponds remain limited to 46.5 mg/30 days. The project is located in Fairfield Township, Cumberland County, New Jersey.

2. *C S Water and Sewer Associates D-87-96 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 4.88 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 4 and 5. Commission approval on April 26, 1989 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 4.88 mg/30 days. The project is located in Lackawaxen Township, Pike County, Pennsylvania.

3. *Stockton Water Company D-95-51 CP.* An application for approval of a ground water withdrawal project to supply up to 1.5 mg/30 days of water to the applicant's distribution system from new Well No. 5, and to limit the withdrawal from all wells to 6 mg/30

days. The project is located in Stockton Borough, Hunterdon County, New Jersey.

4. *AlliedSignal, Inc. D-96-20.* A project to expand the Rohm & Haas Frankford Plant barge dock, operated by AlliedSignal, Inc., on the Delaware River near the Bridesburg area in the City of Philadelphia, Pennsylvania. The project entails new dredging of approximately 0.44 acres adjacent to the existing barge berth to enable simultaneous mooring of two barges.

5. *P & S Development Company D-96-40.* A project to construct a 30,000 gallon per day sewage treatment plant (STP) to replace an existing malfunctioning septic system. The STP will continue to serve The Village Center at Hamlin, a commercial complex located along State Route 590 approximately one mile west of the State Route 191 intersection in Salem Township, Wayne County, Pennsylvania. The STP will provide secondary biological treatment with the sequencing batch reactor activated sludge process as well as tertiary filtration, chlorine disinfection and dechlorination prior to discharge to an unnamed tributary of the West Branch Wallenpaupack Creek in Salem Township, Wayne County, Pennsylvania.

6. *PECO Energy Company D-96-63.* A project to continue operation of the existing United States Steel (USS) Fairless Works Powerhouse and transfer the ownership to PECO Energy Company. PECO proposes to operate the two steam turbines at up to 78 megawatts of electrical capacity to provide electric energy to its regional service center (which in turn can serve the Pennsylvania-Maryland-New Jersey Interconnection Grid). The steam energy will continue to be used by the USS steel fabrication facilities. PECO will divert up to 4,641 mg/30 days (154.7 mgd) of water via the existing USS withdrawal facilities on the Delaware River, primarily for use as cooling water; however, USS will continue to own and operate the intake facilities. The existing cooling water discharge to the Delaware River, just downstream of the intake, will be operated under the responsibility of PECO. The project is located adjacent to the Delaware River in Falls Township, Bucks County, Pennsylvania, just upstream of the Newbold Island area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing

are requested to register with the Secretary prior to the hearing.

Dated: January 7, 1997.

Anne M. Zamonski,

*Acting Secretary.*

[FR Doc. 97-1055 Filed 1-15-97; 8:45 am]

BILLING CODE 6360-01-P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

**DATES:** Thursday, February 6, 1997: 9:00 a.m.-5:00 p.m. Friday, February 7, 1997: 8:30 a.m.-4:00 p.m.

**ADDRESS:** Cavanaugh's at Columbia Center, 1101 N. Columbia Center Boulevard, Kennewick, Washington.

**FOR FURTHER INFORMATION CONTACT:** Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

#### SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

#### Tentative Agenda

##### February Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: FY97 and FY98 Budgets and approach to advice on FY99 Budget, Tank Waste Remediation, 200 Areas Soils Remediation Strategy, N Springs Shoreline Remediation Strategy, Technology Development, Archeological Resource Protection, Reactors on the River, and Institutional Controls. The Board will also receive updates from various Subcommittees, including updates on: the draft Hanford Advisory Board Work Plan, the National Equity Dialogue, the FFTF Restart Decision, Plutonium Disposition Decision, and Tri-Party Agreement Negotiations.

**Public Participation:** The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals

who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

**Minutes:** The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)-376-9628.

Issued at Washington, DC on January 13, 1997.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 97-1090 Filed 1-15-97; 8:45 am]

BILLING CODE 6450-01-P

## Federal Energy Regulatory Commission

[Docket No. CP-97-163-000]

### ANR Pipeline Company; Notice of Request Under Blanket Authorization

January 10, 1997.

Take notice that on December 19, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97-163-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate an interconnection between ANR and Central Louisiana Electric Company (CLECO), in St. Mary's Parish, Louisiana. ANR makes such request under its blanket certificate issued in Docket No. CP82-480-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the proposed interconnection will consist of a gas chromatograph, associated electronic measurement facilities, and a 10-inch tap on ANR's existing 30-inch pipeline.

It is indicated that the maximum capacity of the proposed interconnection will be 125 MMcf per day. ANR avers that it will provide deliveries to CLECO at the proposed interconnection under its Rate Schedule ITS. It is stated that the volumes to be delivered to CLECO will be within the certificated entitlements of CLECO, and the volumes will not impact ANR's gas supply situation. ANR further states that deliveries of natural gas at the proposed interconnection can be made without detriment or disadvantage to any existing customer.

ANR estimates the total cost of the facilities will be approximately \$156,000 and that CLECO will partially reimburse ANR for those cost.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,  
*Acting Secretary.*

[FR Doc. 97-1045 Filed 1-15-97; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. ER96-3096-000]**

**Idaho Power Company; Notice of Filing**

January 10, 1997.

Take notice that on November 29, 1996, Idaho Power Company tendered for filing an amendment in the above-referenced docket.

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 January 21, 1997. 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.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 97-1047 Filed 1-15-97; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. ER96-3093-000, et al.]**

**Montana Power Company, et al.;  
Electric Rate and Corporate Regulation  
Filings**

January 9, 1997.

Take notice that the following filings have been made with the Commission:

**1. Montana Power Company**

[Docket No. ER96-3093-000]

Take notice that on January 2, 1997, Montana Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**2. Village of Belmont City of Juneau, City of Plymouth, City of Reedsburg, City of Sheboygan Falls, and City of Wisconsin Rapids, Wisconsin**

[Docket No. EL97-19-000]

Take notice that on December 20, 1996, the Village of Belmont, City of Juneau, City of Plymouth, City of Reedsburg, City of Sheboygan Falls, and City of Wisconsin Rapids, Wisconsin (the Wisconsin Municipals) filed a complaint under Section 206 of the Federal Power Act against Wisconsin Power and Light Company (WP&L). In the complaint the Wisconsin Municipals challenged the term and rate provisions of the ten-year "evergreen" contracts between them and Wisconsin Power and Light Company and request a rate reduction of approximately 23%, or \$5 million annually, or that the contracts be terminated. The Wisconsin Municipals also ask the FERC to set a refund effective date under Section 206 of the Act, 60 days after the filing of the complaint.

*Comment date:* February 10, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before February 10, 1997.

**3. NESI Power Marketing, Inc.**

[Docket No. ER97-841-000]

Take notice that on January 7, 1997, NESI Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**4. Interstate Power Company**

[Docket No. ER97-926-000]

Take notice that on December 24, 1996, Interstate Power Company (Interstate), submitted for filing a new "Power Sales Tariff PS-1" (Tariff). The Tariff is intended to provide Interstate with greater flexibility to engage in transactions for capacity and energy at cost-based rates.

Copies of this filing have been served on: Iowa Utilities Board, Illinois Commerce Commission, Minnesota Public Utilities Commission.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**5. Interstate Power Company**

[Docket No. ER97-927-000]

Take notice that on December 24, 1996, Interstate Power Company (Interstate), submitted for filing modifications to the following interconnection agreements:

Commonwealth Edison Company, Rate Schedule No. 69  
Corn Belt Power Corporation, Rate Schedule No. 82

The proposed modifications are intended to terminate Interstate's right to make energy and power sale under each of the agreements.

Copies of this filing have been served on each of the parties to the above-referenced agreements and the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**6. Cinergy Services, Inc.**

[Docket No. ER97-928-000]

Take notice that on December 24, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Wisconsin Electric Power Company.

Cinergy and Wisconsin Electric Power Company are requesting an effective date of December 15, 1996.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Cinergy Services, Inc.**

[Docket No. ER97-929-000]

Take notice that on December 24, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement

under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Williams Energy Services Company.

Cinergy and Williams Energy Services Company are requesting an effective date of December 1, 1996.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 8. Cinergy Services, Inc.

[Docket No. ER97-930-000]

Take notice that on December 24, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated December 1, 1996 between Cinergy, CG&E, PSI and NIPSCO Energy Services, Inc. (NESI).

The Interchange Agreement provides for the following service between Cinergy and NESI.

1. Exhibit A—Power Sales by NESI
2. Exhibit B—Power Sales by Cinergy

Cinergy and NESI have requested an effective date of December 23, 1996.

Copies of the filing were served on NIPSCO Energy Services, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

*Comment date:* January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 9. Northeast Utilities Service Company

[Docket No. ER97-931-000]

Take notice that on December 26, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Freeport Electric, Freeport, NY, under the NU System Companies' Sale for Resale Tariff No. 7, Market-Based Rates.

NUSCO states that a copy of this filing has been mailed to the Freeport Electric, Freeport, NY.

NUSCO requests that the Service Agreement become effective January 1, 1997.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 10. Arizona Public Service Company

[Docket No. ER97-932-000]

Take notice that on December 26, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to the Aquila Power Corporation (Aquila) under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888.

A copy of this filing has been served on Aquila and the Arizona Corporation Commission.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 11. Alabama Power Company

[Docket No. ER97-934-000]

Take notice that on December 27, 1996, Alabama Power Company (APCo), tendered for filing a petition for waiver of Commission's fuel adjustment clause regulations to permit the recovery from its full and partial requirements wholesale customers of an appropriate share of the cost associated with the buyout of 4.45 million tons of coal over the period January 1, 1997 through December 31, 2000 under two contracts with Drummond Company, Inc. APCo states that its purchase of replacement coal at more favorable prices will produce cumulative savings to its customers in excess of the buyout costs that it proposes to recover as fuel costs through the fuel cost recovery mechanisms applicable to these customers. The waiver is proposed to be made effective January 1, 1997.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 12. Green Mountain Power Corporation

[Docket No. ER97-935-000]

Take notice that on December 27, 1996, Green Mountain Power Corporation (GMP), tendered for filing an Amendment dated as of September 1, 1996 to a Power Sales Agreement between GMP and the Electric Department of the Village of Northfield, Vermont (Northfield). GMP states it purchases electricity from Northfield under the Power Sales Agreement, and that the Amendment modifies the manner in which an adjustment factor relating to compensation due to Northfield for energy delivered to GMP is administered. GMP has proposed to make the Amendment effective as of September 1, 1996, concurrently with the commencement of the current contract year.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 13. Boston Edison Company

[Docket No. ER97-936-000]

Take notice that on December 27, 1996, Boston Edison Company (Boston Edison), tendered for filing a letter agreement between Boston Edison and Cambridge Electric Light Company (CEL). The tendered letter agreement extends the terms and conditions of the

Substation 402 Agreement to and including March 31, 1997. The Substation 402 Agreement is designated as Boston Edison's FERC Rate Schedule No. 149. Boston Edison requests an effective date of December 31, 1996.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 14. Delmarva Power & Light Company

[Docket No. ER97-937-000]

Take notice that on December 27, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing in the above-captioned docket nine notices of termination of bundled economy energy coordination agreements with Atlantic City Electric Company, Northeast Utilities System, Long Island Lighting Company, New York State Electric & Gas Corporation, PECO Energy, Orange and Rockland Utilities, Inc., Consolidated Edison Company of New York, Old Dominion Electric Cooperative and the City of Dover, Delaware, and one notice of termination of Schedule A of Delmarva's rate schedule with LG&E Power Marketing, Inc. Delmarva seeks waiver of notice to permit these notices of termination to become effective on January 26, 1997, in accordance with the contract terms.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 15. Virginia Electric and Power Co. and Potomac Electric Power Co.

[Docket No. ER97-938-000]

Take notice that on December 27, 1996, Virginia Electric and Power Company (Virginia Power) and Potomac Electric Power Company (Pepco), tendered for filing a Notice of Cancellation of certain Rate Schedules under the Interconnection Agreement between Potomac Electric Power Company and Virginia Electric and Power Company, dated May 25, 1983 (Pepco Rate Schedule FERC No. 35 and Virginia Power Rate Schedule FERC No. 20). Virginia Power and CP&L have requested an effective date of December 31, 1996 for the amendments.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 16. Virginia Electric and Power Company

[Docket No. ER97-939-000]

Take notice that on December 27, 1996, Virginia Electric and Power

Company (Virginia Power), tendered for filing a Notice of Cancellation of certain Rate Schedules under the Interconnection Agreement between Appalachian Power Company and Virginia Electric and Power Company, dated February 1, 1948 (APCO Rate Schedule FPC No. 16 and Virginia Power Rate Schedule FPC No. 7). Virginia Power also filed a Certificate of Concurrence executed by American Electric Power Services (AEP) consenting and assenting to these cancellations on behalf of APCO. Virginia Power has requested an effective date of December 31, 1996 for the cancellations.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission and Mr. D.W. Bethel, Manager—Interconnection Agreements, American Electric Power Services.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. [Docket No. ER97-940-000]

Take notice that on December 27, 1996, Montana-Dakota Utilities Co., a division of MDU resources Group, Inc., (Montana-Dakota), tendered an agreement dated January 27, 1983 with Capital Electric Cooperative, Inc. and two supplements to such agreement. Montana-Dakota requests that the Commission disclaim jurisdiction over the agreement and such supplements. Montana-Dakota requests, further, if the Commission will not disclaim jurisdiction, that the Commission accept the agreement and such supplements for filing in accordance with Federal Power Act § 205 and waive the notice requirement to permit the agreement and such two supplements to be effective in accordance with the intent of the contracting parties.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc. [Docket No. ER97-941-000]

Take notice that on December 27, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Toledo Edison Company.

Cinergy and Toledo Edison Company are requesting an effective date of December 15, 1996.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc. [Docket No. ER97-942-000]

Take notice that on December 27, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cleveland Electric Illuminating Company.

Cinergy and Cleveland Electric Illuminating Company are requesting an effective date of December 15, 1996.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Carolina Power & Light Company [Docket No. ER97-943-000]

Take notice that on December 27, 1996, Carolina Power & Light Company (CP&L), tendered for filing separate Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission customers: Koch Power Services, Inc.; Williams Energy Services Company; IUC Power Services; and Heartland Energy Services, Inc.; and Service Agreements for Short-Term Firm Point-to-Point Transmission Service with IUC Power Services and Heartland Energy Services, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Power & Light Company [Docket No. ER97-944-000]

Take notice that on December 27, 1996, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entities: Florida Power Corporation, Potomac Electric Power Company, Atlantic City Electric Company, Duquesne Light Company, and WPS Energy Services, Inc. (ESI). Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission

and the South Carolina Public Service Commission.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Power Company [Docket No. ER97-945-000]

Take notice that on December 27, 1996, Ohio Power Company (OPC), tendered for filing with the Commission a Facilities, Operations Maintenance and Repair Agreement dated December 12, 1996, between OPC, and South Central Power Company (SCP). SCP is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

SCP has requested OPC provide a new 138-Kv delivery point pursuant to provisions of the Power Delivery Agreement between Columbus Southern Power Company, Buckeye Power, Inc., The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, OPC and Toledo Edison Company, dated January 1, 1968. OPC requests an effective date of December 12, 1996 for the tendered agreements.

OPC states that copies of its filing were served upon the South Central Power Company, Buckeye Power, Inc. and the Public Utilities Commission of Ohio.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Western Resources, Inc. [Docket No. ER97-946-000]

Take notice that on December 27, 1996, Western Resources, Inc. tendered for filing, Supplement Nos. 3 and 13 to Rate Schedule FPC No. 83, the Agreement for Interchange of Power and Interconnected Operation between The Empire District Electric Company and Kansas Gas and Electric Company (KGE), is to be canceled.

Notice of the proposed cancellation has been served upon the Empire District Electric Company, the Kansas Corporation Commission, and the Missouri Public Service Commission.

*Comment date:* January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Detroit Edison Company [Docket Nos. ES97-18-000 and ES97-18-001]

Take notice that on December 16, 1996, Detroit Edison Company (Detroit Edison) filed an application, as amended,<sup>1</sup> under § 204 of the Federal Power Act, seeking authorization to

<sup>1</sup> The amendment was filed on December 24, 1996.

issue, from time to time, on or before May 31, 1999, short-term debt and promissory notes with maturities of not more than two years, all in an aggregate principal amount of not more than \$1 billion outstanding at any one time.

Also, Detroit Edison requests exemption from the Commission's competitive bidding and negotiated placement regulations for the issuance of the promissory notes with maturities of in excess of one year from the date of issuance.

*Comment date:* February 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 25. Hoosier Energy Rural Electric Cooperative

[Docket No. NJ97-5-000]

Take notice that on January 3, 1997, Hoosier Energy Rural Electric Cooperative (Hoosier Energy) submitted for filing an Open Access Tariff and a request for declaratory order which would find that Hoosier Energy's Transmission Tariff meets the Federal Energy Regulatory Commission's (Commission's) comparability standards and is therefore an acceptable reciprocity tariff pursuant to the provisions of Order No. 888.

*Comment date:* February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 26. U.S. Department of Energy Bonneville Power Administration

[Docket No. NJ97-3-000]

Take notice that the Bonneville Power Administration (BPA) on December 20, 1996, tendered two filings for Commission review of BPA's open access transmission terms and conditions, and associated rates. These transmission terms and conditions, and their associated rates are the result of a settlement among most parties to the BPA administrative proceedings that preceded adoption of such terms and conditions, and rates.

First, BPA tendered for filing its Network Integration and Point-to-Point transmission tariff terms and conditions with a Petition for Declaratory Order that the terms and conditions meet or exceed the Commission's open access policies, and are consistent with the reciprocity compliance principles of the Commission's final rule on non-discriminatory open access transmission service.

Second, BPA tendered for filing its rates associated with such tariff terms and conditions with a Petition for Declaratory Order that such rates satisfy the standards applicable to BPA pursuant to Section 212(i)(1) of the

Federal Power Act. BPA previously filed these rates on July 26, 1996, in its request for confirmation and approval of its general wholesale power and transmission rates under the standards of the Pacific Northwest Electric Power Planning and Conservation Act in Docket Nos. EF96-2011-000 and EF96-2021-000. Interim approval of such rates was granted by the Commission on September 25, 1996.

BPA requests review of the following rates associated with its Network Integration and Point to Point transmission tariffs for conformance with the standards applicable to BPA under the Federal Power Act: NT-96 Network Integration Transmission Rate; PTP-96 Point-to-Point Firm Transmission Rate; RNF-96 Reserved Nonfirm Transmission Rate; ET-96 Energy Transmission; IS-96 Southern Intertie Transmission, IM-96 Montana Intertie Transmission Rate; AF-96 Advance Funding Rate; UFT-96 Use-of-Facilities Transmission Rate; APS-96 Ancillary Products and Services Rate; and BPA's General Rate Schedule Provisions.

*Comment date:* February 3, 1997, 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.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 97-1044 Filed 1-15-97; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER97-947-000, et al.]

#### South Carolina Electric & Gas Company, et al. Electric Rate and Corporate Regulation Filings

January 10, 1997

Take notice that the following filings have been made with the Commission:

#### 1. South Carolina Electric & Gas Company

[Docket No. ER97-947-000]

Take notice that on December 27, 1996, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing PanEnergy Trading & Marketing Services, L.L.C. (PanEnergy) as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of August 21, 1996. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon PanEnergy and the South Carolina Public Service Commission.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 2. Oklahoma Gas and Electric Company

[Docket No. ER97-948-000]

Take notice that on December 27, 1996, Oklahoma Gas and Electric Company (OG&E), tendered for filing service agreements for parties to take service under its open access tariff.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 3. PECO Energy Company

[Docket No. ER97-949-000]

Take notice that on December 27, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 16, 1996 with Coral Power, L.L.C. (CORAL) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds CORAL as a customer under the Tariff.

PECO requests an effective date of December 16, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to CORAL and to the Pennsylvania Public Utility Commission.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 4. PECO Energy Company

[Docket No. ER97-950-000]

Take notice that on December 27, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 5, 1996 with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric

and Power Company (collectively, Southern Companies) and Southern Company Services, Inc. (SCS) as agent for Southern Companies (Southern Companies and SCS) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Southern Companies and SCS as a customer under the Tariff.

PECO requests an effective date of December 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Southern Companies and SCS and to the Pennsylvania Public Utility Commission.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 5. Public Service Electric and Gas Company

[Docket No. ER97-951-000]

Take notice that on December 27, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing an agreement to provide non-firm transmission service to Virginia Electric and Power Company, pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96-80-000.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 26, 1996.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 6. Northeast Utilities Service Company

[Docket No. ER97-952-000]

Take notice that on December 27, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Montaup Electric Company (Montaup) under the NU System Companies' System Power Sales/Exchange Tariff No. 6. NUSCO requested deferral of Commission action on the filing until NUSCO made its filing for functional unbundling of services under the Tariff pursuant to the Commission's Order No. 888.

NUSCO states that a copy of this filing has been mailed to Montaup.

NUSCO requests that the Service Agreement become effective December 1, 1996.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 7. PECO Energy Company

[Docket No. ER97-953-000]

Take notice that on December 27, 1996, PECO Energy Company (PECO)

filed a Service Agreement dated December 5, 1996 with Plum Street Energy Marketing (Plum Street) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Plum Street as a customer under the Tariff.

PECO requests an effective date of December 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Plum Street and to the Pennsylvania Public Utility Commission.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 8. Public Service Company of New Mexico

[Docket No. ER97-954-000]

Take notice that on December 27, 1996, Public Service Company of New Mexico Transmission Development and Contracts (PNM Transmission) tendered for filing the Service Agreement for Firm Point-to-Point Transmission Service and Ancillary Service (Service Agreement) between PNM Transmission and the PNM International Business Development (PNM Business Development) executed November 1, 1996.

PNM Transmission requests the Commission to permit the PNM business Development to begin receiving services under the Service Agreement as of January 1, 1997.

Copies of this notice have been mailed to PNM Business Development and the New Mexico Public Utility Commission.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 9. Northern States Power Company

[Docket No. ER97-955-000]

Take notice that on December 27, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing an Agreement dated December 9, 1996, between NSP and the City of Shakopee (City). In a previous agreement dated June 11, 1996, between the two parties, City agreed to continue paying NSP the current wholesale distribution substation rate of \$0.47/kW-month until December 31, 1996. Since the June 11, 1996, agreement has terminated, this new Agreement has been executed to continue the current wholesale distribution substation rate of \$0.47/kW-month until March 31, 1997.

NSP request the Agreement be accepted for filing effective December 30, 1996, and requests waiver of the Commission's notice requirements in

order for the Agreement to be accepted for filing on the date requested.

*Comment date:* January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 10. New England Power Company

[Docket No. ER97-613-000]

Take notice that on December 20, 1996, New England Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 24, 1997, 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.

Linwood A. Watson, Jr.,

*Acting Secretary*

[FR Doc. 97-1046 Filed 1-15-97; 8:45 am]

BILLING CODE 6717-01-P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5676-8]

### Indian Bend Wash—South Superfund Site; Proposed Notice of Administrative Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

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**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.E. 9600 *et seq.*, notice is hereby given that a proposed Prospective Purchaser Agreement associated with the Indian Bend Wash—South Superfund Site was executed by the United States Environmental

Protection Agency ("EPA") on November 20, 1996. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against JPI Texas Development, Inc. (the "Purchaser"). The Purchaser plans to acquire a 26.9 acre parcel located within the Indian Bend Wash—South Superfund Site in Arizona for the purposes of building and operating a 500-unit student dormitory near Arizona State University in Tempe. The proposed settlement would require the Purchaser to pay EPA a one-time payment of \$75,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before February 18, 1997.

**ADDRESSES:** The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. The document can be accessed through the Internet on EPA Region 9's Website located at: <http://www.epa.gov/region09/waste/brown/ppa.html>. A copy of the proposed settlement may also be obtained from William Keener, Assistant Regional Counsel (ORC-3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "JPI Texas Development, Inc., Indian Bend Wash—South Superfund Site" and "Docket No. 97-01" and should be addressed to William Keener at the above address.

**FOR FURTHER INFORMATION CONTACT:** William Keener, Assistant Regional Counsel (ORC-3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: [keener.bill@epamail.epa.gov](mailto:keener.bill@epamail.epa.gov); Phone: (415) 744-1356.

Dated: December 30, 1996.  
Dianna Young,  
*Acting Deputy Director, Superfund Division,  
U.S. EPA, Region IX.*  
[FR Doc. 97-978 Filed 1-15-97; 8:45 am]  
**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collections Submitted to OMB for Review and Approval

January 8, 1997.

**SUMMARY:** The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before February 18, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to [dconway@fcc.gov](mailto:dconway@fcc.gov) and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Dorothy

Conway at 202-418-0217 or via internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:**  
*OMB Approval Number:* 3060-0004.

*Title:* Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (ET Docket 95-62).

*Form No:* N/A.

*Type of Review:* Extension of an existing collection.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 124,441.

*Estimated Time Per Response:* 15 minutes - 1 hour per respondent.

*Total Annual Burden:* 40,301 hours.

*Estimated Costs Per Respondent:* \$100 per respondent conducting Maximum Permissible Exposure Evaluations (approximately 1,416 respondents conduct these evaluations); and \$5,000 per respondent conducting Specific Absorption Rate (SAR) Evaluations (approximately 145 respondents conduct these evaluations).

*Needs and Uses:* The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission adopted RF exposure guidelines for evaluating potential environmental effects of RF radiation from FCC-regulated facilities. The guidelines reflect more recent scientific studies of the biological effects of RF radiation. The use of these guidelines will help ensure that FCC-regulated facilities comply with the latest standards. The collections of environmental information required by Section 1.1307 of the rules will be used by the Commission to determine whether the environmental evaluation is sufficiently complete and in compliance with the Commission rules.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 97-1099 Filed 1-15-97; 8:45 am]

**BILLING CODE 6712-01-F**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Friday, January 10, 1997, the Board of Directors of the Federal

Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred by Director Eugene A. Ludwig (Comptroller of the Currency), Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii), of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: January 13, 1997.

Federal Deposit Insurance Corporation.  
Valerie J. Best,

*Assistant Executive Secretary.*

[FR Doc. 97-1193 Filed 1-14-97; 10:28 am]

BILLING CODE 6714-01-M

## FEDERAL RESERVE SYSTEM

### 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 February 2, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *G.B. Financial Services, Inc.*, Greenbush, Minnesota; to merge with Border Bancshares, Inc., Greenbush, Minnesota, and thereby indirectly acquire Border State Bank, Roseau, Minnesota. Subsequent to the proposed merger, G.B. Financial Services, Inc. will change its name to Border Bancshares, Inc.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Intra Financial Corporation*, Cyde, Kansas; to acquire 100 percent of the voting shares of Farmers State Bancshares of Sabetha, Inc., Sabetha, Kansas, and thereby indirectly acquire Farmers State Bank, Sabetha, Kansas.

Board of Governors of the Federal Reserve System, January 10, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 97-1059 Filed 1-15-97; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY-25]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on December 11, 1996.

#### Proposed Projects

1. Surveillance and Evaluation of Blood Donors Positive for Human Immunodeficiency Virus (HIV) Antibody or HIV Antigen (0920-0329)—Reinstatement—In 1987, the President directed the Department of Health and Human Services (DHHS) to determine the nationwide incidence of, to predict the future of, and to determine the extent to which human immunodeficiency virus (HIV) is present in various segments of our population. In response, CDC formed an epidemiologic team to summarize existing information. An extensive review of published and unpublished data led to the conclusion that even though there is information suggesting a very large number of Americans were infected, there was no substitute for carefully and scientifically obtained incidence and prevalence data. The need to monitor HIV seroprevalence existed on the national and at the state and local levels for public health management: targeting and evaluating prevention programs, planning future health care needs and determining health policy.

On a national basis, HIV seroprevalence projects in 1987 consisted of monitoring the HIV status of: civilian applicants for military service; blood donors, including follow-up risk factor evaluation in seropositives; and Job Corps entrants. HIV prevalence was studied in settings of special public health interest including selected colleges and prisons,

among health care workers in hospital emergency rooms and among Native Americans and homeless persons. Other national data sources were examined, such as cohort studies of groups at risk, including homosexual and bisexual men and IV drug users, providing information on knowledge of AIDS and risk behaviors, changes in behavior, and incidence of HIV infection.

In 1987, OMB approved the "Family of HIV Seroprevalence Surveys" (0920-0232). These surveys included seven seroprevalence surveys which involved interaction with individuals (non-blinded surveys). One of these surveys was the surveillance and evaluation of blood donors positive for Human Immunodeficiency Virus (HIV) Antibody.

In 1993, OMB again approved for 3 years the surveillance and evaluation of blood donors who test positive for Human Immunodeficiency Virus (HIV) Antibody and their needle-sharing and sexual partners (0920-0329). This request is for an additional 3-year approval. The total annual burden is 172.

| Respondents                      | Number of re-spond-ents | Number of re-sponses/ respond-ent | Average burden/ re-sponse (in hours) |
|----------------------------------|-------------------------|-----------------------------------|--------------------------------------|
| Blood donors (inter-views) ..... | 160                     | 1                                 | 1.0                                  |
| Blood donors (refuse interview)  | 120                     | 1                                 | 0.1                                  |

2. A CLIA Comprehension Survey and Information Program for Physicians—New—The purpose of this contract is to enable the Centers for Disease Control and Prevention (CDC) to assess the depth and accuracy of the knowledge base of clinicians regarding the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) regulations as they relate to physicians' office laboratories (POLs), and to provide specific information and training to practitioners based on this assessment. In 1990, CDC was designated by the Department of Health and Human Services to assist in the implementation of CLIA '88; this project is a direct response to that mandate.

Through contact with the laboratory and physician communities, CDC has become aware of gaps in information and understanding about the CLIA '88 regulations, especially as they relate to physicians' office laboratories. Misconceptions regarding the CLIA '88 regulations in the community may be

impeding successful implementation of the regulations and causing unnecessary and inappropriate responses in POL testing sites. Therefore, CDC is proposing a survey of practicing physicians to assess the depth and accuracy of the knowledge base of clinicians regarding the CLIA '88 regulations as they relate to POLs, and to provide specific information and training to practitioners based on this assessment. The total annual burden is 896.

| Respondents  | Number of re-spond-ents | Number of re-sponses/ respond-ent | Average burden/ re-sponse (in hours) |
|--------------|-------------------------|-----------------------------------|--------------------------------------|
| Laboratories | 4479                    | 1                                 | .2                                   |

3. Development and Implementation of a Comprehensive Evaluation for Project DIRECT (Diabetes Intervention: Reaching and Educating Communities Together)—New—Diabetes mellitus is more prevalent among African-Americans than whites, and African-Americans with diabetes are more likely to suffer its devastating complications. Compared to whites, African-Americans are more likely to develop blindness and end-stage renal disease and are more likely to have amputations. In addition, cardiovascular risk factors are more prevalent among African-Americans than whites and African-Americans are more likely to die with diabetes than are whites. In response to this disparity, the Centers for Disease Control and Prevention (CDC) has launched a large-scale community intervention trial known as Project DIRECT (Diabetes Intervention: Reaching and Educating Communities Together). Based in Raleigh, North Carolina, and sponsored by CDC's Division of Diabetes Translation, Project DIRECT will serve as a model for multilevel community-based diabetes prevention and control programs for urban African-Americans.

This evaluation will determine the effect of (1) diabetes care; (2) outreach, and (3) health promotion interventions in the targeted community and compare this effect to a control community. The intervention activities focus on the African-American population of a geographically defined area of southeast Raleigh, North Carolina. The control community is Greensboro, North Carolina. The populations consist primarily of African-Americans. Health care providers will be identified and solicited from practicing physicians in Raleigh and Greensboro.

The survey will be conducted in four phases. Phase I will randomly identify and solicit participation from household members with and without diabetes from the control and intervention communities. In Phase II, participants with and without diabetes will be randomly selected and administered the survey questionnaire upon granting informed consent. During Phase III, persons with diabetes will undergo a brief physical exam that will consist of physical measures for height, weight, blood pressure, and body mass index. In addition, collection of a venous blood sample and urine sample will be performed. In Phase IV, interviewers will administer a questionnaire to primary care physicians about their knowledge, attitude and practice patterns for caring for persons with diabetes. This study will undergo Institutional Review Board reviews and comply with human subject assurances in accordance with federal regulations. The total annual burden is 3,148.

| Respond-ents                                      | Number of re-spond-ents | Number of re-sponses/ respond-ent | Average burden/ response (in hours) |
|---|-------------------------|-----------------------------------|-------------------------------------|
| Households General Population Questionnaire ..... | 7,182                   | 1                                 | .1666                               |
| Diabetes Module ...                               | 2,516                   | 1                                 | 0.5                                 |
| Laboratory Specimen Component .....               | 580                     | 1                                 | 0.5                                 |
| Provider Survey ...                               | 580                     | 10.5                              |                                     |
|   | 150                     | 1                                 | 0.75                                |

Dated: January 10, 1997.  
 Wilma G. Johnson,  
*Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*  
 [FR Doc. 97-1064 Filed 1-15-97; 8:45 am]  
 BILLING CODE 4163-18-P

**[Announcement 713]**

**National Institute for Occupational Safety and Health; Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatality Assessment and Control Evaluation Model**

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for cooperative agreements to

build State capacity for conducting traumatic occupational fatality surveillance, investigation, and intervention activities through the National Institute for Occupational Safety and Health (NIOSH) Fatality Assessment and Control Evaluation (FACE) Model.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, and Surveillance and Data Systems. (To order a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

#### Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended.

#### Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

#### Eligible Applicants

Eligible applicants are State Departments of Health, Departments of Labor, Departments of Industry, etc., located within any State or territory of the United States. Program activities, however, may not be carried out by departmental divisions that are responsible for enforcement of occupational safety and health standards. Awards will be limited to those organizations that can exercise public health authority for intervention into occupational safety and health problems. Only one application per State will be accepted under this announcement.

#### Availability of Funds

Approximately \$315,615 will be available in FY 1997 to fund three to four awards. It is expected that the awards will range from \$60,000 to \$100,000 with an average award of \$80,000. Individual awards may vary by State, and will be based upon the scope and nature of traumatic occupational fatalities documented by the

respondent, and upon proposed personnel, administrative, and associated costs. The awards will be made on or about May 30, 1997, with 12-month budget periods within project periods of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be determined on the basis of satisfactory progress and the availability of funds.

#### Background

Traumatic occupational fatalities represent a public health problem of significant proportion. Based on data from the National Traumatic Occupational Fatalities (NTOF) surveillance system, nearly 6500 workers die each year in the U.S. from traumatic injuries sustained in the workplace. The four highest risk industries for fatal injury are: mining, construction, transportation/communication/public utilities, and agriculture/forestry/fishing. Each of these industrial sectors has a traumatic fatality rate that is at least twice the overall civilian workforce rate of 7.0 deaths per 100,000 workers. The leading causes of death for all industries are motor vehicles, machinery, homicide, falls, and electrocutions. These categories account for nearly 60 percent of the occupational fatalities each year. In order to adequately develop and implement intervention strategies aimed at reducing fatal injuries in the workplace, more specific data pertaining to the interaction of the worker, the work environment, and work processes are needed.

#### Purpose

The purpose of funding these cooperative agreements is to expand the State-based FACE project and significantly strengthen the occupational public health infrastructure. This will be accomplished by integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. The ultimate goal of the project is to reduce traumatic occupational fatalities within the States.

Over the past eight years, State-level personnel have shown that the NIOSH FACE model for investigation of occupational fatalities can be successfully implemented in the States. The most immediate products of the State-level FACE programs have been accurate and timely surveillance systems for detecting traumatic occupational fatalities occurring within the State, fatality investigations

identifying causal factors, and recommendations for prevention strategies. This program will permit awardees to efficiently integrate resources for prevention of occupational fatalities at the State and local level. Additionally, States will be encouraged to target occupational traumatic injury research and prevention programs based on specific State priority areas. FACE data will be shared with all award recipients.

The specific objectives for this cooperative agreement are as follows:

1. Develop a timely, comprehensive, multiple-source State-level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the State.
2. Conduct on-site investigations of specific traumatic occupational fatalities using the NIOSH FACE investigative model.
3. Through case investigations, identify factors common to selected types of traumatic occupational fatalities leading to development and prioritization of prevention strategies.
4. Develop and disseminate prevention recommendations to reduce the risk of fatal occupational injuries within the State.
5. Develop and implement prevention strategies and projects for reducing State incidence of traumatic occupational injuries and fatalities.

#### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities under B. (CDC/NIOSH Activities):

##### A. Recipient Activities

1. Develop a comprehensive multiple-source, State-level surveillance system for prompt identification and reporting of epidemiologic data on all traumatic occupational fatalities occurring in the State.
2. Conduct in-depth site investigations of targeted occupational fatalities as determined by NIOSH. Currently, falls from elevations and machinery-related incidents are targeted fatality types. These are among the leading causes of work-place fatalities, as identified by national surveillance systems; however, they may change over the term of the agreement. Greatest emphasis must be placed on the determined targets; however, States may choose, in cooperation with NIOSH, to conduct in-depth investigations of other fatality types identified.

3. In specified format, develop and submit to NIOSH a narrative report of each in-depth fatality investigation which describes the fatal incident and includes recommendations for preventing future similar occurrences.

4. Submit first reports of fatalities, investigative narrative reports, and supplementary investigative data electronically to NIOSH through CDC's WONDER/PC system.

5. Evaluate surveillance data and investigative findings to identify specific worker populations to which prevention programs should be addressed.<sup>1</sup>

6. Identify entities such as employers, unions, and trade associations that can effect change in the workplace.

7. Communicate recommended preventions to those who can affect change in the workplace and to those at risk through targeted dissemination.

8. Prepare and submit periodic status reports of activities in designated format and an annual report that summarizes the activities and progress made by the State toward meeting the objectives for the State FACE program.

9. Participate in annual NIOSH-conducted FACE project workshop/conference in Morgantown, West Virginia, or other selected site.

#### B. CDC/NIOSH Activities

1. Provide formats for data reporting forms, coding formats, computer software, and State personnel training for electronic transmission of FACE surveillance and investigative data to the NIOSH data base.

2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks.

3. Provide initial training in procedures and subsequent technical assistance for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments).

4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.

5. Provide technical assistance in the dissemination of summary reports and other published findings to State and local health and labor officials, voluntary health groups, workers, unions, employers and professional organizations.

6. Provide technical assistance in identifying and evaluating effective intervention strategies.

7. CDC will provide funds to purchase one IBM-compatible, Pentium-based personal computer, printer, telecommunications equipment, and needed software for use on appropriate activities related to this cooperative agreement, if necessary.

#### Technical Reporting Requirements

An original and two copies of a progress and Financial Status Report (FSR) are required no later than 90 days after the end of each budget period. A final progress report and FSR are due no later than 90 days after the end of the project period. Monthly electronically transmitted CDC WONDER/PC FACE status reports are due to NIOSH no later than the 10th of the following month. All other reports are submitted to the Grants Management Branch, CDC.

#### Application

##### 1. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter-of-intent to apply is requested from potential applicants. The letter should be submitted to the Grants Management Branch, CDC. (See "Application Submission and Deadline" Section for the address.) It should be postmarked no later than February 15, 1997. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter-of-intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and will ensure that each applicant receives timely and relevant information prior to application submission.

##### 2. Application Content

###### A. Abstract

A one-page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number. This abstract should be included in the APPLICATION CONTENT Section of the application, under INTRODUCTION. This abstract is not in lieu of (but in addition to) the INTRODUCTION Section.

###### B. Narrative

The narrative of the application should:

1. Document the applicant's understanding of the objectives of the project and the proposed agreement.

2. Describe the scope and nature of occupational fatalities in the applicant's State.

3. Describe the applicant's ability to provide qualified and appropriate staff and other resources necessary to implement the project. This may be supported by documentation of the applicant's experience in conducting similar research efforts, including surveillance activities.

4. Describe an implementation plan and provide a proposed schedule for accomplishing each of the activities to be carried out in this project including the implementation of the surveillance, field investigations, dissemination, and prevention components, and a method for evaluating the accomplishments.

5. Provide the names, qualifications, and time allocations of the principal investigator, professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

6. Provide a detailed description of the proposed first year activities, as well as a brief description of future year activities.

7. Not exceed 20 double-spaced typewritten pages exclusive of budget and biographical information and addenda. Information that should be part of the narrative will not be accepted if placed in the appendices.

#### C. Budget

Completed budget forms should be placed at the beginning of the application. The applicant should provide a detailed budget, with accompanying justification of all operating expenses, that is consistent with the stated objectives and planned activities of the project. CDC may not approve or fund all proposed activities. Applicants should be precise about the program purpose of each budget item, providing anticipated costs for personnel, travel (including travel expenses for annual NIOSH-conducted FACE project workshop/conference in Morgantown, West Virginia, or other selected site), communications, postage, equipment (see Item 7 under CDC/NIOSH Activities), supplies, etc., and all sources of funds to meet those needs.

For contracts described within the application budget, if known, applicants should name the contractor; describe the service(s) to be performed; provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Budget

<sup>1</sup> A Framework for Assessing the Effectiveness of Disease and Injury Prevention. Morbidity and Mortality Weekly Report (MMWR), March 27, 1992/Vol.41/Jn. The MMWR can be accessed through World-Wide Web (<http://www.cdc.gov/epo/mmwr/mmwr.html>).

narrative pages showing, in detail, how funds in each object class will be spent should be placed directly behind form 424A. Do not put these pages in the body of the application.

The application pages must be clearly numbered, and a complete index to the application and its appendices must be included. Please begin each section of the application on a new page. The original and each copy of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten (observing same type size throughout the application), double spaced on 8½" by 11" paper with at least 1" margins, heading and footers, and printed on one side only. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

### 3. Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 (OMB Number 0937-0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E-13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before March 21, 1997.

**Deadline:** Applications will be considered as meeting the deadline if they are either:

- (a) Received on or before the deadline date, or
- (b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

**Late Applications:** Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicants.

### Evaluation Criteria

Evaluation of the applications will be based on the following criteria:

1. Ability to communicate the scope and nature of traumatic occupational fatalities in the State as evidenced by the quality of the narrative and documented research and experience. (10%)

2. The qualifications and time commitment of proposed project staff (principal investigator, field investigator (if already identified), administrative and technical support staff). (30%—Total)

a. The existence of or potential for acquiring expertise in investigation of occupational fatalities. There should be a full-time field investigator dedicated to the project. (15%)

b. The existence of or potential for acquiring safety expertise relevant to formulation of injury prevention strategies. (15%)

3. Applicant's collaborative relationships with various relevant State or territorial agencies or organizations in addressing the problem of traumatic occupational fatality surveillance, investigation, and intervention. (30%—Total)

a. The existence of or potential for establishment of a multiple-source network for identification and reporting of traumatic occupational fatalities. (15%)

b. The existence of or potential for establishment of relationships with public safety departments, safety compliance agencies, and other entities that can provide background and supplementary data relating to specific fatality cases. (15%)

4. Demonstrated ability to communicate recommended preventions to those at risk through targeted dissemination. (25%)

5. Additional personnel/facilities/equipment already in place that can contribute to successful implementation of the project. (5%)

6. Human Subjects (Not Scored)  
Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects? Recommendations on the adequacy of protections include: (1) protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

7. Budget Justification (Not Scored)  
The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

### Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact

their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" State recommendations it receives after that date.

### Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance for this program is 93.283.

### Other Requirements

#### *Paperwork Reduction Act*

Projects funded through a cooperative agreement that involve collection of information from ten or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

#### *Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulation, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines provided in the application kit.

### Where to Obtain Additional Information

A complete program description and information on application procedures are contained in the application

package. Business management technical assistance may be obtained from

Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E-13, Room 321, 255 East Paces Ferry Road, NE., Atlanta, GA, 30305, telephone (404) 842-6804, Internet: vxw1@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Ted A. Pettit, State FACE Project Officer, Chief, Trauma Investigations Section, Surveillance and Field Investigations Branch, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop 180P, 1095 Willowdale Road, Morgantown, WV, 26505-2888, telephone (304) 285-5972, Internet: tap3@niosr1.em.cdc.gov or Dr. Nancy Stout, Acting Chief, Surveillance and Field Investigations Branch (at the same address), telephone (304) 285-5916.

Please refer to Announcement Number 713 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock Number 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock Number 017-001-00473-1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

Dated: January 9, 1997.

Diane D. Porter,

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97-1030 Filed 1-15-97; 8:45 am]

BILLING CODE 4163-19-P

## Food and Drug Administration

[Docket No. 97F-0004]

### Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-(4,6-diphenyl-1,3,5-triazin-2-yl)-5-(hexyloxy)phenol as a light stabilizer/

ultraviolet (UV) absorber for polycarbonate resins and polyester elastomers intended for use in contact with food.

**DATES:** Written comments on the petitioner's environmental assessment by February 18, 1997.

**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:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4531) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591-9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-(4,6-diphenyl-1,3,5-triazin-2-yl)-5-(hexyloxy)phenol as a light stabilizer/UV absorber for polycarbonate resins complying with 21 CFR 177.1580 and polyester elastomers complying with 21 CFR 177.1590 intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 18, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the

notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 26, 1996.

Alan M. Rulis,

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 97-1116 Filed 1-15-97; 8:45 am]

BILLING CODE 4160-01-F

## Health Care Financing Administration

[ORD-095-N]

### New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: November 1996

**AGENCY:** Health Care Financing Administration (HCFA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that during the month of November 1996, no proposals, under the authority of section 1115 of the Social Security Act were approved, disapproved, or withdrawn. (This notice can be accessed on the Internet at [HTTP://WWW.HCFA.GOV/ORD/ORDHP1.HTML](http://WWW.HCFA.GOV/ORD/ORDHP1.HTML).)

**DATES:** *Comments.* We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

**ADDRESSES:** Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3-11-07, 7500 Security Boulevard, Baltimore, MD 21244-1850.

**FOR FURTHER INFORMATION CONTACT:** Susan Anderson, (410) 786-3996.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act. In exercising her discretionary authority, the Secretary has developed a number of policies and

procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the Federal Register with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

## II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of November 1996

### A. Comprehensive Health Reform Programs

#### 1. New Proposals

No new proposals were received during the month of November.

#### 2. Pending, Approved, Disapproved, and Withdrawn Proposals

We did not approve or disapprove any Comprehensive Health Reform Programs during November nor were any proposals withdrawn during that month. Pending proposals for the month of October found in the Federal Register of December 9, 1996, 61 FR 64914, remain unchanged with the exception of the following one new proposal submitted in October that is now pending.

*Demonstration Title/State:* State of Washington Medicaid Section 1115(a) Waiver Request—Washington.

*Description:* Under the "State of Washington Medicaid Section 1115(a) Waiver Request," the State is requesting waivers of the 75/25 and lock-in requirements. The State's intent is for the demonstration to subsume the current 1915(b) Health Options Program. The State is planning innovations with encounter data, Medicaid HEDIS, and quality measures for the disabled population.

*Date Received:* October 2, 1996.

*State Contact:* Jane Beyer, Assistant Secretary, Medical Assistance Administration, Department of Social and Health Services, P.O. Box 45500, Olympia, Washington 98504-5500, (360) 586-6513.

*Federal Project Officer:* Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-18-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

### B. Other Section 1115 Demonstration Proposals

#### 1. New, Pending, Approved, Disapproved, and Withdrawn Proposals

We did not receive any new proposals or approve or disapprove any Other Section 1115 Demonstration Proposals during the month of November nor were any proposals withdrawn during that month. Pending proposals for the month of October found in the Federal Register of December 9, 1996, 61 FR 64914, remain unchanged.

### III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments).

Dated: December 18, 1996.

Barbara Cooper,

*Acting Director, Office of Research and Demonstrations.*

[FR Doc. 97-1025 Filed 1-15-97; 8:45 am]

BILLING CODE 4120-01-P

## Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104-13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft

instruments, call the HRSA Reports Clearance Officer on (301) 443-1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

### Proposed Projects

1. Project To Assess Bi/Multilingual Services Offered At Selected Community And Migrant Health Centers—NEW—Recognizing the importance of language-appropriate services to full and effective health care provision, the Office of Minority and Women's Health in the Bureau of Primary Health Care [BPHC], Health Resources and Services Administration [HRSA], proposes to conduct a voluntary survey to assess the composition and provision of bi/multilingual services at 150 Community and Migrant Health Centers [C/MHCs] identified as likely to be serving such populations. This effort was developed so that information could be gathered to assist the field, funding agency staff, and policy makers in better understanding what works, what does not, and barriers and facilitators to effective health service provision for speakers of languages other than English.

The information gathered will provide HRSA with an information base upon which to build in making future program decisions regarding C/MHC resource and staffing needs in order to reduce or eliminate the barriers to health care often faced by non- or limited-English-speaking populations. The end result of the program will be to assist the funding agency to help C/MHCs and by extension, other providers of health care for non- or limited-English speaking populations, to provide appropriate services. An estimate of the hour burden anticipated for the 150 C/MHC Directors to whom the survey will be mailed is shown below.

| Form                                  | No. of respondents        | Responses per respondent | Hours per response | Total hour burden |
|---------------------------------------|---------------------------|--------------------------|--------------------|-------------------|
| Bi/Multilingual Services Survey ..... | 150 C/MHC Directors ..... | 1                        | 2.5 hours          | 375 hours         |

2. Study on Ethnicity/Race of Subpopulations: User/Clients and Providers in Bureau-Supported Programs—NEW—National health statistics show that there are disproportionately high numbers of individuals from ethnic minority groups who have low incomes and limited access to health care. In addition, recent published studies indicate that cultural and linguistic barriers discourage many minority group members from seeking medical attention from certain service providers. For these reasons, and given the fact that certain diseases and disorders have a higher prevalence within particular ethnic groups, it is

important for the Bureau of Primary Health Care (BPHC) to have full understanding of the ethnicity of clients and providers at health centers supported through the Community Health Center Program, Migrant Health Center Program, Health Care for the Homeless, Primary Health Care in Public Housing, and the HIV Health Center Program. The ultimate purpose of this study is to examine subpopulation data on the service providers and users of these health care agencies supported by BPHC.

In the first stage of the study, emphasis will be on gathering, organizing, analyzing, and reporting on

ethnicity/race data that are currently available. This stage will be in preparation for a mail survey of health centers who receive BPHC support (through the programs listed above) to obtain detailed data on the ethnic/racial composition of users and providers. The mail survey will also request information on their data collection processes for ethnicity and race, which will be used to guide future BPHC efforts to collect race/ethnicity subpopulation data, making maximum use of the data collection and storage methods already employed by BPHC grantees.

| Type of respondent  | No. of respondents | Responses per respondent | Average hours per response | Total burden hours |
|---------------------|--------------------|--------------------------|----------------------------|--------------------|
| BPHC Grantees ..... | 800 .....          | 1                        | 1                          | 800                |

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14-36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 10, 1997.  
 J. Henry Montes,  
 Director, Office of Policy and Information Coordination.  
 [FR Doc. 97-1060 Filed 1-15-97; 8:45 am]  
 BILLING CODE 4160-15-P

mandates for the Service, particularly involving new authorities for land acquisition activities, expansion of grant programs and other private land activities, and increased Endangered Species Act (ESA) permit and recovery activities. The revisions promote cooperating agency arrangements with other Federal agencies; early coordination techniques for streamlining the NEPA process with other Federal agencies, Tribes, the States, and the private sector; and integrating the NEPA process with other environmental laws and executive orders.

**EFFECTIVE DATE:** January 16, 1997.  
**FOR FURTHER INFORMATION CONTACT:** Don Peterson, Environmental Coordinator, Fish and Wildlife Service, at (703) 358-2183.

**SUPPLEMENTARY INFORMATION:** The Service's existing procedures for implementing NEPA with regard to actions proposed to be carried out by the Service appear in Appendix 1 to Chapter 6, Part 516, of the Departmental Manual (516 DM 6, Appendix 1). These procedures are consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (Regulations). These procedures (Appendix 1) were previously published in the Federal Register on July 1, 1982 (47 FR 28841), and were incorporated

into the Departmental Manual on April 30, 1984. Proposed revised procedures were published in the Federal Register on May 1, 1996 (61 FR 19308), for 45-day public review. The comment period closed June 17, 1996.

The final revisions update organizational changes in the Service (section 1.1); provide general guidance for NEPA compliance for Service activities (section 1.2); update guidance to State, local, and private applicants for permits and Federal assistance provided through Service-administered programs (section 1.3); update and expand the categorical exclusions to reflect increased responsibilities, including the implementation of several new programs (section 1.4); add a new section that identifies Service actions normally requiring an environmental assessment (EA) (section 1.5); and revise the list of major actions normally requiring the development of an environmental impact statement (EIS) (section 1.6). The Appendix must be read in conjunction with the Department's NEPA procedures (516 DM 1-6) and CEQ's Regulations (40 CFR 1500-1508). The Department's overall NEPA procedures were published in the Federal Register on April 23, 1980 (45 FR 27541), and were revised in 49 FR 21437, on May 21, 1984.

**RESPONSE TO COMMENTS:** A total of eight responses were received during the public comment period. As a result of

**DEPARTMENT OF THE INTERIOR**

**National Environmental Policy Act Revised Implementing Procedures**

**AGENCY:** Department of the Interior.  
**ACTION:** Notice of Final Revised Procedures for the Fish and Wildlife Service (Service).

**SUMMARY:** This notice announces final revised procedures for implementing the National Environmental Policy Act (NEPA) for actions implemented by the Fish and Wildlife Service in Appendix 1 in the Department of the Interior's (Departmental) Manual (516 DM 6). The revisions update the agency's procedures, originally published in 1984, based on changing trends, laws, and consideration of public comments. Most importantly, the revisions reflect new initiatives and Congressional

these comments and other internal Service input, several technical changes were made to refine the final revised procedures. The following is the Service's response to substantive comments.

#### Streamlining, Increased Inter-Agency Cooperation, and Early Coordination To Resolve Issues and To Integrate NEPA are Supported

Many commenters supported the changes, particularly those efforts to integrate Service programs, such as integrating the section 10(a)(1)(B) incidental take process, with NEPA. We are also encouraged by widespread support for increasing Service involvement in cooperative efforts with other agencies and for promoting early coordination with Federal agencies and Tribal, State, and local governments. Additional language was added to section 1.2 to further encourage cooperative and early coordination efforts.

#### There Should be Consistency Between the Service and the National Marine Fisheries Service in Developing NEPA Procedures for Implementing The Endangered Species Act

One commenter stated that there should be consistency between the Service and the National Marine Fisheries Service (NMFS) in developing NEPA procedures for implementing the provisions of ESA. The Service and NMFS share in the responsibility of implementing many of the provisions of ESA. In that regard, the Service and NMFS are working together, to the extent practicable, given different agency missions and objectives, to seek consistency in applying NEPA to ESA activities.

#### An EA Must Be Prepared Prior to Finalizing the Revisions

One commenter stated that the Service must prepare an EA prior to finalizing these procedural changes. The final NEPA procedures are considered categorically excluded under an existing Departmental categorical exclusion (516 DM 2, Appendix 1.10), which applies to procedures where the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Individual Service actions are subject later to the NEPA process, pursuant to these procedures, either collectively or on a case-by-case basis.

#### Regional Directors Should Be Responsible for Contacting State, Tribal, and Local Governments When Initiating an Action

One commenter stated that language should be added to section 1.1E to require each Regional Director to be responsible for contacting State, Tribal, and local governments when initiating an action. Numerous Service guidance documents (e.g., 30 AM 3) already require the Service to coordinate with the effected public when the Service proposes actions requiring an EA or EIS. However, to strengthen this important requirement of the CEQ Regulations, additional language has been added to section 1.1E.

#### Executive Order 12996 on "Management and General Public Use of the National Wildlife Refuge System" Should be Referenced in the Procedures

One commenter stated that the recently published Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the National Wildlife Refuge System" should be cited in this section. We concur and have added appropriate language to section 1.3A(2).

#### The NEPA Procedures are Confusing as to Whether they Apply to Service Actions or to the Service Review of Other Agency Activities

One commenter stated that the Service's revised NEPA procedures, particularly section 1.3B, are confusing as to whether they apply to Service actions or to the review of other Federal agency activities. We agree that the revised procedures are not clear on this point. These procedures apply to Service actions only, including, but not limited to, proposed construction, changes in land or human use, issuance of grants, issuance of permits, etc. Section 1.3 provides guidance to permittees who receive permits, grants, or technical assistance on how to assist the Service meet its requirements under NEPA, other Federal laws, and the executive orders. To clarify these procedures, minor language changes have been made in sections 1.2 and 1.3, including the deletion of section 1.3B, which primarily deals with the review of other agency environmental documents.

#### Terminology to Define Categorical Exclusions is Vague and Undefined and Could Result in Avoiding EAs and EISs

Several commenters suggested that the Service's use of terminology such as "no or minor change", "negligible environmental disturbance", and "suitable habitat", for example, for the

categorical exclusions (section 1.4), should be further defined. Although the use of this terminology may at times seem vague, to define limits such as the size of the structure, extent of acreage involved, number of trees removed, etc., is generally not useful as a NEPA trigger. Predetermined limits of physical factors often have little relationship to the actual impact of the action. For example, a proposal to acquire a 1,000-acre parcel from a willing seller as an addition to a national wildlife refuge with little or no changes in management may be categorically excluded because no change in the environmental conditions is proposed or would occur; whereas, the acquisition of a 1,000-acre in-holding which could terminate a popular, locally-significant recreational use, would likely require the preparation of an EA or EIS. Under the CEQ Regulations, it is the level of impact or an established need to determine the level of impact that triggers the preparation of an EA or EIS. In other words, Service managers make NEPA decision based on the level of anticipated impact, or uncertainty of the impact of the action, not merely on the physical size of the action. Service decision makers are given a reasonable amount of flexibility to make these decisions based on their consideration of relevant biophysical factors that could result in anticipated or possible impacts. General guidance is provided in the Departmental NEPA procedures (516 DM 2, Appendix 2) to help Service decisionmakers determine when exceptions to a normally categorically excluded action could occur, thus requiring the preparation of an EA or EIS. Service guidance is also provided in 30 AM 3.9. The Service will continue to rely on this guidance and process to ensure proper compliance with NEPA, consistent with CEQ's Regulations.

#### The Service is Categorically Excluding Actions That may Require the Preparation of an EA or EIS

Several commenters were concerned that when impacts of actions, normally categorically excluded, are substantial, the Service would not prepare an EA or EIS (section 1.4). Commenters mentioned such actions as the construction of new structures or improvements, section 10 permits, land acquisition, and fire management. An important factor for determining when an action can fit an established categorical exclusion is whether the action could have a significantly impact, either individually or cumulatively. Departmental procedures (preamble to section 1.4) clearly state that if there is an exception to the categorically

exclusion, an EA or EIS must be prepared. The Departmental procedures state that categorically exclusions are not the equivalent of statutory exemptions. Exceptions to the categorical exclusions are found in the Departmental Manual (516 DM 2, Appendix 2). In the past, environmental documents have been prepared for the construction of new or improved structures and for fire-related activities. These procedures continue to require the preparation of an EA or EIS, when required. To ensure coordination, compliance, and consistency with other affected Federal agencies and State, Tribal, and local governments, language to this affect has been inserted at the beginning of section 1.4B.

#### The Service has no Mechanisms to Assess the Cumulative Impacts of its Actions

Several commenters stated that the Service has not mechanism to assess cumulative impacts of categorically excluded actions (section 1.4), such as multiple minor modifications to existing land use as a result of land acquisition, section 10(a)(1)(B) incidental take permits under ESA, listings, designation of critical habitats, or recovery plans and actions. For land acquisition actions, categorically excluded activities must meet the three criteria set forth in section 1.4A(4). In most cases, the land acquisition action covers the administrative action of transferring title from an owner to the Service. Specific guidance on land acquisition and the application of NEPA to land acquisition actions is found Service guidance (341 FW 2). The land acquisition planning process does not, nor is it intended to, fully address the impacts of future management decisions for refuge. The Service believes that aggregate land acquisition actions, per se, when executed under the Service's current policies and guidelines, are not causing significant impacts. The future development of refuge comprehensive management plans and any step-down management plans, however, are subject to NEPA compliance. The NEPA documents prepared pursuant to these actions are to address all relevant impacts, including cumulative impacts associated with the proposed management of the lands and waters. Specific guidance regarding the development of these plans and the application of NEPA to the development of management plans is found in other Service guidance (602 FW 1-3).

One commenter stated that the number of habitat conservation plans (HCP) prepared pursuant to section 10(a)(1)(B) of the ESA contradicts the

Service's assertion that the impacts of such activities would be minor or negligible because of the total number of permits issued by the Service. The commenter combined all HCPs into a single action that was considered to be inevitably "significant." It was also implied that these permits are being issued without reference to any legal or biological standards that mitigate their effects. None of these assertions are true. Each permit application is evaluated to determine the effect on individual species or groups of species and the habitat on which they depend. Mitigation measures are then incorporated into the HCP and permit, as appropriate, to ensure that there is not adverse effect on the species. In some cases, the permit conditions may result in enhancing the species or its habitat. The cumulative impacts from categorically excluded low-effect HCPs are considered when the Service performs internal section 7 (ESA) consultation on the proposed action, pursuant to 50 CFR 402. Under section 7, the cumulative impacts analysis includes the effects of future State, Tribal, local, or private actions that are reasonably certain to occur in the action area. Past activities that may affect the environmental baseline are also considered. This process will be described in the final Section 7 Handbook and will be referenced in the final Section 10 Handbook, both to be released in the near future. We believe this process is adequate for ensuring the consideration of potential cumulative impacts of multiple low-effect HCPs within the same geographic area.

Regarding listing actions, CEQ has determined that these actions may be exempt from the requirements of NEPA, including an assessment of cumulative impacts. This assessment is based, in part, on the ESA amendments of 1982, which clearly restrict the information upon which the Secretary of the Interior may make listing decisions. Only scientific, biological criteria can be considered. The Service published this finding in the Federal Register on October 1, 1984 (49 FR 38908).

Regarding the cumulative impacts of the designation of critical habitat and the development of recovery plans, the Service believes that these activities do not constitute a proposal under NEPA and, therefore, do not warrant the preparation of an EA or EIS, including an evaluation of cumulative impacts. Implementation of recovery actions, however, is subject to NEPA, including the consideration of cumulative impacts, as appropriate. Refer to other responses below.

#### The use of Categorical Exclusions Effectively Precludes Public Involvement in Service Decisions

One commenter stated that categorical exclusions (section 1.4) effectively preclude public involvement in Service decisions. The CEQ Regulations clearly focus on those actions with significant impacts on the quality of the human environment or on those actions whereby such a determination must be determined (i.e., the EA), from which a better environmental decision can be encouraged. Categorical exclusions are categories of similar actions identified by agencies that normally do not require the preparation of an EA or EIS because the actions do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). A major purpose of categorical exclusions is to preclude such actions from undergoing detailed NEPA examinations or public review. However, this does not preclude the Service from involving the affected public in the planning and implementation of such decision. In some cases, it is mandatory, such as for recovery plan development. In other cases, the Service routinely includes the affected public in decisions, such as land acquisition actions, and issuance of special use permits, where the actions are normally categorically excluded.

#### At a Minimum, an EA Should be Prepared for Land Acquisition Actions

One commenter stated that, at a minimum, the Service should prepare an EA for all land acquisitions in cooperation with State, Tribal, and local governments [section 1.4A(4)]. All land acquisition proposals for the establishment or major expansion of national wildlife refuges are completed with the Service's full consideration of NEPA during the detailed pre-acquisition planning phase of a proposal. At that time, the Service considers the environmental impacts of the acquisition of lands within a proposed acquisition boundary. Proposals for the establishment of refuges involve appropriate coordination with Federal agencies and affected State, Tribal, and local governments. Either an EA or EIS is normally prepared, depending on the significance of impacts and/or controversy surrounding the proposal (refer to section 1.5A). The categorical exclusion for land acquisition in section 1.4A(4) is utilized for land acquisition within approved established refuges or for minor adjustments to the acquisition boundary of an existing refuge. Specific guidance on land acquisition and the

application of the NEPA process is found in Service guidance (341 FW 2).

#### Concerns Were Raised Regarding the Categorical Exclusion for the Reintroduction of Native, Formerly Native, or Established Species

Several commenters raised concerns regarding this categorical exclusion [section 1.4B(6)]. These concerns are fueled, in part, by controversy over the reintroductions of the gray wolf, proposed reintroduction of the Mexican wolf, and debate over the reintroduction of hatchery-raised fish. One commenter recommended that the categorical exclusion be deleted.

The Service is involved in numerous reintroductions through various grants programs (e.g., Federal Aid in Fish and Wildlife Restoration Acts), recovery actions under ESA, and the Service's Fisheries Program. The categorical exclusion for this activity applies only when there are no significant impacts associated with the proposal. The categorical exclusions must be read in context with the Departmental Manual, 516 DM 2, Appendix 2, which identifies exceptions to the categorical exclusions. When an exception applies, such as an action with highly controversial environmental effects, an EA or EIS must be prepared. In a number of recent reintroductions, such as the reintroduction of the gray wolf in Yellowstone National Park and central Idaho, and the proposed reintroduction of the Mexican Wolf in Arizona and New Mexico, an EIS was prepared due to the controversy over environmental effects associated with the proposals.

Several commenters raised specific concerns about the use of this categorical exclusion for the release of hatchery propagated fish. The Service's National Fish Hatchery System produces various species of fish for a variety of purposes. Numerous legislative authorities, such as the Atlantic Striped Bass Conservation Act, Great Lakes Fishery Act, New England Fishery Resources Restoration Act, Sikes Act, and the Water Resources Development Act of 1976, to name a few, direct the Service's Fisheries Program. While it is true that fishery managers in the past sometimes favored using Federal hatcheries to produce and stock non-native fishes, these kinds of activities are very limited today. The Service's Fisheries Program focuses its resources on restoring depleted native populations of fishes, recovering threatened and endangered fishes, and maintaining the health and abundance of inter jurisdictional fish populations. The service uses non-native fish primarily in waterways grossly altered

by water projects and in artificial impoundments and sterile waterbodies. Any reintroduction activity covered under this categorical exclusion, whether it involves native or non-native species, will be subject to the exceptions procedures in the Departmental Manual (516 DM 2, Appendix 2). Additional language has been added to this categorical exclusion to clarify that such reintroductions can be categorically excluded only when no or negligible environmental disturbances are anticipated.

#### The categorical Exclusions are attempting to Bypass the Assessment of Impacts for the Issuance of Permits

Several commenters suggest that the Service, through its categorical exclusions [sections 1.4C(1) and (2)], is attempting to bypass the assessment of impacts from the issuance of permits for endangered and threatened species, species listed under the Convention on International Trade on Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

Although some ESA permits can be issued which involve the killing, removal from natural habitat, or permanent impairment of reproductive capability of species under this revised categorical exclusion, the permit can be issued only if it poses no jeopardy to the species. To ensure this standard, permits include appropriate minimization and mitigation actions in the conditions of the permit. If these actions are not feasible or the conditions are not acceptable to the applicant, the permit application will be denied.

Under the categorical exclusion 1.4C(1) and (2), section 10(a)(1)(B) incidental takes permits and the preparation of accompanying HCPs can now be categorically excluded if the expected impacts are minor or negligible. This standard for "low-effect" HCPs was not included under the previous categorical exclusions, where any permit, for example, involving incidental take, required the preparation of an EA or EIS. The previous language was a far more rigorous standard than required under NEPA. For example, under the previous procedures, incidental take of a listed species would require the preparation of an EA or EIS even when the service established that there was only a minor or negligible effect. The revised language is consistent with NEPA in that the level of impact is the trigger for determining when to prepare an EA or EIS, thus allowing the implementation of a more flexible, efficient section

10(a)(1)(B) permit program. Additional Service guidance on how to determine when a permit proposal will be "low-effect" will be included in the final Section 10 Handbook.

For species listed under CITES, the Wild Bird Conservation Act, and the Marine Mammal Protection Act, the Service carefully reviews possible effects of the proposed activity on the wildlife before issuing a permit. For species listed as injurious wildlife, the Service reviews whether provisions are in place to ensure that wildlife cannot escape and potentially harm native wildlife. The permit review process includes consulting with appropriate State and Federal agencies and species experts. The Service makes a decision to issue a permit only after issuance criteria are met. These are specific to the provisions of the law or treaty. For example, under CITES, the Service's Office of Scientific Authority must make a finding that the import or export would not be detrimental to the survival of the species. If the Service anticipates that a permit may have an incidental environmental impact, the Service would require the preparation of an EA or EIS.

Under the Migratory Bird Treaty Act (MBTA), the Service thoroughly reviews and considers anticipated effects on migratory bird populations before issuing a permit allowing the take of a protected species. Permits are issued at the Regional level pursuant to regulations and requirements (50 CFR 210 and are only issued after careful review by the Region's Permit Review Committee. Like the MBTA, the Bald and Golden Eagle Protection Act (BGEPA) prohibits the taking of bald and golden eagles, except as otherwise permitted pursuant to regulations (50 CFR 22.21 through 22.25). Under MBTA, BGEPA, and applicable regulations, no permits can be issued for actions that would cause harm to the species. If there are incidental impacts as a result of the issuance of the proposed issuance of a permit that are or may be significant, such permits would require the preparation of an EA or EIS.

If any permit action, that normally would be categorically excluded, meets one or more of the exceptions to the categorical exclusion in 516 DM 2, Appendix 2, an EA or EIS is required. This requirement is to ensure that proposals with significant impacts or with impacts that may be significant undergo the NEPA documentation and decisionmaking process.

The Habitat Conservation Plan Process Serves Essentially the Same Purpose as the NEPA Process

One commenter suggested that the HCP process, authorized under section 10(a)(1)(B) of the ESA, serves essentially the same purpose as the NEPA analysis in an EA or EIS. We agree that there are some similarities in the content of the HCP and the NEPA document, such as the identification of alternative, evaluation of impacts, and public review. However, some of these features can differ substantially, depending on the proposal. For example, section 10(a)(1)(B) and subsequent Service guidance limits the analysis of impacts in the HCP to affected listed and proposed species by minimizing and mitigating the incidental take of a listed species. The purpose of the HCP process is to provide an incidental take permit to the applicant that authorizes the incidental take of federally listed species in the context of an HCP. The HCP specifies the impacts that will likely result from the incidental taking, what steps the applicant will take to minimize and mitigate such impacts, what alternative actions are not being utilized, and such other measures as may be required by the Service.

When considering the NEPA analysis as it relates to an incidental take permit and the HCP, it is important to be precise about the nature of the underlying action. The scope of the NEPA analysis covers the direct, indirect, and cumulative effects of the proposed incidental take and the mitigation and minimization measures proposed from the implementation of the HCP. The specific scope of the NEPA analysis will vary depending on the nature of the scope of activities described in the HCP. In some cases, the anticipated environmental effects in the NEPA documents that address the HCP may be confined to effects on endangered species and other wildlife and plants, simply because there are no other important effects. In many cases, the NEPA analysis will focus on the effects of the minimization and mitigation actions on other wildlife and plants and will examine any alternatives or conservation strategies that might not otherwise have been considered. In other cases, the minimization and mitigation activities proposed in the HCP may affect a wider range of impacts analyzed under NEPA, such as cultural resources and water use. It is important to keep in mind, however, that the NEPA analysis for an HCP should be directed towards analyzing direct, indirect, and cumulative effects that would be caused by the approval of the

HCP, that are reasonably foreseeable, and that are potentially significant.

Refuge Actions Determined to be Compatible Would not be Subject to Qualitative and Quantitative Evaluations

One commenter suggests that if the Service made a determination of compatibility, that would be sufficient to qualify the issuance or reissuance of refuge special use permit as a categorical exclusion, thus avoiding any qualitative or quantitative assessment of impacts. The categorical exclusion 1.4C(5) requires that three criteria be met before a Refuge action requiring the issuance or reissuance of a permit can apply: the use must be compatible, must contribute to the purposes of the refuge, and result in no or negligible anticipated environmental disturbances. The compatibility criteria is one of three that must be met before this categorical exclusion can be used. This categorical exclusion cannot be used unless it meets the requirements of both the National Wildlife Refuge System Administration Act of 1966, as amended, and NEPA (40 CFR 1508.4).

An EA or EIS Should be Prepared for the Preparation of Recovery Plans

One commenter stated that the preparation of recovery plans should require the preparation of an EA or EIS (section 1.4D). Another commenter stated that recovery plans should not be categorically excluded because the issue is currently in litigation. However, several commenters also stated that recovery plans are not "action" documents, and therefore do not constitute a Federal action under NEPA. The Service continues to consider recovery plans categorically excluded under section 1.4B(8), as well as under 516 DM 2, Appendix 1.10. Recovery plans are considered to be advisory in nature and provide technical assistance. These plans merely provide planning strategies and identify possible recovery actions and/or tasks that can be implemented at a later time to help recover the species. The recovery tasks identified in the plan are discretionary. The plans do not authorize, fund, or implement a specific task. Through section 1003 of the ESA amendments of 1988, the Secretary of the Interior provides the public an opportunity to review and comment on draft recovery plans. The NEPA process will be applied at the time specific tasks are proposed to be implemented. The relationship of NEPA to recovery planning will be clarified in revisions to the Service Recovery Manual.

The Service Should Maintain the Flexibility To Issue EAs and FONSI's Without Public Review

One commenter stated that the language in section 1.5C indicates that public review is required for an EA and that this is inconsistent with CEQ's Regulations, which require review of the FONSI only when an action is similar to one which normally requires an EIS or when the nature of the action is without precedent [40 CFR 1501.4(e)(2)]. We agree that this language is inconsistent and it is also somewhat confusing. The language in section 1.5C has been revised to indicate that it is not the EA/FONSI, but the notice of intent to prepare an EIS that is to be made available to the affected public when an EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment.

Although CEQ's Regulations do not normally require public review of EAs, such review is encouraged. The Service routinely involves the public in the review of EAs in conjunction with HCPs. The ESA requires the Service to publish a Notice, called the Notice of Receipt, when a HCP permit application is received. The final Section 10 Handbook will provide guidance encouraging Service personnel to publish a joint notification of the permit application, HCP, and the EA for public review. In practice, the Service normally provides the public an opportunity to review the EA along with the HCP to facilitate the planning and implementation of the incidental take permit.

Designation of Critical Habitat Should Require the Preparation of an EIS

One commenter stated that the designation of critical habitat should require the preparation of an EIS. The Department's NEPA procedures do not specifically state that the designation of critical habitat is categorically excluded. The Service has maintained that these designations are exempt from NEPA and therefore, do not require the preparation of an EA or EIS in conjunction with regulations adopted pursuant to section 4(a) of the ESA, as amended. A notice outlining the Service's reason was published in the Federal Register on October 25, 1983 (48 FR 49244). As the commenter notes, two Federal Circuit Courts have disagreed on this issue (9th and 10th Circuits). Pending resolution of this issue by the Courts, the Service will not prepare environmental documents in the 9th Circuit or in other parts of the United States, consistent with our current position, but the

Service will prepare EAs for any designations proposed in areas subject to the 10th Circuit. This admittedly inconsistent approach to the application of NEPA for the designation of critical habitat will likely continue until resolved by the Courts.

#### Departmental Manual

##### 516 DM 6 Appendix 1

#### Fish and Wildlife Service

##### 1.1 NEPA Responsibility

A. The Director is responsible for NEPA compliance for Fish and Wildlife Service (Service) activities, including approving recommendations to the Assistant Secretary (FW) for proposed referrals to the Council on Environmental Quality (CEQ) of other agency actions under 40 CFR 1504.

B. Each Assistant Director (Refuges and Wildlife, Fisheries, International Affairs, External Affairs, and Ecological Services) is responsible for general guidance and compliance in their respective areas of responsibility.

C. The Assistant Director for Ecological Services has been delegated oversight responsibility for Service NEPA compliance.

D. The Division of Habitat Conservation (DHC—Washington), which reports to the Assistant Director for Ecological Services, is responsible for internal control of the environmental review and analysis of documents prepared by other agencies and environmental statements prepared by the various Service Divisions. This office is also responsible for preparing Service NEPA procedures, guidelines, and instructions, and for supplying technical assistance and specialized training in NEPA compliance, in cooperation with the Service Office of Training and Education, to Service entities. The Washington Office Environmental Coordinator, who reports to DHC, provides staff assistance on NEPA matters to the Director, Assistant Directors, and their divisions and offices, and serves as the Service NEPA liaison to the CEQ, the Department's Office of Environmental Policy and Compliance (OEPC), and NEPA liaisons in other Federal agencies, in accordance with 516 DM 6.2.

E. Each Regional Director is responsible for NEPA compliance in his/her area of responsibility. The Regional Director should ensure that Service decisionmakers in his/her area of responsibility contact affected Federal agencies and State, Tribal and local governments when initiating an action subject to an EA or EIS. An individual in each Regional Office,

named by title and reporting to the Assistant Regional Director for Ecological Services, other appropriate Assistant Regional Director, or the Regional Director, will have NEPA coordination duties with all program areas at the Regional level similar to those of the Washington Office Environmental Coordinator, in accordance with 516 DM 6.2.

##### 1.2 General Service Guidance

Service guidance on internal NEPA matters is found in 30 AM 2-3 (organizational structure and internal NEPA compliance), 550 FW1-3 (in preparation), 550 FW 3 (documenting and implementing Service decisions on Service actions), and 550 FW 1-2 (replacement to 30 AM 2-3 in preparation). These guidance documents encourage Service participation as a cooperating agency with other Federal agencies, encourage early coordination with other agencies and the public to resolve issues in a timely manner, and provide techniques for streamlining the NEPA process and integrating the NEPA process with other Service programs, environmental laws, and executive orders. Some Service programs have additional NEPA compliance information related to specific program planning and decisionmaking activities. Service program guidance on NEPA matters must be consistent with the Service Manual on NEPA guidance and Departmental NEPA procedures. For example, additional NEPA guidance is found in the Federal Aid Handbook (521-523 FW), refuge planning guidance (602 FW 1-3), Handbook for Habitat Conservation Planning and Incidental Take Processing, and North American Wetlands Conservation Act Grant Application Instructions.

##### 1.3 Guidance to Applicants

A. Service Permits. The Service has responsibility for issuing permits to Federal and State agencies and private parties for actions which would involve certain wildlife species and/or use of Service-administered lands. When applicable, the Service may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with NEPA, other Federal laws, and executive orders.

(1) Permits for the Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, or Importation of Certain Wildlife Species. The Code of Federal Regulations, Part 13, Title 50 (50 CFR 13) contains regulations for General

Permit Procedures. Section 13.3 lists types of permits and the pertinent Parts of 50 CFR. These include: Importation, Exportation, and Transportation of Wildlife (Part 14); Exotic Wild Bird Conservation (Part 15); Injurious Wildlife (Part 16); Endangered and Threatened Wildlife and Plants (Part 17); Marine Mammals (Part 18); Migratory Bird Hunting (Part 20); Migratory Bird Permits (Part 21); Eagle Permits (Part 22); Endangered Species Convention (Part 23); and Importation and Exportation of Plants (Part 24). Potential permit applicants should request information from the appropriate Regional Director, or the Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, as outlined in the applicable regulation.

(2) Federal Lands Managed by the Service. Service lands are administered under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4), and the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 410hh-3233, 43 U.S.C. 1602-1784). Inherent in these acts is the requirement that only those uses that are compatible with the purposes of the refuge system unit may be allowed on Service lands. The Service also complies with Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the National Wildlife Refuge System." This Executive Order identifies general public uses that will be given priority consideration in refuge planning and management, subject to meeting the compatibility requirement and if adequate funding is available to administer the use. Detailed procedures regarding comprehensive management planning and integration with NEPA are found in the Service Manual (602 FW 1-3). Reference to this and other National Wildlife Refuge System requirements are found in the Code of Federal Regulations, Title 50 parts 25-29, 31-36, 60, and 70-71. Under these regulations, these protections are extended to all Service-administered lands, including the National Fish Hatchery System.

B. Federal Assistance to States, Local or Private Entities.

(1) Federal Assistance Programs. The Service administers financial assistance (grants and/or cooperative agreements) to State, local, and private entities under the Anadromous Fish Conservation Act (CFDA #15.600); North American Wetlands Conservation Act; Fish and Wildlife Act of 1956; Migratory Bird Conservation Act; Food Security Act of

1985; Food, Agriculture, Conservation and Trade Act of 1990; Partnerships for Wildlife Act of 1992; and Consolidated Farm and Rural Development Act. The Service administers financial assistance to States under the Sport Fish Restoration Act (CFDA #15.605), Wildlife Restoration Act (CFDA #15.611), Endangered Species Act (CFDA #15.612 and 15.615), Coastal Wetlands Planning Protection and Restoration Act (CFDA #15.614), and Clean Vessel Act of 1992 (CFDA #15.616).

(2) Program Information and NEPA Compliance. Information on how State, local, and private entities may request funds and assist the Service in NEPA compliance relative to the Anadromous Fish Conservation Act may be obtained through the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 840, Washington, D.C. 20240. Similar information regarding the North American Wetlands Conservation Act may be obtained through the North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 110, Washington, D.C. 20240. All other requests for information on how funds may be obtained and guidance on how to assist the Service in NEPA compliance may be obtained through the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 140, Washington, D.C. 20240.

#### 1.4 Categorical Exclusions

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under 516 DM 2, Appendix 2 of the Departmental Manual, the departmental categorical exclusions cannot be used. In addition to the actions listed in the departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

##### A. General.

(1) Changes or amendments to an approved action when such changes have no or minor potential environmental impact.

(2) Personnel training, environmental interpretation, public safety efforts, and other educational activities, which do

not involve new construction or major additions to existing facilities.

(3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.

(4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 DM 2 and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

B. Resource Management. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, Tribal, and local governments.

(1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.

(2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.

(3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.

- i. The installation of fences.
- ii. The construction of small water control structures.
- iii. The planting of seeds or seedlings and other minor revegetation actions.
- iv. The construction of small berms or dikes.
- v. The development of limited access for routine maintenance and management purposes.

(4) The use of prescribed burning for habitat improvement purposes, when

conducted in accordance with local and State ordinances and laws.

(5) Fire management activities, including prevention and restoration measures, when conducted in accordance with departmental and Service procedures.

(6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

(7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

(8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.

(9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.

(10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.

(11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); section 311(f)(4) of the Clean Water Act; and the Oil Pollution Act; when only minor or negligible change in the use of the affected areas is planned.

C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

(2) The issuance of ESA section 10(a)(1)(B) "low-effect" incidental take permits that, individually or cumulatively, have a minor or negligible

effect on the species covered in the habitat conservation plan.

(3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects.

(4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e., facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible environmental disturbances are anticipated.

(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.

(6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.

(7) Activities directly related to the enforcement of fish and wildlife laws, not included in 516 DM 2, Appendix 1.4. These activities include:

- (a) Assessment of civil penalties.
- (b) Forfeiture of property seized or subject to forfeiture.

(C) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.

(8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected actions where the Service is a cooperating agency.

#### D. Recovery Plans.

Issuance of recovery plans under section 4(f) of the ESA.

#### E. Financial Assistance.

(1) State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the environmental effects are minor or negligible.

(2) Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of 516 DM 2.

### 1.5 Actions Normally Requiring an EA

A. Proposals to establish most new refuges and fish hatcheries; and most additions and rehabilitations to existing installations.

B. Any habitat conservation plan that does not meet the definition of "low-effect" in the Section 10(a)(1)(B) Handbook.

C. If, for any of the above proposals, the EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, an EIS will be prepared. The determination to prepare an EIS will be made by a notice of intent in the Federal Register and by other appropriate means to notify the affected public.

### 1.6 Major Actions Normally Requiring an EIS

A. The following Service proposals, when determined to be a major Federal action significantly affecting the quality of the human environment, will normally require the preparation of an EIS.

(1) Major proposals establishing new refuge system units, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing State and local land use, significant controversy over the environmental effects of the proposal, or the remediation of major on-site sources of contamination.

(2) Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed.

B. If, for any of the above proposals it is initially determined that the proposal is not a major Federal action significantly affecting the quality of the human environment, an EA will be prepared and handled in accordance with 40 CFR 1501.4(e)(2). If the EA subsequently indicates the proposed action will cause significant impacts, an EIS will be prepared.

Dated: January 13, 1997.

Willie Taylor,

Director, Office of Environmental Policy and Compliance, Office of the Secretary, U.S. Department of the Interior.

[FR Doc. 97-1071 Filed 11-15-97; 8:45 am]

BILLING CODE 4310-55-M

## Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain

activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-822203

*Applicant:* Louisiana Purchase Gardens and Zoo, Monroe, LA.

The applicant requests a permit to purchase a female captive-bred jaguar (*Panthera onca*) from Marion Nature Park, Bellview, Florida, for the purpose of enhancement of the species through captive propagation.

PRT-824037

*Applicant:* Siegfried & Roy Enterprises, Inc., Las Vegas, NV.

The applicants request a permit to import 2 pair of tigers (*Panthera tigris tigris*) born in captivity from Guadalajara Zoo, Guadalajara, Mexico for survival of the species through propagation and conservation education.

PRT-824036

*Applicant:* Charles Sammut, Salines, CA.

The applicant requests a permit to export and reimport one male captive born leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT-823928

*Applicant:* Plumpton Park Zoo, Rising Sun, MD.

The applicant requests a permit to import one female Siberian tiger (*Panthera tigris altaica*) born in captivity at the Greater Vancouver Zoological Centre, Canada, to enhance the survival of the species through conservation education.

PRT-823832

*Applicant:* The Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport captive-born tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities done by the applicant over a three year period.

PRT-823896

*Applicant:* The Jane Goodall Institute's Center for Primate Studies, St. Paul, MN.

The applicant requests a permit to import chimpanzee (*Pan troglodytes*) hair samples collected from night nests in the Gombe National Park, Tanzania, for the purpose of scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: January 10, 1997.

Caroline Anderson,  
*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 97-1031 Filed 1-15-97; 8:45 am]

BILLING CODE 4310-55-P

**Endangered and Threatened Species Permits Issued**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of permits issued for the months of April 1996—December 1996.

Notice is hereby given that the U.S. Fish and Wildlife Service, Region 3, has taken the following action with regard to permit applications duly received in accordance with section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*) Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

| Name                    | Permit No. | Date issued |
|-------------------------|------------|-------------|
| Dr. James R. Curry      | PRT 810469 | 4/3/96      |
| Dr. Francesca Cuthbert. | PRT 810834 | 4/3/96      |
| Dr. Daniel Hornbach.    | PRT 811008 | 4/17/96     |
| Mr. Don Helms .....     | PRT 811314 | 7/12/96     |
| Dr. Arthur Clarke ...   | PRT 811679 | 4/29/96     |

| Name                         | Permit No. | Date issued |
|------------------------------|------------|-------------|
| Mr. David Evans ....         | PRT 811958 | 4/29/96     |
| Dr. Kirk Larsen .....        | PRT 813258 | 4/29/96     |
| Mr. Thomas Erdman.           | PRT 813259 | 6/6/96      |
| National Biological Service. | PRT 813261 | 7/23/96     |
| N. Anthony and G. Gelembiuk. | PRT 814105 | 7/26/96     |
| Dr. Mark Hove .....          | PRT 814107 | 6/6/96      |
| Mr. Robert Bevill ....       | PRT 814684 | 7/22/96     |
| The Nature Conservancy.      | PRT 815484 | 7/17/96     |
| National Biological Service. | PRT 815942 | 9/19/96     |
| 3D/International .....       | PRT 817175 | 9/5/96      |
| National Biological Service. | PRT 818186 | 9/19/96     |
| Dr. Daniel Soluk ....        | PRT 805269 | 9/20/96     |
|                              | A1*        |             |
| Ms. Marian Havlik ..         | PRT 801471 | 6/28/96     |
|                              | A1*        |             |
| Dr. John Whitaker            | PRT 802777 | 6/18/96     |
|                              | A2*        |             |
| 3D/Environmental ..          | PRT 809227 | 7/18/96     |
|                              | A2*        |             |

\* indicates permit amendment.

Additional information on these permit actions may be requested by contacting the U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, telephone 612/725-3536 x250, during normal business hours (7:30am—4:00pm) weekdays.

Dated: January 9, 1997.

Matthias A. Kerschbaum,  
*Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.*

[FR Doc. 97-1032 Filed 1-15-97; 8:45 am]

BILLING CODE 4310-55-P

**Bureau of Land Management**

[NV-930-1430-00; N-57459]

**Notice of Realty Action: Non-Competitive Sale of Public Lands**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Non-Competitive Sale of Public Lands in Nye County, Nevada.

**SUMMARY:** The following described public land in Pahrump, Nye County, Nevada, has been examined and found suitable for classification for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of P.L. 94-579, the Federal Land Policy and Management Act of 1976 (U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada  
T. 21 S., R. 54 E.,  
Section 31, E½NE¼NW¼SE¼

Containing 5 acres, more or less.

This parcel of land, situated in Pahrump, is being offered as a non-competitive FLPMA sale to Mr. Edward E. Wheeler. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a \$50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals, and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Nye County/the City of Pahrump. Upon publication of this notice in the Federal Register, the above described lands will continue to be segregated from all other forms appropriate under the public land laws including the general mining laws, except for sales and disposal under the mineral disposal laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

Publication of this notice in the Federal Register previously occurred on April 18, 1996 (61 FR 16933), July 13, 1995 (60 FR 36157) and, December 27, 1994 (59 FR 49251). The December 27, 1994, publication allowed for the required 45 day comment period. Publication of this notice will not initiate an additional comment period. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws.

Dated: January 8, 1997.

James Wesley Abbott,  
*Acting District Manager, Las Vegas, NV.*

[FR Doc. 97-1049 Filed 1-15-97; 8:45 am]

BILLING CODE 4310-HC-P

## National Park Service

### Notice of Intent to Repatriate a Cultural Item in the Possession of the Museum of the South Dakota State Historical Society, Pierre, SD

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the Museum of the South Dakota State Historical Society, Pierre, SD, which meets the definition of "sacred object" under Section 2 of the Act.

The cultural item is a medicine man's rattle made from a buffalo scrotum with a wooden stick handle. The rattle has an incised figure on one side and the opposite side is covered with faded blue pigment.

The rattle was donated to the South Dakota State Historical Society in 1906 by Mary Clementine Collins of Keokuk, IA. During the late 1800s and early 1900s, Miss Collins worked at the Oahe Mission, north of Pierre on the Missouri River, just opposite the Cheyenne River Sioux reservation. Miss Collins identified the rattle as having belonged to "Elk Head, 9th keeper of the sacred pipe." It is not known how Miss Collins acquired the rattle.

Mr. Arvol Looking Horse, keeper of the sacred pipe, traces his ancestry directly and without interruption to Elk Head, his great-great-grandfather. During consultation, Mr. Looking Horse identified this rattle as a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religion by present-day adherents and has requested the rattle be returned to him as lineal descendent.

Based on the above-mentioned information, officials of the South Dakota State Historical Society have determined that, pursuant to 25 U.S.C. 3001 (3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the South Dakota State Historical Society have also determined that, pursuant to 25 U.S.C. 3001 (a)(5)(A), Mr. Arvol Looking Horse can trace his ancestry directly and without interruption by means of the traditional kinship system of the Cheyenne River Sioux Tribe to the individual who owned this sacred object.

This notice has been sent to Mr. Arvol Looking Horse and officials of the

Cheyenne River Sioux Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Claudia Nicholson, Museum of the South Dakota State Historical Society, 900 Governors Dr., Pierre, SD 57501-2217, telephone (605) 773-6011 before February 18, 1997. Repatriation of these objects to Mr. Arvol Looking Horse may begin after that date if no additional claimants come forward.

Dated: January 8, 1997.

Francis P. McManamon,

*Departmental Consulting Archeologist,  
Chief, Archeology and Ethnography Program.*

[FR Doc. 97-1067 Filed 1-15-97; 8:45 am]

BILLING CODE 4310-70-F

### Notice of Intent to Repatriate a Cultural Item in the Possession of the National Park Service, Organ Pipe Cactus National Monument, Ajo, AZ

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the National Park Service, Organ Pipe Cactus National Monument which meets the definition of "unassociated funerary object" under Section 2 of the Act.

The object is a large ceramic jar, reportedly recovered from the gravesite of Tomas, a Hia-Ced O'odham medicine man. Museum records indicate that the jar was donated in 1972 to the National Park Service by Mrs. Ramona Mattia, a lineal descendant of Tomas. Information provided by members of the Hia-Ced O'odham Alliance, a non-federally recognized Indian group, indicates that the jar is typical of the type of objects placed near a medicine man's burial site.

Repatriation of the jar has been requested by Josephine Martinez, Tomas' brother's daughter's daughter's daughter. The Hia-Ced O'odham Alliance has provided genealogical information documenting Mrs. Martinez's relationship to Tomas and supports her claim of lineal descent based on the traditional kinship system of the Hia-Ced O'odham. Mrs. Mattia, now deceased, is the daughter of Mrs. Martinez. This genealogical information is available in the records at the Monument.

Officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (3)(B), this object is reasonably believed to have been placed with or near the remains of Tomas at the

time of death or later as part of a death rite or ceremony. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3005 (a)(5)(A), Mrs. Martinez can trace her ancestry directly and without interruption by means of the traditional kinship system of the Hia-Ced O'odham to Tomas.

This notice has been sent to Josephine Martinez, officials of the Tohono O'odham Nation of Arizona, Ak Chin Indian Community of Papago Indians of Arizona, Gila River Pima-Maricopa Indian Community of Arizona, and the Hia-Ced O'odham Alliance, a non-federally recognized Indian group. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Harold Smith, Superintendent, National Park Service, Organ Pipe Cactus National Monument, Route 1, Box 100, Ajo, Arizona; telephone: (520) 387-6849 before February 18, 1997. Repatriation of these objects to Josephine Martinez may begin after that date if no additional claimants come forward.

Dated: January 6, 1997.

Francis P. McManamon,

*Departmental Consulting Archeologist,  
Chief, Archeology and Ethnography Program.*

[FR Doc. 97-1065 Filed 1-15-97; 8:45 am]

BILLING CODE 4310-70-F

### Notice of Inventory Completion for Native American Human Remains and an Unassociated Funerary Object from Norwich, CT, in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

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 an inventory of human remains and an unassociated funerary object in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Mohegan Indian Tribe of Connecticut.

In 1922, human remains representing three individuals were recovered from the Norwich, CT area by W.K. Morehead of the Robert S. Peabody Museum. These human remains were received by the Peabody Museum of Archaeology and Ethnology as a gift from the Robert

S. Peabody Museum, Andover, MA in 1937. Mohegan oral tradition and historical documents indicate Norwich, CT area was a traditional Mohegan burial area. The condition of the human remains indicate internment during the contact period ca. 1600–1800 AD. No known individuals were identified. No associated funerary objects are present.

In 1910, the Peabody Museum of Archaeology and Ethnology purchased a large collection of objects and human remains from Mr. James Eddy Mauran. Included in this collection is one projectile point which is described in the original accession records as having come from "the Grave of Uncas, Sachem of the Mohegans" in Norwich, CT. Evidence presented by Mohegan representatives indicates that projectile points were commonly included in burials as part of Mohegan funerary practices. The Mohegan representatives also state that because ninety-eight percent of Mohegan tribal members are descended from Uncas, no single lineal descendent can be identified.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), this cultural item is 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 and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and unassociated funerary object and the Mohegan Indian Tribe of Connecticut.

This notice has been sent to officials of the Mohegan Indian Tribe of Connecticut. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and unassociated funerary object should contact Ms. Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138; telephone (617) 495-2254, before February 18, 1997. Repatriation of the human remains and the unassociated

funerary object to the Mohegan Indian Tribe of Connecticut may begin after that date if no additional claimants come forward.

Dated: December 17, 1996.

Veletta Canouts,

*Acting Departmental Consulting Archeologist,*

*Deputy Manager, Archeology and Ethnography Program.*

[FR Doc. 97-1068 Filed 1-15-97; 8:45 am]

BILLING CODE 4310-70-F

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**Notice of Intent to Repatriate a Cultural Item in the Possession of the W.H. Over State Museum of the South Dakota State Historical Society, Vermillion, SD**

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the W. H. Over State Museum of the South Dakota State Historical Society, Vermillion, SD, which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The object is a drum made from a wooden washtub with hide stretched over the top and tacked with metal nails. The washtub, ivory in color, has four rope handles and is braced around the middle and near the base with heavy wire. A brass plaque attached to the drum reads: "Northern Ponca Hethushka, or War Dance Drum Donated to the South Dakota Museum by Thomas Knudsen October 5, 1963 Restored to its Original Condition under the Direction of Peter LeClaire."

During the late 1950s and early 1960s, when the Northern Ponca were being terminated as a federally-recognized Indian tribe by the Federal government, the Keeper of the Hethu'shka Drum, Thomas Knudsen, removed the drum from the tribal community building for safekeeping. Mr. Knudsen then apparently placed the drum in the hands of Peter LeClaire, then Tribal Historian, in order to have the drum refurbished. The drum was never returned. The drum is noted as coming into the collection of the W.H. Over Museum (then the South Dakota Museum) in the fall of 1963, but no deed of gift has been located. It is likely that Mr. LeClaire actually donated the drum.

The drum's cultural affiliation with the Ponca Tribe of Nebraska is clearly identified through museum records, donor information, and by

representatives of the Ponca Tribe of Nebraska. Representatives of the Ponca Tribe of Nebraska state that this drum is used for a variety of Ponca dances and ceremonies, including the Hethu'shka, a warrior society. Further, representatives of the Ponca Tribe of Nebraska state that this drum has ongoing historical, traditional, and cultural importance central to the tribe, and could not have been alienated, appropriated, or conveyed by any individual regardless of whether or not the individual was a member of the tribe.

Officials of the W.H. Over State Museum have determined that, pursuant to 25 U.S.C. 3001(3)(D), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the W.H. Over State Museum 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 these items and the Ponca Tribe of Nebraska.

This notice has been sent to officials of the Ponca Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Ms. Cathleen MacDonald, Assistant Curator, W.H. Over State Museum, 414 E. Clark St., Vermillion, SD 57069, telephone (605) 677-5273 before February 18, 1997. Repatriation of this object to the Ponca Tribe of Nebraska may begin after that date if no additional claimants come forward.

Dated: January 8, 1997.

Francis P. McManamon,

*Departmental Consulting Archeologist,*

*Chief, Archeology and Ethnography Program.*

[FR Doc. 97-1066 Filed 1-15-97; 8:45 am]

BILLING CODE 4310-70-F

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**AGENCY FOR INTERNATIONAL DEVELOPMENT**

**Housing Guaranty Program; Notice of Investment Opportunity**

The U.S. Agency for International Development (USAID) has authorized the guaranty of a loan to MUFIS, a.s. ("Borrower"), Prague, Czech Republic, as part of USAID's development assistance program. The proceeds of this loan will be used to enhance the municipal infrastructure finance system for shelter-related infrastructure for the benefit of low-income families in the Czech Republic. At this time, the Borrower has authorized USAID to request proposals from eligible lenders

for a loan under this program of \$14 million U.S. Dollars (US\$14,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Czech Republic

*Project No.:* 192-HG-001-  
\$14,000,000.

*Housing Guaranty Loan No.:* 192-HG-003 A01.

(1) Attn: Mr. Ladislav Macka, MUFIS, a.s., Mailing Address: Jeruzalemska 4, 111 21 Praha 1 Czech Republic, Telefax No. (preferred communication): 42-2-260-273, Telephone No.: 42-2-21009-440/42-2-21009-454.

(2) Attn: Ms. Vera Kamenickova, The Ministry of Finance, Mailing Address: Letenska 15, 118 10 Praha 1 Czech Republic, Telefax No. (preferred communication): 42-2-2454-2120, Telephone No.: 42-2-2454-2258.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to all of the Borrower's representatives by the bid closing date, *Tuesday, January 28, 1997, 12:00 noon Eastern Standard Time*. Bids should be open for a period of 48 hours from the bid closing date. If, in the judgement of the Borrower, interest rates should rise significantly during the bid solicitation period, the Borrower reserves the right to refuse all offers. Copies of all bids should be simultaneously sent to the following:

(1) Mr. Fred Van Antwerp, U.S. Agency for International Development, USAID/Prague, Czech Republic, (Street address: Trziste 15, 118 01 Praha, Czech Republic), Telefax No. (preferred communication): 42-2-2451-0340 or 0341, Telephone No.: 42-2-2451-0847.

(2) Ms. Viviann Gary/Mr. Peter Pirnie, U.S. Agency for International Development, Office of Environment and Urban Program, G/ENV/UP, Room 409, SA-18, 1601 North Kent Street, Rosslyn, VA 22209, Telex No.: 892703 AID WSA, Telefax No. (preferred communication): (703) 875-4639 or (703) 875-4384, Telephone No.: (703) 875-4510 or (703) 875-4300.

(3) Mr. William Frej, U.S. Agency for International Development, USAID/Warsaw, Poland, (Street address: Aleje Jerozolimskie 56C 00803 Warszawa, Poland), Telefax No. (preferred communication): 48-22-6302486, Telephone No.: 48-22-6302480.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. \$14 million.

(2) *Term:* 30 years; 15 years.

(3) *Grace Period:* Ten years' grace on repayment of principal. (During grace period, semi-annual payments of interest only.) Semi-annual level payments of principal and interest over the remaining 20 or 5-year life of the loan are requested.

(4) *Interest Rate:* Alternatives of (a) 30-Year fixed, and (b) 15-Year fixed are requested.

(a) *30-Year Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the yield on the 6½% U.S. Treasury Bond due November 15, 2026. Such rate is to be set at the time of acceptance. Interest to be payable semi-annually in arrears on a 30/360 day basis.

(b) *15-Year Fixed Interest Rate:* If rates are to be quoted on a spread over an index, the lender should use as the index the yield of the 6½% U.S. Treasury Bond due October 2006. Such rate is to be set at the time of acceptance. Interest to be payable semi-annually in arrears on a 30/360 day basis.

(5) *Prepayment:*

(a) Offers should include options for repayment and identify prepayment premiums, if any, and specify the earliest date the option can be exercised without penalty.

(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan at par (it should be noted that since the inception of USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees and Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender unless by mutual agreement of all the parties.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and, thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loan must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from:

Ms. Viviann Gary, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA-18, 1601 N. Kent Street, Rosslyn, VA 22209, Fax Nos.: (703) 875-4384 or (202) 736-7485, Telephone: (703) 875-4300 or (202) 647-9839.

Dated: January 9, 1997.

Michael G. Kitay,

*Assistant General Counsel, Bureau for Global Programs, Field Support and Research Agency for International Development.*

[FR Doc. 97-1130 Filed 1-15-97; 8:45 am]

BILLING CODE 6116-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Earl G. Rozeboom, M.D.; Revocation of Registration; Correction

In notice document 96-30377 appearing on page 60730 in the issue of Friday, November 29, 1996, as corrected at 61 FR 68097, December 26, 1996, make the following corrections:

On page 60730, in the first column, first paragraph, 9th line and third column, 3rd line "AR4044611" should read "AR4014611".

Dated: January 9, 1997.

James S. Milford,

*Acting Deputy Administrator.*

[FR Doc. 97-1023 Filed 1-15-97; 8:45 am]

BILLING CODE 4410-09-M

**Office of Justice Programs**

[OJP (OJJDP) No. 1107]

ZRIN 1121-ZA54

**Notice of the Fiscal Year 1996 Missing and Exploited Children's Program Final Program Plan and Announcement of Discretionary Competitive Assistance Grant; Correction; Deadline Extension**

**AGENCY:** Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

**ACTION:** The notice extends the due date for applications until 5:00 p.m. March 14, 1997 and corrects the address for obtaining the Application Kit.

**SUMMARY:** This is a correction and revision to 61 FR 65436, December 12, 1996.

**DATES:** The due date for submission of applications is extended to March 14, 1997. All applications must be received by mail or delivered to Office of Juvenile Justice and Delinquency Prevention, Missing and Exploited Children's Program by 5 p.m. e.s.t., March 14, 1997. Applications received after the deadline date will not be considered.

**ADDRESSES:** Applications must be mailed or delivered to Office of Juvenile Justice and Delinquency Prevention, Missing and Exploited Children's Program, 633 Indiana Avenue, N.W., Room 550, Washington D.C. 20531. Applications Kits can be obtained by contacting the Juvenile Justice Clearinghouse, P.O. Box 6000, Rockville, Maryland 20849-6000 or at 1-800-638-8736.

**FOR FURTHER INFORMATION CONTACT:** Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., 7th Floor, Washington, D.C., 20531. For copies of the original solicitation for applications, refer to Federal Register, Vol. 61, No. 240, December 12, 1996. An application kit and supplemental information relevant to the program, can be obtained by calling the Juvenile Justice Clearinghouse, toll free, 24 hours a day, (800) 638-8736.

Dated: January 10, 1997.

Shay Bilchik,

*Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 97-1024 Filed 1-15-97; 8:45 am]

BILLING CODE 4410-18-P

**DEPARTMENT OF LABOR****Employment and Training Administration****Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Proposed Allocation Formula**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of a proposed updated allocation formula described herein, and request for comments.

**SUMMARY:** The Employment and Training Administration is publishing a notice of a description of and rationale for a new allocation formula for the Job Training Partnership Section 402 migrant and seasonal farmworker programs, and a presentation of preliminary State planning estimates derived therefrom for Program Year (PY) 1997 (July 1, 1997 through June 30, 1998). Public comment is requested.

**DATES:** Written comments on this notice are invited and must be received on or before March 3, 1997.

**ADDRESSES:** Written comments shall be submitted to Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 219-5500 (this is not a toll-free number) or e-mail: <kanec@doleta.gov>.

**I. Introduction, Scope and Purpose of Notice**

This notice is published pursuant to Section 162(d) of the Act, which states:

Whenever the Secretary utilizes a formula to allot or allocate funds made available for distribution at the Secretary's discretion under this Act, the Secretary shall, not later than 30 days prior to such allotment or allocation, publish such formula in the Federal Register for comments along with the rationale for the formula and the proposed amounts to be distributed to each State and area. After consideration of any comments received, the Secretary shall publish final allotments and allocations in the Federal Register.

Thus, this notice represents the first part of a two-stage process. Upon receipt of comments from the public regarding this notice, modifications to the proposed formula and preliminary planning estimates will be considered. In the second stage, the final formula

and planning estimates will be published in the Federal Register.

The formula is developed for the purpose of distributing funds geographically by State service areas, on the basis of each State service area's relative share of persons eligible for the program. Beginning with PY 1997, a revised allocation formula is proposed which will update the allocation of funds among the States by using more current data on the distribution of the farmworker population. The revised formula is the result of work done by an Interagency Task Force on Farmworker Population Data (Task Force). The Task Force was convened by ETA in an effort to refine the allocation formula used since 1986.

Part II of this notice provides a discussion for public comment of the issues associated with farmworker population data, including: a description of available farmworker population data sources; a discussion of the factors affecting formula construction; and the rationale for the proposed formula.

Part III describes a hold-harmless provision which is proposed to be put into place for three years following the implementation of the revised allocation formula. The hold-harmless provision is designed to provide a staged transition from old to new funding levels for State service areas.

Part IV describes the proposed application of the formula and the hold-harmless provision using the PY 97 appropriation. These results are presented in a Table appended to this notice.

**II. Description of Proposed Allocation Formula****A. Interagency Task Force on Farmworker Population Data**

In April 1994, a special task force was convened to explore options for revising the existing formula and its data bases. The Interagency Task Force on Farmworker Population Data consisted of specialists in the fields of demography, economics, sociology, survey research, statistics; an employment and training programs specialist; and a representative of JTPA Section 402 grantees. Staff from ETA, the Bureau of Labor Statistics, the Economic Research Service of the U.S. Department of Agriculture, and the Bureau of the Census of the U.S. Department of Commerce were represented in this group. The Task Force was fortunate to include three members of the 1986 Interagency Task Force that developed the original allocation formula, which the proposed

formula in this notice revises and updates.

The Task Force examined a wide variety of issues in considering those most important to developing a funding formula. The formula proposed in this notice is intended to be responsive to the many concerns about and interest in farmworker population data. It represents the Task Force's best effort at crafting a funding methodology which meets the following statutory and administrative requirements:

(1) The need to use the most current data available on the farmworker population distribution among States and counties;

(2) The need to employ detailed data which enumerate the farmworker population at the State level, to correlate with the State-by-State geographical level at which funds are allocated; and

(3) The need to use data which are descriptive and relevant—that is, which address the socio-economic conditions, particularly the occupations and incomes, experienced by the farmworker population served by the JTPA Section 402 program.

#### B. Discussion of Data Sources

The following eight data bases were evaluated for possible use in the formula distribution of JTPA Section 402 funds: Census of Population, Census of Agriculture, National Agricultural Workers Survey, Current Population Survey, Farm Labor Survey, Farm Costs and Returns Survey, Bureau of Economic Analysis data, and Migrant Enumeration Project data. Each is discussed separately below. Three measures were applied to each of the data bases. A measure of currency determined whether the data bases were composed of more recent or more obsolete data. A measure of detail determined whether data bases offered descriptions of the farmworker population at national, State and county levels. A measure of relevance determined whether data bases contain meaningful data on the socio-economic conditions experienced by the population. These measures were applied to each data source separately, and in combination with others to determine which one or ones would be suitable for a revised formula.

#### 1. Census of Population

Presently, the Decennial Census of Population (COP) is the only source of data on the farmworker population that provides information on their socio-economic characteristics which is equally available at national, State, and county levels. This is perhaps its greatest strength. The COP, among other

things, counts individuals by occupation, industry, income level, and provides the number of family members for respondents. All of these are factors associated with participant eligibility in the JTPA Section 402 program. Finally, the COP has been used, in whole or in part, for the past decade to allocate JTPA Section 402 funds. The funding levels to the grant programs which now comprise the JTPA Section 402 system have been relatively stable as a result.

The COP also has a number of recognized weaknesses with regard to counting the farmworker population. These have been described elsewhere, by numerous, knowledgeable critics and this notice contains only a brief recapitulation of these problems. The 1990 COP was conducted during one reference week period, generally the last week in March or the first week in April. The enumeration in early Spring occurred at a time during which agricultural activity across the country was limited. Occupational questions on the Census form concerned the chief job activity during the survey week. Consequently, those farmworkers who were unemployed due to the seasonal nature of agricultural, or who were employed for a majority of hours in a nonfarm occupation, would not be counted as farmworkers by Census enumerators.

Migrant and seasonal farmworkers as a group, are characterized by many members who: have no fixed address; are highly migratory; have limited English-speaking abilities; have low educational levels; work intermittently in various agricultural and non-agricultural occupations during a single year; have only casual employer-employee links; live in rural, often remote, areas; and are unfamiliar with or actively distrustful of government agencies and agents, such as Census enumerators. The consequent non-identification of such individuals as farmworkers tended to exacerbate the problem of under-counting this population.

The COP's weaknesses as a measuring instrument also include the fact that it occurs decennially and there are no intercensal surveys of equivalent breadth. Additionally, measures of the farmworker (or any *occupationally-defined*) population, are the result of projections made from a sample (in that case 17 percent of households), not the universe of respondents. However, it should be noted that virtually all farmworker data sources suffer this weakness. As a mitigating factor, the COP is based on a much larger sample of households than any other data set.

#### 2. Census of Agriculture

The Census of Agriculture (COA) conducted every five years, measures total hired and contract labor expenses incurred in the operation of farms during an entire year. Additionally, there is a periodic enumeration of the number of hired (but not contract) workers on farms. The COA combined tallies of labor expenditures and number of workers, capture virtually all farmworkers who worked for wages. The COA also offers the most complete geographic coverage of hired and contract farm labor, as measured by labor expenses.

The weakness of the COA include the fact that no measures of individual worker earnings are available. Therefore, it is not possible to determine, without additional refinement of these data, the number and distribution of the economically disadvantaged farmworkers who are the target population for JTPA Section 402 services. Neither does the COA record data based on discrete occupations within agriculture, or the number of farmworker dependents. The COA expenditure data include farm owners/managers, secretaries, clerks and others who are not eligible for program services based on their occupation. In the tally of hired farmworkers, there is a potential for a duplicate count given the high level of turnover in this industry. Finally, there is a potential problem of using expenditure data as a proxy for the number of farmworkers in the States, since areas with substantial agribusiness may have higher unit costs, and higher expenditures do not necessarily equate with larger numbers of workers.

#### 3. National Agricultural Worker Survey

The National Agricultural Workers Survey (NAWS), published by the Department, is conducted three times annually at peak and slack agricultural seasons (January, May and September) and surveys a random sample of agricultural workers. The NAWS is rich in demographic and socio-economic detail, and includes income and family member data.

The principal weakness of the NAWS is that it does not provide an estimate of either the size or the distribution of the farmworker population among the States. A secondary weakness is that its description of the farmworker population is based on a relatively small sample of between 2,000 and 2,700 respondents located in 72 predominantly agricultural counties in 25 States. Additionally, the surveyed respondents work only in perishable

commodities and the NAWS does not survey farmworkers in livestock production; thus, it excludes those livestock workers who may be eligible for JTPA Section 402 program services.

#### 4. Current Population Survey

The Current Population Survey (CPS), published by the Bureau of Labor Statistics, is a monthly probability survey based on a random sample of about 57,000 households. Earnings questions are directed to a subset of the sample households. Although this is the most timely of the data sources considered, with regard to the farmworker population, the extremely small sample size limits its applicability to the whole farmworker population. Furthermore, because of low statistical reliability, DOL does not publish State estimates directly from the CPS for most States.

#### 5. Farm Labor Survey

The Farm Labor Survey (FLS), published by the National Agricultural Statistics Service, is a quarterly count (for California, Florida, and the full United States) of all wage and salary workers on the farm, including clerical and maintenance workers, but excluding contract workers. The FLS is a probability survey based on a sample of roughly 15,000 farms. It projects from this sample the average number of persons engaged in agriculture in 16 States and 15 regions comprised of two or more States. No income information is available from FLS data. However, the FLS reports annual average hourly wages for all hired, field, field and livestock, and hourly workers. Agricultural service workers and contract workers are excluded. The hourly wage rates are available for all States except Alaska. The District of Columbia and the Commonwealth of Puerto Rico also are excluded. These annual wage rates are averages of the wage rates for each survey week, weighted by the number of hours worked during the week. The annual average is based on data collected for January, April, July and October.

#### 6. Farm Costs and Returns Survey

The annual Farm Costs and Returns Survey (FCRS) data reflect total hired and contract labor expenses incurred in the operation of farms during the entire year, including expenses for secretaries and maintenance workers. No individual income data are available from the FCRS, nor are State estimates of the farmworker population derived directly from the FCRS. The FCRS data are used to calculate a national estimate which is then distributed to the States,

primarily by using data from the Census of Agriculture.

#### 7. Bureau of Economic Analysis

Bureau of Economic Analysis (BEA) data consist of annual estimates of all wage and salary workers, including farmworkers and others working on a farm, such as clerical and maintenance workers, but excluding contract workers. The BEA estimates are based on data from the Farm Labor Survey, the Farm Costs and Returns Survey, the Census of Agriculture discussed above, and Unemployment Insurance Program data.

#### 8. Migrant Enumeration Project

The Migrant Enumeration Project (MEP) data on the number of farmworkers are developed from a Demand for Labor study sponsored by the Office of Migrant Health of the Department of Health and Human Services in 1991–92. The formula used in the study is constructed from information on crop acreage, hours needed to perform a specific operation (e.g. harvest) on one acre of the crop, work hours per farmworker per day, and season length for peak work activity. This information was collected in counties with a migrant presence. Inter- and intra-State duplicate counts are likely with this methodology. The number of dependents found by the MEP was calculated based on NAWS data. No farmworker income information is available from the MEP.

#### C. Data Correlation

To test the cohesion of the various data bases, the Task Force made a comparison of relative distributions for those data bases able to provide estimates on a State-by-State level. The NAWS was excluded because it does not provide estimates of the distribution of farmworkers. Analysis revealed a surprising degree of correlation (ranging from 0.8 to 0.99) among the data bases as to the relative distribution of farmworkers, despite their differing methodologies, timing, definitions of farmworkers and scope. The degree of correlation deteriorates when data on the large agricultural States of California, Florida and Texas are excluded. In particular, with these States excluded, MEP and CPS data correlate very poorly with other data sets. Even so, the data sets which are proposed for the formula—the COP, the FLS and the COA—range in correlation from 0.86 to 0.91 with all States included and from 0.64 to 0.80 with California, Florida and Texas excluded.

#### D. Proposed Allocation Formula

Based on evaluation of the data bases, the Department proposes that the data for the allocation of JTPA Section 402 funds among the States in PY 1997 will come from the 1990 Census of Population, the 1992 Census of Agriculture, and the 1992 Farm Labor Survey. These three data bases, while limited in the aspects discussed in this notice, nevertheless meet the tests of currency, detail, and relevance. The Department's decision to continue to use 1990 COP data is, in part, based on Section 162(a) of the Act which provides:

All allotments and allocations under this Act shall be based on the latest available data and estimates satisfactory to the Secretary. All data relating to economically disadvantaged and low-income persons shall be based on 1980 Census or later data.

One set of data obtained from the 1990 COP and proposed for use in the formula, is the number of workers in certain occupational and industrial codes associated with agriculture, who reported on the Census questionnaire that they earned an income at or below 70 percent of the Lower Living Standard Income Level (LLSIL) set by the Bureau of Labor Statistics.

A second component of the formula is labor expenditure from the Census of Agriculture 1992. Labor expenditure data are a function of wages times hours worked. Since wage rates vary widely by geographic area, the proposed formula converts expenditures from an absolute to a relative measure by dividing State expenditures by the annual average hired farmworker's wage rate in each State to derive an hours-worked figure. The wage rate data are from the 1992 Farm Labor Survey. Because the FLS does not report on Puerto Rico annual average wages, data for on-the-job training hourly wages in agriculture, from the JTPA Section 402 grantee for the Commonwealth of Puerto Rico, were used as a substitute. Although the COA/FLS data set does not directly measure the number of farmworkers, it does provide a measure of total work supplied farmworkers, and the Department believes it will serve as an effective proxy.

Of the amounts available for allocation by formula for each program year and which will not be set aside for use in technical assistance or special projects pursuant to 20 CFR 633.105(b)(2)—

(1) Fifty percent of the funds would be allocated on a State-by-State basis using 1990 Census data on the relative share distribution of farmworkers

among the States who: (a) performed eligible farmwork, and (b) were economically disadvantaged, defined as family income at or below 70 percent of the Lower Living Standard Income Level; and

(2) Fifty percent of the funds would be allocated on a State-by-State basis according to the relative share distribution of an estimate of the total number of hours of farmwork in each State, determined by using Census of Agriculture data on the total labor expenditures in each State, adjusted by the average annual hourly wage in agriculture, derived from the FLS.

This two-part formula is intended to provide an equitable distribution of the funds available for PY 1997 and beyond.

#### E. Special Tabulation of COP Data

The State data from the 1992 Census of Agriculture and the Farm Labor Survey portions of the formula were taken from published reports with no further refinement of data.

To collect data for the COP portion of the proposed formula, several steps were taken. The Department requested a special tabulation of 1990 COP data from the Bureau of the Census in the form of a selection of Standard Occupational Classification (SOC) and Standard Industrial Classification (SIC) codes which contain information somewhat different from that used in the current formula.

#### F. SOC and SIC Codes

COP equivalents were used to capture individuals in the following Standard Occupational Classification codes:

- 473—farmers, except horticultural
- 474—horticultural specialty farmers
- 475—managers, farms except horticultural
- 476—managers, horticultural specialty farms
- 477—supervisors, farm workers
- 479—farm workers
- 483—marine life cultivation workers
- 484—nursery workers
- 485—supervisors, related agricultural occupations
- 488—graders and sorters, agricultural products
- 489—inspectors, agricultural products
- 494—supervisors, forestry and logging workers
- 495—forestry workers, except logging
- 496—timber cutting and logging occupations
- 497—captains and other officers, fishing vessels
- 498—fishers

COP equivalents were used to capture individuals in the following Standard Industrial Classification codes:

- 001—agricultural production, crops
- 002—agricultural production, livestock
- 007—agricultural services
- 008—forestry
- 009—fishing, hunting and trapping
- 241—logging
- 515—farm products, raw materials

The Department attempted to examine the widest possible range of workers in agricultural activities in designing its special tabulation. Some of the SOC and SIC categories that were considered are new, e.g., SOC codes 494–498 and SIC codes 008, 009, 241 and 515. The following SOC and SIC codes were deleted as not being representative of the population served by the JTPA Section 402 program: SOC 496—timber cutting and logging occupations; SOC 497—captains and other officers, fishing vessels; SIC 241—logging; and SIC 515—farm products, raw materials. One result of the codes selected for the proposed formula is that funds would be allocated for Alaska. This is almost solely due to a significant number of low income individuals in fishing occupations. Under the current formula, Alaska does not receive JTPA Section 402 funds because of the minimal level of farmwork activity. The Department specifically requests comment on which of the above SOC and SIC codes are appropriate to be retained for the farmworker population database.

The special tabulation was built around a number of tables which provide discrete information on the farmworker population. Data are available on:

- (1) The whole count of farmworkers;
- (2) The count of farmworkers falling below the Poverty Index;
- (3) The count of farmworkers falling below 70 percent of the LLSIL;
- (4) The count of individuals who did any farmwork in 1989; this table attempts to capture individuals who, at the time of the Census in April 1990 were farmworkers, but who were unemployed and whose last chief job was in farmwork;
- (5) The count of farmworker families falling below the Poverty Index;
- (6) The count of farmworker families falling below 70 percent of the LLSIL;
- (7) The count of farmworker family members falling below the Poverty Index; this table is a proxy for farmworker dependents who are potentially eligible for JTPA Section 402 program services; and
- (8) The count of farmworker family members falling below 70 percent of the LLSIL; this table is a proxy for farmworker dependents who are potentially eligible for JTPA Section 402 program services.

#### G. Other Formula Design Issues

Following are some of the ancillary issues which surfaced or were revisited (from the 1986 formula deliberations) during the preparation of the proposed new formula.

##### 1. LLSIL v. Poverty Index

The special tabulation from the COP provides counts of farmworkers falling under the Poverty Index and farmworkers falling under 70 percent of the LLSIL. In 1986, the Department decided to change from the Poverty Index to the LLSIL. The Rationale at the time was that this change was consistent with program regulations and the practice of programs funded through other Titles of the JTPA. That rationale continues to be applicable to the proposed formula. As well, the LLSIL count captures a larger absolute number of farmworkers in all States with the exception of Connecticut, Maine, Massachusetts, and Rhode Island. These States experience a large reduction in their relative share under the LLSIL count. Rhode Island has not received any funding under the JTPA Section 402 program, because, under the formula currently in place and under the proposed new formula, its share of program funds has not been deemed sufficient to effectively operate a program. The Department proposes to continue to use the LLSIL as a factor in the farmworker count but specifically invites comment on the effect of using the LLSIL count with regard to Connecticut, Maine, and Massachusetts.

##### 2. SOC v. SIC

In 1986, the Department opted to use SOC codes to define agricultural occupations. The rationale was to exclude those persons working in clerical, administrative and technical positions on a farm. These latter persons are captured in the SIC codes. The special tabulation of 1990 Census data on the farmworker population took a different approach to this issue and did a cross-tabulation of farmworkers against both the SOC and SIC codes. This process is intended to identify all farmworkers, by occupation and by industry, and still exclude clerical, administrative and technical workers.

##### 3. Farmworkers v. Family Member (Dependent) Distribution

The special tabulation of COP data provided a count of farmworker family members. Because family members who are dependents of farmworkers are eligible for JTPA Section 402 services, an argument can be made for using the family member distribution, as a proxy for dependents, as the basis for

allocating funds. An analysis of the relationship between the farmworker and the family member LLSIL distributions indicates that these two distributions track each other very closely. Nineteen States would increase their relative shares only slightly under a family member distribution from the COP. For these States, the collective increase in relative share is less than six percent. Therefore, since there are only small differences in the distribution pattern, and because it is not possible to separate actual dependents from the COP family member count, the Department proposes to use the farmworker distribution from the COP in the Section 402 allocation formula.

#### H. Rationale for Formula Methodology

The Department proposes to use data from the COP, in part, to create a new funding formula because the level of detail, particularly for occupation and income, of COP data at the national, State and local level is not matched by other data bases. It is the Department's position that the strong probability of undercounts and non-identification inherent in the COP design is remediated by the more periodic information collected by the COA and FLS. While use of labor expenditure data as a proxy for the number of hired and contract farmworkers is less than ideal, no other data are available which reach this group. Finally, the COA offers the most complete geographic coverage of hired and contract labor use, as measured by labor expenditures. The proposed weights of 50 percent for the COP data and 50 percent for COA/FLS data are suggested as a balanced approach for equitably measuring the distribution of the farmworker population.

The Department's proposed formula is intended to be responsive to the statutory and administrative design requirements of currency, detail and relevance. In testing the new formula, certain allocation differences emerge from the allocation process presently in place. The Table appended to the notice compares the States' relative shares for the PY 1996 allocation under the current formula and the relative shares under the proposed formula. This Table shows some shifts in funds, including counter-intuitive shifts of funds from large agricultural States to States with a lower presumed presence of farmworkers.

A significant source of differences between funding under the old and proposed formulas is the adjustment that was made to the old formula as the result of the Immigration Reform and Control Act of 1986 (IRCA). Following

the enactment of IRCA, Congress appropriated additional sums each year for the JTPA Section 402 program above the statutory levels. Conference language each year also directed the Department to use some of these additional funds to serve those newly legalized individuals admitted under the Special Agricultural Worker (SAW) provisions of IRCA. In response, the Department modified the purely Census-driven allocation formula to incorporate Immigration and Naturalization Service data on SAW applications in the States. The States of California, Texas, and Florida, among others, received additional sums much above the amount they would have received using a straight application of 1980 Census data. SAW data are not proposed for use in the new formula because these data are no longer current and no longer collected.

The hold-harmless provision described in Part III of this notice is intended to act as a staged transition from old to new funding levels which result from the application of the proposed formula.

#### III. Description of the Hold-Harmless Provision

For Program Years 1997, 1998, and 1999, the Department intends to apply a hold-harmless provision to the allocation formula in order to allow a staged transition from the application of the old formula to the new one. The staged transition of the hold-harmless provision is proposed specifically as follows:

(1) In PY 1997, each State service area will receive an amount equal to at least 90 percent of its relative share of the PY 1996 allotments as applied to the PY 1997 formula funds available;

(2) In PY 1998, each State service area will receive an amount equal to at least 80 percent of its relative share of the PY 1997 allotments as applied to the PY 1998 formula funds available; and

(3) In PY 1999, each State service area will receive an amount equal to at least 70 percent of its relative share of the PY 1998 allotments as applied to the PY 1999 formula funds available.

Thereafter, allocations to each State service area would be for the amount resulting from a direct application of the proposed funding formula without adjustment.

A State area which would receive less than \$60,000 by application of the formula will receive no allocation because this amount is deemed insufficient for sustaining an independently administered program. Although the Department has the authority under 20 CFR 633.105(b)(2)

not to allocate any funds for use in a State jurisdiction whose allocation is less than \$120,000, it is proposed that any State jurisdictions which would receive more than \$60,000 but less than \$120,000 under the proposed formula will be awarded a minimum allocation of \$120,000 both during and after the hold-harmless period.

The Department specifically invites comments on the above application of the funding floors provided for at 20 CFR 633.105(b)(2).

#### IV. Program Year 1997 Preliminary State Planning Estimates

The allocations set forth in the Table appended to this Notice reflect the allocation formula described above. For PY 1996, \$69,285,000 were appropriated for Section 402 migrant and seasonal farmworker programs, of which \$65,486,767 were allocated on the basis of the old formula. The remaining \$3,798,233 of the PY 1996 Section 402 appropriation retained in the Section 402 national account to fund the housing program (\$2,400,409), the Hope, Arkansas, Migrant Rest Center (\$266,524), and other training and technical assistance projects (\$1,131,300). The figures in the first numerical column show the actual PY 1996 formula allocations to State service areas. The next column shows the percentage of each allocation.

The amount appropriated for PY 1997 is the same as it was for PY 1996 and the amount available for formula allocation remains at \$65,486,767. For the purpose of illustrating the effects of the proposed formula, the third column of the Table shows the allocations based on the proposed formula without the application of the hold-harmless or funding minimum provisions, with the percentages reported in column 4. The State service area allocations with the application of the first-year (90%) hold-harmless and funding minimum provisions, followed by the percentages, are shown in columns 5 and 6.

#### A. Proposed Formula Allocations (Without Hold-Harmless Provision)

The \$65,486,767 formula total is proposed for allocation in the following manner:

(1) \$32,743,383 (fifth percent of the formula total) would be allocated on a State-by-State basis using 1990 Census data on the relative share distribution of farmworkers among the States who: (a) performed eligible farmwork; and (b) were economically disadvantaged, defined as family income at or below 70 percent of the Lower Living Standard Income Level; and

(2) \$32,743,383 (fifty percent of the formula total) would be allocated on a State-by-State basis according to the relative share distribution of an estimate of the total number of hours of farmwork in each State, determined by using 1992 Census of Agriculture data on the total wages paid to hired and contract farmworkers in each State, adjusted by the average annual hourly wage in agriculture, taken from the 1992 Farm Labor Survey.

*B. Allocations With Hold-Harmless Provision*

To transition State service areas from the current formula to the revised formula funding levels, a graduated hold-harmless provision would be applied the first three years: at 90 percent the first year, at 80 percent the second year, and at 70 percent the third. For PY 1997, the State service areas will receive at least 90 percent of their relative share of the PY 1996 formula, as applied to the PY 1997 formula total. Since the PY 1996 formula total and the

PY 1997 formula total are actually the same, the proposed PY 1997 revised formula funding of State service areas will result in no less than 90% of the PY 1996 funding that was actually allocated under the current formula.

For the purpose of comparisons, please refer to the table.

Signed at Washington, DC, this 31st day of December, 1996.

Timothy M. Barnicle,  
*Assistant Secretary of Labor.*

**BILLING CODE 4510-30-M**

U. S. Department of Labor  
Employment and Training Administration

**Migrant and Seasonal Farmworkers  
Impact of Proposed PY 1997 Formula Allotments To States**

| State                     | PY 1996<br>Allotments<br>(1) | %<br>Share<br>(2) | Proposed PY 1997                           |                   |  |                   |
|---------------------------|------------------------------|-------------------|--|-------------------|--|-------------------|
|                           |                              |                   | Without<br>90% Hold-Harmless<br>or Minimum |                   | With<br>90% Hold-Harmless<br>and Minimum |                   |
|                           |                              |                   | \$<br>(3)                                  | %<br>Share<br>(4) | \$<br>(5)                                | %<br>Share<br>(6) |
| <b>Total.....</b>         | <b>\$65,486,767</b>          | <b>100.00%</b>    | <b>\$65,486,767</b>                        | <b>100.00%</b>    | <b>\$65,486,767</b>                      | <b>100.00%</b>    |
| Alabama.....              | 772,523                      | 1.18%             | 686,255                                    | 1.05%             | 695,271                                  | 1.06%             |
| Alaska.....               | 0                            | 0.00%             | 97,974                                     | 0.15%             | 120,000                                  | 0.18%             |
| Arizona.....              | 1,482,583                    | 2.26%             | 1,201,004                                  | 1.83%             | 1,334,325                                | 2.04%             |
| Arkansas.....             | 1,138,938                    | 1.74%             | 1,172,731                                  | 1.79%             | 1,071,740                                | 1.64%             |
| California.....           | 14,235,281                   | 21.74%            | 13,200,395                                 | 20.16%            | 12,811,753                               | 19.56%            |
| Colorado.....             | 785,877                      | 1.20%             | 1,006,699                                  | 1.54%             | 922,142                                  | 1.41%             |
| Connecticut.....          | 200,999                      | 0.31%             | 150,106                                    | 0.23%             | 180,899                                  | 0.28%             |
| Delaware.....             | 115,448                      | 0.18%             | 91,586                                     | 0.14%             | 120,000                                  | 0.18%             |
| District of Columbia..... | 0                            | 0.00%             | 4,848                                      | 0.01%             | 0  | 0.00%             |
| Florida.....              | 4,518,461                    | 6.90%             | 4,238,489                                  | 6.47%             | 4,066,615                                | 6.21%             |
| Georgia.....              | 1,669,871                    | 2.55%             | 1,230,495                                  | 1.88%             | 1,502,884                                | 2.29%             |
| Hawaii.....               | 245,471                      | 0.37%             | 388,475                                    | 0.59%             | 360,980                                  | 0.55%             |
| Idaho.....                | 856,039                      | 1.31%             | 1,179,110                                  | 1.80%             | 1,081,718                                | 1.65%             |
| Illinois.....             | 1,391,035                    | 2.12%             | 1,345,159                                  | 2.05%             | 1,251,932                                | 1.91%             |
| Indiana.....              | 762,553                      | 1.16%             | 934,160                                    | 1.43%             | 852,826                                  | 1.30%             |
| Iowa.....                 | 1,282,338                    | 1.96%             | 1,513,103                                  | 2.31%             | 1,365,776                                | 2.09%             |
| Kansas.....               | 680,820                      | 1.04%             | 1,010,217                                  | 1.54%             | 924,759                                  | 1.41%             |
| Kentucky.....             | 1,319,625                    | 2.02%             | 1,562,470                                  | 2.39%             | 1,407,657                                | 2.15%             |
| Louisiana.....            | 776,618                      | 1.19%             | 1,002,048                                  | 1.53%             | 907,163                                  | 1.39%             |
| Maine.....                | 319,412                      | 0.49%             | 175,125                                    | 0.27%             | 287,471                                  | 0.44%             |
| Maryland.....             | 298,821                      | 0.46%             | 308,026                                    | 0.47%             | 283,308                                  | 0.43%             |
| Massachusetts.....        | 342,466                      | 0.52%             | 159,596                                    | 0.24%             | 308,219                                  | 0.47%             |
| Michigan.....             | 857,212                      | 1.31%             | 1,299,948                                  | 1.99%             | 1,191,946                                | 1.82%             |
| Minnesota.....            | 1,243,685                    | 1.90%             | 1,436,346                                  | 2.19%             | 1,297,243                                | 1.98%             |
| Mississippi.....          | 1,413,704                    | 2.16%             | 1,013,801                                  | 1.55%             | 1,272,334                                | 1.94%             |
| Missouri.....             | 1,067,830                    | 1.63%             | 1,211,588                                  | 1.85%             | 1,093,183                                | 1.67%             |
| Montana.....              | 650,917                      | 0.99%             | 752,584                                    | 1.15%             | 679,527                                  | 1.04%             |
| Nebraska.....             | 755,986                      | 1.15%             | 1,198,633                                  | 1.83%             | 1,094,310                                | 1.67%             |
| Nevada.....               | 195,898                      | 0.30%             | 134,481                                    | 0.21%             | 176,308                                  | 0.27%             |
| New Hampshire.....        | 109,854                      | 0.17%             | 75,230                                     | 0.11%             | 120,000                                  | 0.18%             |
| New Jersey.....           | 390,282                      | 0.60%             | 363,452                                    | 0.56%             | 351,254                                  | 0.54%             |
| New Mexico.....           | 584,118                      | 0.89%             | 697,778                                    | 1.07%             | 635,714                                  | 0.97%             |
| New York.....             | 1,805,532                    | 2.76%             | 1,522,274                                  | 2.32%             | 1,624,979                                | 2.48%             |
| North Carolina.....       | 2,932,691                    | 4.48%             | 1,961,833                                  | 3.00%             | 2,639,422                                | 4.03%             |
| North Dakota.....         | 456,939                      | 0.70%             | 697,929                                    | 1.07%             | 625,486                                  | 0.96%             |
| Ohio.....                 | 882,881                      | 1.35%             | 1,200,305                                  | 1.83%             | 1,095,712                                | 1.67%             |
| Oklahoma.....             | 593,313                      | 0.91%             | 903,985                                    | 1.38%             | 820,214                                  | 1.25%             |
| Oregon.....               | 1,061,170                    | 1.62%             | 1,523,303                                  | 2.33%             | 1,393,923                                | 2.13%             |
| Pennsylvania.....         | 1,191,652                    | 1.82%             | 1,662,171                                  | 2.54%             | 1,516,234                                | 2.32%             |
| Puerto Rico.....          | 2,867,153                    | 4.38%             | 1,625,905                                  | 2.48%             | 2,580,438                                | 3.94%             |
| Rhode Island.....         | 0                            | 0.00%             | 23,991                                     | 0.04%             | 0  | 0.00%             |
| South Carolina.....       | 1,053,764                    | 1.61%             | 679,587                                    | 1.04%             | 948,388                                  | 1.45%             |
| South Dakota.....         | 675,971                      | 1.03%             | 715,459                                    | 1.09%             | 643,012                                  | 0.98%             |
| Tennessee.....            | 934,440                      | 1.43%             | 900,113                                    | 1.37%             | 840,996                                  | 1.28%             |
| Texas.....                | 5,833,961                    | 8.91%             | 5,077,712                                  | 7.75%             | 5,250,565                                | 8.02%             |
| Utah.....                 | 239,370                      | 0.37%             | 348,245                                    | 0.53%             | 317,391                                  | 0.48%             |
| Vermont.....              | 207,936                      | 0.32%             | 177,166                                    | 0.27%             | 187,142                                  | 0.29%             |
| Virginia.....             | 1,011,164                    | 1.54%             | 909,304                                    | 1.39%             | 910,048                                  | 1.39%             |
| Washington.....           | 1,663,979                    | 2.54%             | 2,315,795                                  | 3.54%             | 2,122,047                                | 3.24%             |
| West Virginia.....        | 213,976                      | 0.33%             | 201,045                                    | 0.31%             | 192,578                                  | 0.29%             |
| Wisconsin.....            | 1,199,223                    | 1.83%             | 1,888,917                                  | 2.88%             | 1,724,904                                | 2.63%             |
| Wyoming.....              | 196,987                      | 0.30%             | 309,816                                    | 0.47%             | 284,031                                  | 0.43%             |

[FR Doc. 97-1101 Filed 1-15-97; 8:45 am]  
BILLING CODE 4510-30-C

## Mine Safety and Health Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Product Testing by Applicant or Third Party

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to "Product Testing by Applicant or Third Party." MSHA is particularly interested in comments which:

- 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

A copy of the proposed information collection request can be obtained by contacting the person listed in the contact section of this notice.

**DATES:** Submit comments on or before March 17, 1997.

**ADDRESSES:** Written comments shall be mailed to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Arlington, VA 22203-1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to [psilvey@msha.gov](mailto:psilvey@msha.gov), along with an original printed copy. Ms. Silvey can be reached at (703) 235-1910 (voice) or (703) 235-5551 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203-1984. Mr. Fesak can be reached at [gfesak@msha.gov](mailto:gfesak@msha.gov) (Internet E-mail), (703) 235-8378 (voice), or (703) 235-1563 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 318 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 878, defines "permissible" equipment as that which has been approved according to specifications which are prescribed by the Secretary of Labor. This approval indicates that the Mine Safety and Health Administration's specifications and tests, designed to ensure that a product will not present a fire, explosion, or other specific safety hazard related to use, have been met. Additionally, 30 CFR Part 7 provides procedures whereby products may be tested and certified by the applicant or a third party.

##### II. Current Actions

MSHA is seeking to continue the requirements for approving certain products and equipment for use in underground mines.

*Type of Review:* Reinstatement.

*Agency:* Mine Safety and Health Administration.

*Title:* Product Testing by Applicant or Third Party.

*OMB Number:* 1219-0100.

*Recordkeeping:* 30 CFR 7.4(a) requires respondents to maintain records of test results and procedures for a period of at least 3 years. Section 7.6(c) requires respondents to maintain records of the initial sale of each unit having an approval marking for at least the expected shelf life of and service life of the product.

*Affected Public:* Businesses or other for-profit.

*Total Respondents:* 392.

*Frequency:* On occasion.

*Total Responses:* 403 responses.  
*Average Time per Response:* 0.54 hours.

*Estimated Total Burden Hours:* 219 hours.

*Estimated Total Burden Cost:* \$52,547.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: January 9, 1997.

George M. Fesak,

*Director, Program Evaluation and Information Resources.*

[FR Doc. 97-1100 Filed 1-15-97; 8:45 am]

BILLING CODE 4510-43-M

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting of the Presidential Search Committee of the Board of Directors

**TIME AND DATE:** The Presidential Search Committee of the Legal Services Corporation Board of Directors will meet by teleconference on January 22, 1997, from 10:00 a.m. until approximately 11:30 a.m.

**STATUS OF MEETING:** Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the executive session, the Committee will hear a status report by representatives of the independent search firm assisting the Committee to identify and recruit candidates for the position of President of the Legal Services Corporation and will provide direction to the search firm. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. §552b(c)(2) & (6)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. §1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be posted for public inspection at Corporation headquarters, 750 First Street NE., Washington, DC 20002, in its 11th floor reception area, and will also be available upon request.

**LOCATION:** Members of the Committee and directors wishing to participate, as well as members of the Corporation's staff and the public, will be able to hear and participate in the meeting by means of telephonic conferencing equipment set up for this purpose in the Corporation's Conference Room, on the 11th floor of 750 First Street, NE., Washington, DC 20002.

**MATTERS TO BE CONSIDERED:**

## OPEN SESSION:

1. Approval of agenda.
2. Approval of minutes of November 22, 1996.

## Closed Session:

3. Discussion with and direction to representatives of Isaacson Miller, the independent search firm assisting the Committee to identify candidates for consideration for the position of President of the Legal Services Corporation, about specific candidates for the position.

## Open Session:

4. Other business, including public comment and scheduling of the Committee's next meeting.

**CONTACT PERSON FOR INFORMATION:**

Victor M. Fortuno, General Counsel & Secretary of the Corporation, (202) 336-8810.

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336-8800.

Dated: January 14, 1997.

Victor M. Fortuno,

*General Counsel.*

[FR Doc. 97-1270 Filed 1-14-97; 2:13 pm]

BILLING CODE 7050-01-P

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION****Sunshine Act; Meeting**

**TIME AND DATE:** 10:00 a.m., Thursday, January 16, 1997.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. Secretary of Labor on behalf of Dixon v. Pontiki Coal Corp., Docket No. KENT 94-1274-D. (Issues include whether the judge correctly determined that the Commission does not have jurisdiction over complaints filed by the Secretary of Labor that allege discrimination against miners who have not filed an initiating complaint under section 105(c)(2) of the Mine Act, and whether the judge correctly determined that a person may become a miners' representative before complying with 30 C.F.R. Part 40.)

**TIME AND DATE:** 1:00 p.m., Thursday, January 16, 1997.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

**STATUS:** Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session.

1. Secretary of Labor o.b.o. Dixon v. Pontiki Coal Corp., Docket No. KENT 94-1274-D. (See oral argument listing, supra, for issues).

**TIME AND DATE:** 10:00 a.m., Thursday, January 23, 1997.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Secretary of Labor v. Mingo Logan Coal Co., Docket No. WEVA 93-392 (Issues include whether the judge properly determined that the mine operator was liable for a training violation committed by one of its independent contractors).

**TIME AND DATE:** 10:00 a.m., Thursday, January 30, 1997.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Knotts v. Tanglewood Energy, Inc., et al., Docket No. WEVA 94-357-D (Issues include whether the judge correctly found that the mine operator discriminated against the complainant in violation of section 105(c) of the Mine Act and whether the judge erred in finding individual liability for discriminatory acts under that provision, in assessing the civil penalty for the violation, and in taking unemployment compensation into account when calculating the backpay award).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay / 1-800-877-8339 for toll free.

Jean H. Ellen,

*Chief Docket Clerk.*

[FR Doc. 97-1192 Filed 1-14-97; 9:46 am]

BILLING CODE 6735-01-M

**NUCLEAR REGULATORY COMMISSION****Commonwealth of Massachusetts: Staff Assessment of Proposed Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Massachusetts**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of proposed Agreement with the Commonwealth of Massachusetts.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received, from the Governor of the Commonwealth of Massachusetts, a proposal to enter into an Agreement pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (Act). The proposed Agreement would permit Massachusetts to assume certain portions of the Commission's regulatory authority. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing a summary of the NRC staff assessment of the proposed Massachusetts radiation control program. Comments are requested on the proposed Agreement, especially public health and safety aspects, and the assessment.

The Agreement will effectively release (exempt) persons in Massachusetts from certain portions of the Commission's regulatory authority. The Act also requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the Federal Register and are codified in the Commission's regulations as 10 CFR Part 150.

**DATES:** The comment period expires January 23, 1997.

Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555-0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, along with copies of the request by Governor Weld including referenced enclosures, applicable legislation, regulations for the control of radiation, and the full text of the NRC staff assessment are also available for public

inspection in the NRC's Public Document Room.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2322 or e-mail RLB@NRC.GOV.

**SUPPLEMENTARY INFORMATION:** The Commission has received a request from Governor William Weld of Massachusetts to enter into an Agreement whereby the NRC would discontinue, and the Commonwealth would assume, certain regulatory authority as specified in the Act. Section 274 of the Act authorizes the Commission to enter into such an agreement.

Section 274e of the Act requires that the terms of the proposed Agreement be published for public comment once each week for four consecutive weeks. This notice is being published in the Federal Register in fulfillment of the requirement.

#### I. Background

(a) Section 274d of the Act provides the mechanism whereby a State may assume regulatory authority, otherwise reserved to the NRC, over certain radioactive materials<sup>1</sup> and uses thereof. In a letter dated March 28, 1996, Governor Weld certified that the Commonwealth of Massachusetts has a program for the control of radiation hazards that is adequate to protect health and safety of the public within the Commonwealth with respect to the materials covered by the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The specific authorities requested by the Commonwealth of Massachusetts under this proposed Agreement are (1) the regulation of byproduct materials as defined in Section 11e.(1) of the Act, (2) the regulation of source materials, (3) the regulation of special nuclear materials in quantities not sufficient to form a critical mass, (4) the evaluation of the safety of sealed sources and devices (containing materials covered by the Agreement) for distribution in interstate commerce, and (5) the land disposal of low-level radioactive waste

(as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. 2021b) received from other persons. The Commonwealth does not wish to assume authority over the regulation of byproduct materials as defined in Section 11e.(2) of the Act, that is over tailings from the recovery of source materials from ore, but does reserve the right to apply at a future date for an amended agreement to assume authority in this area.

(b) The proposed agreement contains nine articles that (1) list the materials and activities to be covered by the Agreement; (2) specify the activity for which the Commission will retain regulatory authority; (3) allow for future amendment of the Agreement; (4) allow for certain regulatory changes by the Commission; (5) reference the continued authority of the Commission for purposes of safeguarding nuclear materials and restricted data; (6) commit the Commonwealth and NRC to exchange information necessary to maintain coordinated and compatible programs; (7) recognize reciprocity of licenses issued by the respective agencies; (8) identify criteria for the suspension or termination of the Agreement; and (9) specify the proposed effective date. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes in style. Also, because of several issues posed by this request which required resolution before the Agreement could be concluded, the effective date requested by the Governor could not be realized. The final text of the Agreement, with the actual effective date, will be published after the Agreement is approved by the Commission.

(c) The Massachusetts radiation control program currently regulates users of naturally-occurring and accelerator-produced radioactive materials, and users of certain radiation-producing electronic machines. The program was enabled by Massachusetts law (Massachusetts General Law [M.G.L.] Chapter 111, §5B) in 1958. This statute was later replaced by M.G.L. Chapter 111, Sections 5M through 5P. In 1987, M.G.L. Chapter 111H was added to provide for the regulation of low-level radioactive waste. Section 7 of the legislation contains the authority for the Governor to enter into an Agreement with the Commission.

The Massachusetts regulations contain provisions for the orderly transfer of authority over NRC licenses to the regulatory control of the Commonwealth. After the effective date of this proposed Agreement, licenses

issued by NRC will continue in effect under Massachusetts regulatory authority until these licenses expire or are replaced by Commonwealth issued licenses.

(d) The NRC staff assessment finds the proposed Massachusetts program adequate to protect public health and safety, and compatible with the NRC program for materials regulation.

#### II. Summary of the NRC Staff Assessment of the Massachusetts Program for the Control of Agreement Materials

NRC staff has examined the proposed Massachusetts radiation control program with respect to the ability of the program to regulate agreement materials. The examination was based on the Commission's policy statement "*Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*" (referred to herein as the "criteria") (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and personnel.* The proposed program unit responsible for regulating agreement materials will consist of 13 technical/professional positions within the existing radiation control program of the Massachusetts Department of Public Health. The qualifications for staff members specified in the personnel position descriptions, and the qualifications of the current staff members, meet the criteria for education, training and experience. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Most staff members hold advanced degrees, and have had additional training and experience in radiation protection. Senior staff have more than five years experience each in radiation control programs. The program director has a master's degree in public health and 15 years experience in regulatory health physics.

(b) *Legislation and regulations.* The Massachusetts Department of Public Health is designated by statute to be the radiation control agency. The Department is provided by statute with the authority to promulgate regulations, issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required by law to provide access to inspectors.

The Department has adopted regulations (Massachusetts Regulations for the Control of Radiation or MRCR) providing radiation protection standards essentially identical to the standards in

<sup>1</sup> The materials, sometimes referred to as "agreement materials," are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) Byproduct materials as defined in Section 11e.(2) of the Act; (c) Source materials as defined in Section 11z. of the Act; and (d) Special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

10 CFR Part 20. Technical definitions in the MRCR are also essentially identical. The MRCR require consideration of the total radiation doses to individuals from all sources of radiation (except background radiation and radiation from medical treatment or examinations, as is the case in the NRC rules), whether the sources are in the possession of the licensee or not. The MRCR also require appropriate surveys and personnel monitoring under the close supervision of technically competent people, and the use of radiation labels, signs and symbols essentially identical to those contained in 10 CFR Part 20. Posting requirements and instruction of workers requirements adopted in the MRCR are compatible with the equivalent current requirements of the NRC.

Nothing in the Massachusetts statutes or regulations seeks to regulate areas not permitted by the Atomic Energy Act. The MRCR contain a provision to avoid interference with those regulatory requirements imposed by NRC pursuant to the Act, and for which Commonwealth licensees have not been exempted under the agreement.

(c) *Storage and disposal.* The MRCR also contain compatible requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both waste disposal by material users and the land disposal of waste received from other persons. The NRC staff noted some differences in the MRCR waste regulations as compared to the NRC regulations in 10 CFR Part 61, but determined that the differences are related either to the prohibition of shallow land burial as a disposal technology or to the ownership of the disposal site by the Massachusetts Low-Level Radioactive Waste Management Board. Because of these special provisions, NRC staff determined that the differences in the regulations do not reduce the ability of the Massachusetts radiation control program to protect health and safety, nor reduce the compatibility of the program or the regulations themselves.

(d) *Transportation of radioactive material.* The MRCR contains rules equivalent to 10 CFR Part 71 as in effect prior to April 1, 1996. Effective on that date, the NRC amended Part 71. Under current policy, an existing Agreement State is allowed up to three years after NRC adopts a final rule to adopt a compatible rule, or to impose each regulatory provision of the rule using an alternate legally binding requirement (LBR), such as an order or license condition. A State seeking an agreement is expected to have effective rules or

LBRs compatible with those of NRC in effect at the time the agreement becomes effective. The intent of this expectation is to spare licensees in the new Agreement State from the "whipsaw" effect of being subjected first to the new NRC requirements, then the old requirements when the agreement takes effect, then again to the new requirements when later adopted by the State. Massachusetts is in the process of adopting rules compatible with the revised 10 CFR Part 71. However, these rules may not become effective before the Agreement is signed. Massachusetts intends to impose the requirements of the new Part 71 rules in the interim by issuing appropriate orders to the affected licensees.

(e) *Recordkeeping and incident reporting.* The MRCR incident reporting requirements are similar to the requirements in the NRC rules. The NRC staff noted that for some NRC rules that specify a records retention period of less than five years, the retention period specified in the MRCR is shorter. The NRC staff concluded, however, that the retention periods specified in the MRCR rules are adequate since the retention periods are long enough to permit examination of the records during routine inspections. The MRCR imposes retention requirements similar to the NRC rules for records which must be retained indefinitely or until the license is terminated.

(f) *Evaluation of license applications.* The MRCR contains requirements equivalent to the current NRC regulations specifying the required content of applications for licenses, renewals, and amendments. The MRCR also provide requirements equivalent to the NRC requirements for issuing licenses and specifying the terms and conditions of licenses. The agreement materials program unit has adopted a procedure for processing applications that assures the regulatory requirements will be met, or, if appropriate, exceptions granted. The program unit has the authority by Statute to impose requirements in addition to the requirements specified in the regulations. The program unit also retains by regulation the authority to grant specific exemptions from the requirements of the regulations. The MRCR specifies qualifications for the use of radioactive materials in or on humans that are similar to the NRC requirements in 10 CFR Part 35.

The Massachusetts licensing procedures manual, along with the accompanying regulatory guides, are adapted from similar NRC documents and contain adequate guidance for the agreement materials program unit staff

to use when evaluating license applications.

(g) *Inspections and enforcement.* The Massachusetts radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The agreement materials program unit has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted procedures for enforcement in the MRCR.

(h) *Regulatory administration.* The Massachusetts Department of Public Health is bound by procedures specified in Commonwealth statute for rulemaking. The program has adopted procedures to assure fair and impartial treatment of license applicants.

(i) *Cooperation with other agencies.* The MRCR deems the holder of an NRC license on the effective date of the Agreement to possess a like license issued by Massachusetts. The MRCR provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. The MRCR also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. Licenses in timely renewal are not excluded from the transfer continuation provision. The MRCR provide exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The Department of Public Health and the Department of Labor and Industries have entered into a Memorandum of Understanding, as authorized elsewhere in Massachusetts law, which provides for the Department of Public Health to exercise the responsibility and authority of the Department of Labor and Industries with respect to radiation and radioactive materials. The Department of Environmental Protection is designated as the agency to adopt the suitability standards for any proposed disposal site under the Massachusetts Low-Level Radioactive Waste Management Act. The Department of Public Health will license and regulate the site only after the Executive Secretary for Environmental Affairs has determined that the report on the site characterization study is in conformance with the suitability standards, and the Low-Level

Radioactive Waste Management Board has selected the operator.

The proposed Agreement commits the Commonwealth to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the Commission's program for the regulation of like materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the Commonwealth to use their best efforts to accord such reciprocity.

### III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed Agreement, and that the State desires to assume regulatory responsibility for such materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff has concluded that the Commonwealth of Massachusetts meets the requirements of Section 274 of the Act. The Commonwealth's statutes, regulations, personnel, licensing, inspection, and administrative procedures are compatible with those of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Since the Commonwealth is not seeking authority over byproduct material as defined in Section 11e.(2) of the Act, Subsection 274o is not applicable to the proposed Agreement. The language of the Agreement requested by Governor Weld has been revised to reflect that the effective date of the proposed Agreement and the location at which it will be signed remain to be determined. Certain conventions have been used to highlight the proposed revisions. New language is shown inside boldfaced arrows, while

language that would be deleted is set off with brackets.

### IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 19th day of December 1996.

For the U. S. Nuclear Regulatory Commission.

Paul H. Lohaus,

*Acting Director, Office of State Programs.*

### Appendix A—Proposed Agreement

Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Massachusetts for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to by-product materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Massachusetts is authorized under Massachusetts General Laws, Chapter 111H, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Massachusetts certified on [June 1, 1995,] >March 28, 1996,< that the Commonwealth of Massachusetts (hereinafter referred to as the Commonwealth) has a program for the control of radiation hazards adequate to protect [the] public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [November 1, 1995,] >(date to be determined)< that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation[s] between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth, acting in behalf of the Commonwealth, as follows:

### Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. By-product materials as defined in Section 11e.(1) of the Act;
- B. Source materials;
- C. Special nuclear materials in quantities not sufficient to form a critical mass; and,
- D. Licensing of Low-Level Radioactive Waste Facilities.

### Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

- A. The construction and operation of any production or utilization facility;
- B. The export from or import into the United States of by-product, source, or special nuclear material, or of any production or utilization facility;
- C. The disposal into the ocean or sea of by-product, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other by-product, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting by-product material.

#### Article III

This Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E, whereby the Commonwealth can exert regulatory control over the materials stated therein.

#### Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, by-product, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

#### Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

#### Article VI

The Commission will use its best efforts to cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of like materials. The Commonwealth and the Commission

will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

#### Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

#### Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act.

#### Article IX

This Agreement shall become effective on [April 24, 1996.] >(date to be determined)< and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [Boston, Massachusetts] >(location to be determined)<, in triplicate, this [24]th Day of [April, 1996] >(date to be determined)<.

For the United States Nuclear Regulatory Commission.

Shirley Ann Jackson,  
*Chairman.*

For the Commonwealth of Massachusetts.

William F. Weld,

*Governor.*

[FR Doc. 97-716 Filed 1-15-97; 8:45 am]

BILLING CODE 7590-01-P

#### [Docket No. 50-344]

#### **Portland General Electric Company, Trojan Nuclear Plant; Consideration of Approval of Application Regarding Proposed Corporate Restructuring**

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of an application concerning the proposed corporate restructuring of Portland General Corporation (PGC), the parent holding company for Portland General Electric (PGE), the licensee for the Trojan Nuclear Plant (TNP).

By letter dated August 20, 1996, as supplemented by letter dated October 30, 1996, PGE informed the Commission that PGE's parent company, PGC, has agreed to a merger with Enron Corporation, subject to certain conditions. Those conditions include approval by the shareholders of the companies and obtaining appropriate governmental approvals which do not impose terms or conditions that would be reasonably likely to have an adverse effect on PGC or Enron. Under the Agreement and Plan of Merger the businesses of Enron and PGC would be combined by means of the re-incorporation of Enron as an Oregon corporation through the merger of Enron with, and into, a wholly owned Enron subsidiary, New Falcon Corporation (the name to be changed to Enron Corporation, but is hereinafter referred to as the "Merger Company"). As a result the shareholders of Enron will become shareholders of the Merger Company. In addition, PGC will combine with the Merger Company. The shareholders of PGC will become shareholders of the Merger Company on a share for share basis. PGE will continue to be headquartered in Portland and senior management will remain in place. The merger will not affect PGE's status as a regulated public electric utility in the State of Oregon. According to PGE, the planned merger of PGE's parent company, PGC, with the Merger Company should improve the overall financial strength and stability of PGE's parent company after the merger. After the merger PGE will continue to be

the NRC licensee for Trojan Nuclear Plant and no direct transfer of the operating license or interests in the unit will result from the merger.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this action, see the licensee's letter dated August 20, 1996, as supplemented by letters dated October 16, 1996, and October 30, 1996. These 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 Branford Price Millar Library, Portland State University, 934 SW Harrison Street, PO Box 1151, Portland, Oregon 97207.

Dated at Rockville, MD., this 10th day of January 1997.

For the Nuclear Regulatory Commission,  
Marvin M. Mendonca,

*Acting Director Non-Power Reactors and  
Decommissioning Project Directorate,  
Division of Reactors Program Management,  
Office of Nuclear Reactor Regulation.*

[FR Doc. 97-1089 Filed 1-15-97; 8:45 am]

BILLING CODE 7590-01-P

**[Docket No. 50-356]**

**Environmental Assessment and  
Finding of No Significant Impact  
Regarding Proposed Amendment  
Approving Decommissioning Plan  
University of Illinois at Urbana-  
Champaign**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment approving the decommissioning plan for the University of Illinois at Urbana-Champaign (licensee or UIUC) Low Power Reactor Assembly (LOPRA) located on the licensee's campus in Urbana, Illinois, in accordance with the application dated February 10, 1995, as supplemented on April 24, 1995, and October 2, 1996. The approved decommissioning plan will be a supplement to the Safety Analysis Report.

**Environmental Assessment**

***Identification of Proposed Action***

By application dated February 10, 1995, as supplemented, UIUC requested authorization to decommission and partially dismantle the LOPRA, Facility Operating License No. R-117, in accordance with the decommissioning plan submitted as part of the application and to terminate Facility Operating License No. R-117. There are two reactors at UIUC, the Advanced TRIGA Research Reactor (TRIGA) and the LOPRA. The LOPRA was created when a subcritical assembly authorized under the TRIGA license was upgraded in 1971 to sustain nuclear fission in a self-supporting chain reactor and licensed as a separate reactor. The LOPRA will be converted back into a subcritical assembly by partial dismantling. All byproduct and special nuclear material under the LOPRA license will then be transferred as part of the decommissioning effort to Facility License No. R-115 for the UIUC TRIGA. Amendment No. 9 to the TRIGA license authorizing possession of the LOPRA byproduct and special nuclear material was issued on August 8, 1996.

***Need for Proposed Action***

The proposed action is needed in order to convert the LOPRA back into a subcritical assembly, transfer the byproduct and special nuclear material to the TRIGA license, and terminate the LOPRA license.

***Environmental Impact of the Proposed Action***

All proposed operations in connection with decommissioning and dismantling of the LOPRA will be carefully planned and controlled; all contaminated components will be removed, packaged, and shipped offsite or transferred to the TRIGA license; and radiological control procedures will be in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

All decommissioning activities will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health-physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The NRC staff estimates that the collective dose equivalent to the UIUC staff and public for the project will be less than 1 mrem.

On the basis of a review of the specific proposed activities associated with the dismantling and

decontamination of the UIUC-LOPRA, the staff has determined that there will be no significant increase in the amounts of effluents that may be released off site, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not have any significant impacts on air, water, land, or biota in the area or any other significant environmental impact.

***Alternative Use of Resources***

The only alternative to the proposed decommissioning, dismantling, and decontamination activities is to have UIUC maintain possession of the reactor. This approach would include monitoring and reporting for the duration of a safe storage period until the TRIGA is decommissioned. However, UIUC intends to convert the reactor to a subcritical assembly under the TRIGA reactor license. This alternative would not be responsive to the licensee's request. The alternative of not decommissioning reactors was rejected in the "Generic Environmental Impact Statement on Decommissioning," NUREG-0586. No alternative appears that will have a different or lesser effect on the use of available resources, and other alternatives need not be evaluated.

***Agencies and Persons Consulted***

The NRC staff consulted with the Illinois State official regarding the environmental impact of the proposed action. The State official had no comments.

***Finding of No Significant Impact***

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons given above.

For detailed information with respect to this proposed action, see the application for a license amendment dated February 10, 1995, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20037.

Dated at Rockville, Maryland this 10th day of January 1997.

For the Nuclear Regulatory Commission.  
Marvin M. Mendonca,  
*Acting Director, Non-Power Reactors and  
Decommissioning Project Directorate,  
Division of Reactor Program Management,  
Office of Nuclear Reactor Regulation.*  
[FR Doc. 97-1088 Filed 1-15-97; 8:45 am]  
BILLING CODE 7590-01-P

### Advisory Committee on Reactor Safeguards

#### Subcommittee on Probabilistic Risk Assessment; Meeting

The ACRS Subcommittee on Probabilistic Risk Assessment will hold a meeting on January 28, 1997, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, January 28, 1997—8:30 a.m. until the conclusion of business.*

The Subcommittee will continue its discussion of the NRC staff's approach to codify risk-informed, performance-based regulation through development of Standard Review Plan (SRP) sections and associated regulatory guides. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the

Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415-6885) between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: January 10, 1997.  
Sam Duraiswamy,  
*Chief Nuclear Reactors Branch.*  
[FR Doc. 97-1091 Filed 1-15-97; 8:45 am]  
BILLING CODE 7590-01-P

### PEACE CORPS

#### Information Collection Requests Under OMB Review

**AGENCY:** Peace Corps.

**ACTION:** Notice of public use form review request to the Office of Management and Budget (0420-0007).

**SUMMARY:** The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the Peace Corps Request for Information Card (PC-1741). The initial Federal Register notice was published on November 21, 1996 (pp. 59251). A copy of the information collected may be obtained from Stephen R. Abbott, Office of Communications, Marketing Department, United States PEACE CORPS, 1990 K Street, NW., Washington, DC 20526. Mr. Abbott may be contacted by telephone at (202) 606-3780. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; 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; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

#### Information Collection Abstract

**Title:** Peace Corps Request for Information Card.

**Need for and Use of This Information:** Peace Corps needs this information in order to identify prospective applicants for Volunteer service. The information is used to determine what program specific information to send to interested individuals.

**Respondents:** Individuals interested in learning more about Peace Corps service.

**Respondents Obligation to Reply:** Voluntary.

**Burden on the Public:**

- Annual reporting burden: 1,021 hrs.
- Annual record keeping burden: 0 hrs.
- Estimated average burden per response: 1.75 min.
- Frequency of response: one time.
- Estimated number of likely respondents: 35,000.
- Estimated cost to respondents: \$0.35.

This notice is issued in Washington, DC, on January 13, 1997.

Stanley D. Suyat,

*Associate Director for Management.*

[FR Doc. 97-1103 Filed 1-15-97; 8:45 am]

BILLING CODE 6051-01-M

### PENSION BENEFIT GUARANTY CORPORATION

#### Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (<http://www.pbgc.gov>).

**DATES:** The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 1997. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 1997.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:**

**Variable-Rate Premiums**

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is a specified percentage (currently 80 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 1997 (*i.e.*, 80 percent of the yield figure for December 1996) is 5.24 percent. The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 1996 and January 1997.

| For premium payment years beginning in | The required interest rate is |
|--|-------------------------------|
| February 1996 .....                    | 4.84                          |
| March 1996 .....                       | 4.99                          |
| April 1996 .....                       | 5.28                          |
| May 1996 .....                         | 5.43                          |
| June 1996 .....                        | 5.54                          |
| July 1996 .....                        | 5.65                          |
| August 1996 .....                      | 5.62                          |
| September 1996 .....                   | 5.47                          |

| For premium payment years beginning in | The required interest rate is |
|--|-------------------------------|
| October 1996 .....                     | 5.62                          |
| November 1996 .....                    | 5.45                          |
| December 1996 .....                    | 5.18                          |
| January 1997 .....                     | 5.24                          |

**Late Premium Payments; Underpayments and Overpayments of Single-employer Plan Termination Liability**

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 1997, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

| From—         | Through— | Interest rate (percent) |
|---------------|----------|-------------------------|
| 10/1/89 ..... | 3/31/91  | 11                      |
| 4/1/91 .....  | 12/31/91 | 10                      |
| 1/1/92 .....  | 3/31/92  | 9                       |
| 4/1/92 .....  | 9/30/92  | 8                       |
| 10/1/92 ..... | 6/30/94  | 7                       |
| 7/1/94 .....  | 9/30/94  | 8                       |
| 10/1/94 ..... | 3/31/95  | 9                       |
| 4/1/95 .....  | 6/30/95  | 10                      |
| 7/1/95 .....  | 3/31/96  | 9                       |
| 4/1/96 .....  | 6/30/96  | 8                       |
| 7/1/96 .....  | 12/31/96 | 9                       |
| 1/1/97 .....  | 3/31/97  | 9                       |

**Underpayments and Overpayments of Multiemployer Withdrawal Liability**

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan

provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the first quarter (January through March) of 1997 (*i.e.*, the rate reported for December 16, 1996) is 8.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

| From          | Through  | Rate (percent) |
|---------------|----------|----------------|
| 4/1/90 .....  | 3/31/91  | 10.00          |
| 4/1/91 .....  | 6/30/91  | 9.00           |
| 7/1/91 .....  | 9/30/91  | 8.50           |
| 10/1/91 ..... | 12/31/91 | 8.00           |
| 1/1/92 .....  | 3/31/92  | 7.50           |
| 4/1/92 .....  | 9/30/92  | 6.50           |
| 10/1/92 ..... | 6/30/94  | 6.00           |
| 7/1/94 .....  | 9/30/94  | 7.25           |
| 10/1/94 ..... | 12/31/94 | 7.75           |
| 1/1/95 .....  | 3/31/95  | 8.50           |
| 4/1/95 .....  | 9/30/95  | 9.00           |
| 10/1/95 ..... | 3/31/96  | 8.75           |
| 4/1/96 .....  | 12/31/96 | 8.25           |
| 1/1/97 .....  | 3/31/97  | 8.25           |

**Multiemployer Plan Valuations Following Mass Withdrawal**

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 1997 under part 4044 are contained in an amendment to part 4044 published on page 2016 in yesterday's Federal Register. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of January 1997.

Martin Slate

*Executive Director, Pension Benefit Guaranty Corporation*

[FR Doc. 97-1063 Filed 1-15-97; 8:45 am]

BILLING CODE 7708-01-P

**OFFICE OF PERSONNEL  
MANAGEMENT****Submission for OMB Review;  
Comment Request for Review of an  
Expired Information Collection: RI 38-  
128**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for review of an expired information collection. Public Law 104-134, requires all retirees and their survivors to use Direct Deposit for their annuity checks unless they certify they do not have an account in any financial institution nor do they have an account established for them by an authorized paying agent. RI 38-128, Direct Deposit Information, is used by retirees to collect this information.

We estimate 45,500 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 22,750 hours.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to jmfarron@mail.opm.gov

**DATES:** Comments on this proposal should be received on or before February 18, 1997.

**ADDRESSES:** Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING  
ADMINISTRATIVE COORDINATION—CONTACT:**  
Mary Beth Smith-Toomey, Management Services Division, (202) 606-0623.

U.S. Office of Personnel Management.

Lorraine A. Green,  
*Deputy Director.*

[FR Doc. 97-1086 Filed 1-15-97; 8:45 am]

**BILLING CODE** 6325-01-M

**Excepted Service**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:**  
Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606-0830.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on December 11, 1996 (61 FR 65249). Individual authorities established or revoked under Schedules A and B and established under Schedule C between November 1, 1996, and November 30, 1996, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

**Schedule A**

No Schedule A authorities were established in November 1996:

The following Schedule A authorities were revoked in November 1996:

**Selective Service System**

Executive Secretary, National Selective Service Appeal Board. Effective November 8, 1996.

**Department of Energy**

Bonneville Power Administration. Five Area Managers. Effective November 11, 1996.

**Schedule B**

No Schedule B authorities were established or revoked in November 1996.

**Schedule C**

The following Schedule C authorities were established in 1996:

**Council on Environmental Quality**

Special Assistant to the Chair for Outreach and Strategic Planning. Effective November 1, 1996.

**Department of Agriculture**

Speech Writer to the Director, Office of Communications. Effective November 19, 1996.

Area Director, South West Area to the Administrator, Farm Service Agency. Effective November 22, 1996.

Special Assistant to the Administrator, Agricultural Marketing Service. Effective November 22, 1996.

Confidential Assistant to the Director, Empowerment Zone/Enterprise Community. Effective November 22, 1996.

Confidential Assistant to the Administrator, Farm Agency Service. Effective November 22, 1996.

**Department of the Army (DOD)**

Secretary (Office Automation) to the Assistant Secretary of the Army (Civil Works). Effective November 12, 1996.

**Department of Defense**

Defense Fellow to the Assistant Secretary, Special Operations/Low Intensity Conflict. Effective November 1, 1996.

Special Assistant to the Assistant Secretary of Defense for Health Affairs. Effective November 22, 1996.

**Department of Energy**

Attorney-Advisor (General) to the Assistant Attorney General Counsel for General Law. Effective November 14, 1996.

**Department of the Interior**

Special Assistant to the Commissioner of Reclamation. Effective November 26, 1996.

**Department of Transportation**

Special Assistant for Scheduling and Advance to the Secretary of Transportation. Effective November 12, 1996.

Deputy Scheduler to the Special Assistant for Scheduling and Advance. Effective November 12, 1996.

Special Assistant to the Secretary of Transportation. Effective November 22, 1996.

**Department of the Treasury**

Special Assistant to the Deputy Secretary of the Treasury. Effective November 12, 1996.

**Office of Management and Budget**

Confidential Assistant to the Associate Director for General Government and Finance. Effective November 1, 1996.

**Office of National Drug Control Policy**

Confidential Secretary to the Deputy Director, Office of National Drug Control Policy. Effective November 26, 1996.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., P.218.

Office of Personnel Management.  
Lorraine A. Green,  
Deputy Director.  
[FR Doc. 97-1085 Filed 1-15-97; 8:45 am]  
BILLING CODE 6325-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22456; File No. 812-9096]

### The Palladian Trust, et al.

January 9, 1997.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of Application for Exemptions under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** The Palladian Trust (the "Trust") and Palladian Advisors, Inc. ("PAI").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to the extent necessary to permit shares of the Trust to be sold and held by: (1) separate accounts (the "Separate Accounts") funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies"); (2) qualified pension and retirement plans; and (3) investment advisers to the Trust.

**FILING DATE:** The application was filed on July 1, 1994, and amended on October 26, 1994, June 20, 1996, and December 23, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 3, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

Applicants, c/o Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036, Attention: Christopher E. Palmer, Esq.

**FOR FURTHER INFORMATION CONTACT:** Megan L. Dunphy, Attorney, or Patrice M. Pitts, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

#### Applicant's Representations

1. The Trust is an open-end, management investment company organized as a Massachusetts business trust. It currently offers shares of capital stock ("shares") in five separate investment portfolios (the "Portfolios"), each of which has its own investment objective: The Value Portfolio, The Growth Portfolio, The International Growth Portfolio, the Global Strategic Income Portfolio, and the Global Interactive/Telecomm Portfolio. Additional portfolios may be added in the future.

2. PAI is a corporation organized under the laws of Delaware, and is registered as an investment adviser under the Investment Advisers Act of 1940. PAI serves as overall investment manager of the Portfolios. The Trust retains other investment advisers (the "Portfolio Managers") to handle the day-to-day investment management of the Portfolios.

3. The Trust currently sells shares of the Portfolio to First ING of New York Separate Account A1, a separate account of First ING Life Insurance Company of New York, an affiliate of Security Life of Denver Insurance Company (collectively, "Security Life"). The Trust intends to offer shares of the Portfolios to Separate Accounts of other Participating Insurance Companies, including insurance companies that are not affiliated with Security Life, to serve as investment vehicles for various types of insurance products, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, the "Contracts").

4. The Trust also intends to offer its shares to qualified pension or retirement plans ("Plans") described in Treasury Regulation § 1.817-6(f)(3)(iii).

5. Each Portfolio Manager has agreed that it or an affiliate (either directly or through a qualified pension or

retirement plan) will invest \$1 million in the shares of the Portfolio(s) it manages. Each Portfolio Manager purchasing Portfolio shares has agreed that all such shares will be automatically redeemed if and when the Portfolio Manager's advisory agreement with the Trust terminates.

6. PAI will not act as an investment adviser to any Plan which purchases shares of the Trust. While a Portfolio Manager may serve as investment adviser to one or more Plans which invest in the Trust, none of the assets of any Plan advisory account actually managed by such Portfolio Manager will be invested in the Trust. Nor may such Portfolio Manager advise any Plan to invest in the Trust. Plans advised by a Portfolio Manager may independently choose to invest in the Trust.

#### Applicant's Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) thereof, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit "mixed" and "shared" funding, as defined below.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or the rules 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 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e-2(b)(15) provides partial exemptions from Sections 9(2), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e-2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company."<sup>1</sup> Therefore, the relief grant by Rule 6e-2(b)(15) is

<sup>1</sup> The exemptions provided by Rule 6e-2 also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account

not available with respect to a scheduled premium variable life insurance separate account that owns shares of a management company that also offers its shares to a variable annuity separate account of the same insurance company or any affiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company (or of any affiliated life insurance company) is referred to as "mixed funding." The use of a common management company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of more than one unaffiliated insurance company is referred to as "shared funding." The relief granted by Rule 6e-2(b)(15) is not available to a scheduled premium variable life insurance separate account that owns shares of an underlying management investment company ("underlying fund") which offers its shares to Plans or to its investment advisers.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e-3(T)(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e-3(T)(b)(15) are available only to separate accounts owning shares of underlying funds which offer shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Thus, Rule 6e-3(T) permits mixed funding, but does not permit shared funding.

5. Current tax law permits the Trust to increase its asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of variable insurance contracts. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an underlying fund must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817-5 (1989). The regulations do contain certain exceptions to this requirement,

however, one of which permits the trustee(s) of a qualified pension or retirement plan to hold shares of an underlying fund, the shares of which are held by the separate accounts of insurance companies, without adversely affecting the status of the underlying fund as an adequately diversified underlying investment vehicle for variable insurance contracts issued through such separate accounts. Treas. Reg. § 1.817-5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e-2 and 6e-3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then-current tax law, the sale of shares of the same underlying fund to separate accounts and to Plans could not have been envisioned at the time of the adoption of Rules 6e-2(b)(15) and 6e-3(T)(b)(15).

7. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rules 6e-2(b)(15) and 6e-3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief from Section 9(a) provided by Rules 6e-2(b)(15) and 6e-3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants assert, therefore, that applying the restrictions of Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) serves no regulatory purpose.

9. Applicants state that the relief requested should not be affected by the proposed sale of shares of the Trust to the Plans because the Plans are not

investment companies and will not be deemed affiliates by virtue of their shareholdings. Applicants further state that no regulatory purpose is served by extending the Section 9(a) monitoring requirements in the context of the Trust selling its shares to Portfolio Managers. Rules 6e-2 and 6e-3(T) provide relief from the eligibility restrictions of Section 9(a) only for officers, directors of employees of Participating Insurance Companies or their affiliates. Applicants note that Portfolio Managers are not likely to be employees of the Participating Insurance Companies or their affiliates, and if they were, the Section 9(a) eligibility restrictions would apply to those who participate directly in the management of administration of the Trust. Applicants also maintain that the monitoring requirements should not extend to all officers, directors and employees of the Participating Insurance Companies and their affiliates simply because the Trust sells certain shares to the Portfolio Managers. This monitoring would not benefit Contract owners and Plan participants and would only increase costs, thereby reducing net rates of return.

10. Applicants submit that Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) assume the existence of a "pass-through voting" requirement with respect to management investment company shares held by a separate account. Applicants state that Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed. More specifically, Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A)(I) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. In addition, Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(a)(2) provide that an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e-2 and 6e-3(T). Applicants note that Rules 6e-2 and 6e-3(T) both require

that disregard of voting instructions by an insurance company be reasonable and based on specific good faith determinations. If a decision of a Participating Insurance Company to disregard the instructions of Contract owners represents a minority position or would preclude a majority vote approving a particular change, however, such Participating Insurance Company may be required, at the election of the Trust, to withdraw the investment of its Separate Account in the Trust. No charge or penalty will be imposed as a result of such withdrawal.

11. Applicants further represent that the sale of Trust shares to Plans would not affect the circumstances and conditions under which any veto right would be exercised by a Participating Insurance Company. Shares of the Trust sold to Plans would be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, ERISA does not require pass-through voting to the participants in Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans.

12. Applicants note, however, that some Plans do provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that Plan participants generally, or participants of a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners.

Therefore, the purchase of Trust shares by Plans that provide voting rights to their participants does not present any complications not otherwise occasioned by mixed and shared funding.

13. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants state that there is no reason why the investment policies of the Trust providing mixed funding would or should be materially different from what those policies would or should be if the Trust funded only variable annuity or variable life insurance contracts whether flexible premium or scheduled premium contracts. In this regard, Applicants note that each type of variable insurance product is designed as a long-term investment program, and that Plans also have long-term investment horizons. Moreover, Applicants submit that each Portfolio of the Trust will be managed to attempt to achieve the investment objective of the Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of variable insurance product.

15. Applicants note that no single investment strategy can be identified as appropriate to a particular variable insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. An underlying fund supporting even one type of variable insurance product must accommodate these diverse factors in order to attract and retain purchasers.

16. Applicants further note that Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817-5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and investment separate accounts to share the same

underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity separate account and variable life insurance Separate Accounts all invest in the same management investment company.

17. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Trust at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan, and a Participating Insurance Company will make distributions in accordance with the terms of the Contract.

18. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that the Portfolios will inform each shareholder, including each Separate Account and Plan, of its respective share of ownership in the respective Portfolio. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement.

19. Applicants argue that the ability of the Portfolios to sell their respective shares directly to Plans does not create a "senior security", as that term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Separate Accounts have rights only with respect to their shares of the Trust. Such shares may be redeemed only at net asset value. No shareholders of any of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

20. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basis premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance

commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem shares of one underlying fund held by their Separate Accounts and invest the proceeds in another underlying fund. Complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans can decide to and actually redeem shares of an investment vehicle, and reinvest the proceeds in another investment vehicle without the same regulatory impediments; most Plans may even hold cash pending suitable investment. Based on the foregoing, Applicants represent that should issues arise where the interests of Contract owners and the interests of Plans conflict, the issues can be resolved almost immediately because trustees of the Plans can redeem shares out of the Trust independently.

21. Applicants assert that the requested relief is appropriate and in the public interest because the relief will promote competitiveness in the variable insurance product market. Applicants submit that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts that currently offers such contracts. These factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of name recognition by the public of certain insurers as investment professionals. Applicants argue that use of the Trust as a common investment medium for the Contracts would alleviate these concerns because Participating Insurance Companies would benefit not only from the investment and administrative expertise of PAI and the Portfolio Managers, but also from the cost efficiencies and investment flexibility afforded by a large pool of assets. Applicants state that making the Trust available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts and, accordingly, may increase competition with respect to both the design and the pricing of variable contracts; this can be expected to result in greater product variation and lower charges. Applicants submit that mixed and shared funding will benefit Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of

the Trust to Plans should increase the amount of assets available for investment by the Trust. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

#### Applicant's Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Trustees or Directors of the Trust (the "Board") shall consist of persons who are not "interested persons" of the Trust, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the remaining trustees; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict among the interests of the Contract owners of all of the Separate Accounts investing in the Trust and of the Plan participant investing in the Trust. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurances, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by owners of variable annuity contracts and those given by owners of variable life insurance contracts; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. The Participating Insurance Companies, PAI (or any other investment adviser of the Portfolios), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Trust (collectively, "Participants")

will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonable necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by PAI and each Plan to inform the Board whenever it is determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts to and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Plans investing in the Trust under their agreements governing participating in the Trust, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners or, as appropriate, Plan participants.

4. If the Board or a majority of its disinterested members determines that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members), take any steps necessary to remedy or eliminate the material irreconcilable conflict, including: (a) withdrawing the assets allocate to some or all of the Separate Accounts from the Trust or any Portfolio and reinvesting such assets in a different investment medium including another Portfolio of the Trust; (b) submitting the question of whether such segregation should be implemented to a vote of all affected variable insurance contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arise because of a Participating Insurance Company's decision to disregard Contract Owner voting instructions, and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Trust's election, to withdraw its

Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Trust's election, to withdraw its investment in the Trust and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing their participation in the Trust. The responsibility to take such remedial action shall be carried out with a view only to the interests of Contract owners and Participants in the Plan.

5. For purposes of condition 4, a majority of the disinterested trustees will determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Trust or PAI (or any other investment adviser of the Portfolios) be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially affected by the material irreconcilable conflict. Further, no Plan shall be required by condition 4 to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without a vote by Plan participants.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Trust held in their Separate Accounts in a manner consistent with voting instructions timely received from Contract owners.

Each Participating Insurance Company also will vote shares of the Trust held in the Participating Insurance Company's Separate Account(s) for which no voting instructions from the Contract owners are timely received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts investing in the Trust calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Trust. Each Plan will vote as required by applicable law and governing Plan documents.

8. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, each Portfolio Manager will vote its shares of the Portfolio in the same proportion as all contract owners having voting rights with respect to that Portfolio; provided, however, that the Portfolio Manager shall vote its shares in such other manner as may be required by the Commission or its staff.

9. All reports received by the Board regarding potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. The Trust will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that: (a) the Trust is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and certain qualified pension and retirement plans; (b) because of differences in tax treatment and other considerations, the interests of Contract owners investing in the Trust and the interests of Plans investing in the Trust may conflict; and (c) the Board will monitor events to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

11. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Trust) and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) and, if applicable, Section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e-2 and 6e-3(T) are amended (or if Rule 6e-3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Trust and/or the Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

13. No less than annually, the Participants shall submit to the Board such reports, materials, or data as the Board reasonably may request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when the Board so reasonably requests, shall be a contractual obligation of all Participants under the agreements governing their participation in the Trust.

14. If a Plan becomes an owner of 10% or more of the assets of a Trust, such Plan will execute a participation agreement with the Trust. A Plan will execute an application containing an acknowledgement of this condition upon such Plan's initial purchase of the shares of any Portfolio.

#### Conclusion

For the reasons stated above, Applicants assert that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and

Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-1035 Filed 1-15-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38142; International Series Release No. 1043; File No. SR-Amex-96-50]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Listing and Trading of Index Warrants Based on the BEMI South Africa Index**

January 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 30, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Amex, pursuant to Rule 19b-4 of the Act proposes to approve for listing and trading under Section 106 (Currency and Index Warrants) of the Amex *Company Guide* index warrants based on the BEMI South Africa Index ("Index"), a market capitalization-weighted broad-based index developed by ING Barings Securities Limited comprised of 30 South African companies representing five different industry groups.

**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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

Under Section 106 of the Amex *Company Guide*, the Exchange may approve for listing index warrants based on foreign and domestic market indices. The Amex has received approval to trade a number of index warrant products pursuant to Section 106.<sup>3</sup> The Amex represents that the listing and trading of warrants on the Index will comply in all respects to Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants.

Warrant issues on the Index will conform to the listing guidelines under Section 106, which provide, among other things, that: (1) the issuer shall have tangible net worth in excess of \$250,000,000 and otherwise substantially exceed earnings requirements in Section 101(A) of the *Company Guide* or meet the alternative guideline in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to three years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of \$4,000,000.

Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent

<sup>3</sup> See Securities Exchange Act Release No. 36070 (August 9, 1995), 60 FR 42205 (August 14, 1995) (approval for index warrants on the Deutscher Aktienindex); Securities Exchange Act Release No. 33036 (October 8, 1993), 58 FR 53588 (October 15, 1993) (approval for index warrants on the Amex Hong Kong 30 Index); and Securities Exchange Act Release No. 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992) (approval for index warrants on the Japan Index).

that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The procedures for determining the cash settlement value for the warrants have not yet been determined by ING Barings. Once those procedures have been determined by ING Barings, they will be fully set forth in the prospectus and in the Information Circular distributed by the Exchange to its membership prior to the commencement of trading the warrant.

The Amex has adopted suitability standards applicable to recommendations to purchasers of Index warrants and transactions in customer accounts. Amex Rule 411, Commentary .02 recommends that index warrants under Section 106 of the *Company Guide* be sold only to investors whose accounts have been approved for options trading pursuant to Rule 921. The requirements under Rule 923 (Suitability) shall apply to recommendations in index warrants both with respect to customer accounts that have been approved for options trading and customer accounts that have not been so approved. Amex Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index warrants on the day the order is entered. In addition, the Amex, prior to the commencement of trading of Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Amex is proposing to list index warrants based on the Index, an internationally-recognized capitalization-weighted index representing a broad-based portfolio of 30 large, actively traded stocks from South Africa.<sup>4</sup> The total market capitalization of the Index was \$118.6 billion on September 30, 1996. The total available market capitalization<sup>5</sup> of the Index was \$32.1 billion on September 30, 1996. The median available capitalization of the companies in the Index on that date was \$737 million and

<sup>4</sup> The list of the component securities and their respective weights in the Index were attached to the proposed rule filing as Exhibit A, and are available for examination at the Amex or at the Commission as specified in Item IV.

<sup>5</sup> A company's "available capitalization" is defined as the lower of (i) the company's "free float" or (ii) the legally available capitalization of the company. A company's "free float" is defined as the percentage of shares which could reasonably be expected to trade on the open market. Generally, government holdings, corporate cross-ownership and other strategic holdings are not considered freely floating.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the average available market capitalization of these companies was \$1.07 billion. The individual available market capitalization of the companies ranged from \$848 million to \$11.8 billion.

The Index was designed by and is maintained by ING Barings. The stocks selected for inclusion in the Index were chosen on the basis of both country and company criteria. To be included in the Index a country must have a minimum Gross Domestic Product per capita of \$400 and minimum market trading value of \$2 billion per year, in at least one of the last three years. The companies included in the Index are drawn from a database of stock entities, which may represent individual companies in their entirety, or separate lines of stock, e.g., A shares and B shares, of the same company. The criteria for stock entities to be included are: capitalization value greater than 1% of the ING Barings database for that country; minimum free-float of 10%; and minimum average daily trading value of \$100,000. In addition shares that rank first or second in their industry sector may be included if they have a minimum capitalization of 0.5% of the ING Baring database for that country and meet the normal free-float & daily trading value rules.

The Index is composed of companies from 5 industry groups including: consumer goods, energy, capital equipment, basic materials, agriculture/food and financial. The largest stock accounts for 11.43% of the Index, while the smallest accounts for 0.716%. The top five stocks in the Index by weight account for 43.64%. The Exchange believes that the Index is a Stock Index Group and a Broad Stock Index Group pursuant to Rule 1100(b).

The Exchange also believes that the proposed Index complies with the information sharing standards of Section 106(g) of the Company Guide.<sup>6</sup> The Exchange has entered into an agreement with the Johannesburg Stock Exchange establishing the appropriate means to obtain comprehensive surveillance information with respect to the Index's component stocks. Once the agreement has been deemed effective by the Commission, the proposed Index will comply with the information

<sup>6</sup>Section 106(g) of the Company Guide states that foreign country securities or American Depository Receipts thereon that are not subject to a comprehensive surveillance agreement, and have less than 50% of their global trading volume in dollar value within the United States, shall not in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading.

sharing standards of Section 106(g) of the Company Guide.

The Index is capitalization-weighted and based on available capitalization. The Index is quoted in U.S. dollars and disseminated daily shortly after 4 p.m. New York time using local market closing prices and Reuters 4 p.m. currency exchange rates. The Index was first calculated on January 7, 1992 with a benchmark value of 100. In the event a component security in the Index does not open for trading, the most recent closing value for that component will be used in the Index's calculation.

The Index is maintained by ING Barings Recomposition Committee. The Recomposition Committee, established at the time of the launch of the Index, reviews on a quarterly basis the Index rules and composition. The committee implements changes or fixes standards as appropriate and oversees the security environment of the Index and its record-keeping. The quarterly recomposition meeting is normally held in the second week of the last month of the quarter. The date of these meetings is posted at least two months in advance on Reuters and the results are posted on Reuters the day after a committee meeting. Any changes in the composition of the Index are implemented on the last day of the month that the committee meeting is held. This is approximately two weeks after the committee meeting.

ING Barings will maintain the Index so that new issues and privatizations are included in the Index at the end of the month in which they have come to market, provided the company has met the criteria for inclusion in the Index. New companies resulting from a spin-off of a component company will be put into the Index and remain in the Index until the next quarterly recomposition meeting. In the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, reorganization, recapitalization or similar event with respect to the component stocks, the divisor will be adjusted, if necessary, to ensure Index continuity.

According to the Exchange, membership of the committee is regulated by a "Fire Wall."<sup>7</sup> All members are isolated from sales, trading functions and corporate finance functions. Members are drawn from Index research, calculation group, and the legal department of ING Barings. To

<sup>7</sup> See Letter from A.N. Marsh, Legal Department, ING Barings, to Richard Mikaliunas, Vice President, Capital Markets Development, Amex, dated November 20, 1996.

ensure impartiality and good practice, the committee has retained Russell Systems Limited (part of the Frank Russell Group) to attend all meetings and to provide an audit of attendance and appropriateness of the agenda. Russell Systems Limited also provides advice on good practice in indexation and on how to ensure the use of the best available information on emerging markets.

## 2. Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) (5) in particular<sup>8</sup> in that its designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex does not believe that the proposed rule change will impose any inappropriate 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:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the

<sup>8</sup> 15 U.S.C. 78f(b) (5).

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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-50 and should be submitted by February 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-1033 Filed 1-15-97; 8:45 am]

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[Release No. 34-38143; File No. SR-Amex-96-35]

**Self-Regulatory Organizations;  
American Stock Exchange, Inc.; Order  
Approving Proposed Rule Change and  
Notice of Filing and Order Granting  
Accelerated Approval of Amendment  
Nos. 1 and 2 Relating to the Trading of  
Options on the Tobacco Index<sup>SM</sup>**

January 8, 1997.

**I. Introduction**

On October 1, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the trading of options on The Tobacco Index<sup>SM</sup>. The proposal was published for comment in the Federal Register on October 24, 1996.<sup>3</sup> The Exchange filed an amendment ("Amendment No. 1")<sup>4</sup> to its proposal

on November 8, 1996. The Exchange filed a second amendment ("Amendment No. 2")<sup>5</sup> to its proposal on December 6, 1996. No comments were received on the proposed rule change. This order approves the Exchange's proposal as amended.

**II. Description of the Proposal**

**A. General**

The Amex proposes to trade options on The Tobacco Index<sup>SM</sup> ("Index"), a new index developed by the Amex composed of tobacco company stocks (or American Depositary Receipts ("ADRs") thereon) that are traded on the Amex and the New York Stock Exchange ("NYSE"). In addition, the Amex proposes to amend Rule 901C, Commentary .01, to reflect that 90% of the Index's numerical value will be accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915.

**B. Composition of the Index**

The Amex proposes to trade standardized options on the Index, developed by the Amex, representing a portfolio of large, actively traded tobacco company stocks.<sup>6</sup> The Index will comprise nine tobacco industry stocks. The components of the Index will be American Brands, Inc.; B.A.T. Industries P.L.C.; Dimon, Inc.; Empresas La Modernas (ADR); Loews Corp.; Philip Morris Companies, Inc.; RJR Nabisco Holdings Corporation, Inc.; UST, Inc.; and Universal Corporation.<sup>7</sup> The Index was initialized at a level of 250 at the close of trading on August 16, 1996. As of January 2, 1997, the Index had a value of approximately 289. The Exchange will use an "equal-dollar weighted" method to calculate the value of the Index.<sup>8</sup> The market capitalizations of the individual stocks in the Index as of the close of trading on August 23, 1996 ranged from a high

of \$73 billion to a low of \$762 million, with the median and average being \$6.9 billion and \$14 billion respectively. As of the close of trading on August 23, 1996, no one stock accounted for more than 11.50% of the Index's total weight, and the percentage weighting of the five largest issues in the Index accounted for 56.92% of the Index's value.

**C. Eligibility Standards for the Inclusion of Component Stocks in the Index**

The Index conforms with Exchange Rule 901C, which specifies criteria for inclusion of stocks in a narrow-based index on which standardized options will be traded on the Exchange. In addition, the Index conforms to most of the criteria set forth in Rule 901C, Commentary .02 (which provides for the commencement of trading of options on an index thirty days after the date of filing)<sup>9</sup> except that there are only nine component securities,<sup>10</sup> and that four (or 44%) of the components have a minimum monthly volume during the preceding six months of less than 1,000,000 shares, with one component having traded less than 500,000 shares in at least one of the last six months.<sup>11</sup>

All of the component securities meet the following eligibility standards: (1) all component securities are traded on the Amex, NYSE, or are traded through the facilities of the National Association of Securities Dealers Automated

<sup>9</sup> Under Amex Rule 901C, Commentary .02, the Amex may list options on a stock industry index pursuant to Section 19(b)(3)(A) under the Act, provided that the index satisfies certain criteria. See securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (approving substantially identical proposed rule amendments from the Amex, the NYSE, the Philadelphia Stock Exchange, Inc. ("Phlx"); the Chicago Board Options Exchange, Inc. ("CBOE"); and the Pacific Stock Exchange, Inc. ("PSE") relating to narrow-based index options listing standards).

<sup>10</sup> *Id.* The generic standards require that upon the initial listing of narrow-based index options, the underlying index must include at least ten stocks. Thereafter, the index must contain at least nine component stocks at all times.

<sup>11</sup> *Id.* The generic initial listing standards require that component stocks comprising the top 90 percent of the index, by weight, must have a monthly trading volume of at least 1,000,000 shares per month over the six months preceding the filing of the index with the Commission; thereafter, the component stocks must maintain monthly trading volume of at least 500,000 shares per month. The trading volume for the component stocks constituting the bottom 10 percent of the index, by weight, must have been at least 500,000 shares over the same initial period; thereafter, they must meet an average monthly trading volume of at least 400,000 shares per month.

B.A.T. Industries PLC is the one component whose minimum monthly trading volume was less than 400,000 shares. In February 1996, B.A.T. traded only 395,800 shares. During the most recent six month period, however, B.A.T.'s trading volume has increased, with a high of 6.74 million shares in August 1996, and a low of 866,500 shares in October 1996. Amendment No. 1, *supra* note 4.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 37839 (October 17, 1996), 61 FR 55176.

<sup>4</sup> Amendment No. 1 provides information and representations with respect to the proposed rule change. Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated November 7, 1996.

<sup>5</sup> Amendment No. 2 provides further information and representations with respect to the proposed rule change. Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated December 5, 1996.

<sup>6</sup> A list of securities comprising the Index, as well as listed shares outstanding and prices as of August 23, 1996, was submitted by the Exchange as Exhibit B, and is available at the principal office of the Amex and at the Commission.

<sup>7</sup> American brands, Inc. Plans to spin off remaining tobacco related business by the middle of next year. As a result of the spin-off the Amex anticipates that it will replace American Brands, Inc. in the Index with a company in the tobacco industry. Amendment No. 1, *supra* note 4.

<sup>8</sup> See *infra* Section II.D entitled "Calculation of the Index" for a description of this calculation method.

Quotation System ("Nasdaq") and are reported national Market System securities;<sup>12</sup> (2) component stocks comprising the top 90 percent of the Index by weight have a market capitalization<sup>13</sup> of at least \$75 million, and those component stocks constituting the bottom 10 percent of the Index by weight have a market capitalization of at least \$50 million; (3) no single component will represent more than 25% of the weight of the Index and the five highest weighted components will represent no more than 60% of the Index; (4) at least 90% of the Index's numerical value and at least 80% of the total number of component securities is accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915;<sup>14</sup> and (5) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.

#### D. Calculation of the Index

The Index is calculated using an "equal-dollar weighting" methodology. The following is a description of how equal-dollar weighting calculation method works. As of the market close on August 16, 1996, a portfolio of tobacco company stocks was established representing an investment of approximately \$100,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 250.00 at the close of trading on August 16, 1996. Quarterly thereafter, following the close of trading on the third Friday of February, May, August and November, the Index portfolio will be adjusted by changing

<sup>12</sup> Securities Exchange Act Release No. 34157, *supra* note 9. The generic initial listing and maintenance listing standards require that all component stocks be deemed "reported securities" as that term is defined in Rule 11Aa3-1 under the Act. Accordingly, a proposed narrow-based index currently can only comprise exchange-listed and Nasdaq National Market System securities.

<sup>13</sup> In the case of ADRs, this represents market capitalization as measured by total world-wide shares outstanding.

<sup>14</sup> Amex staff have represented that all underlying stocks are options eligible, and all but Dimon, Inc. and UST, Inc. currently have options traded on them. Telephone conversation between Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Janet W. Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, October 16, 1996.

the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews, except in the event of certain types of corporate actions, such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, if necessary, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining Index components will be calculated and that amount invested in the stock of the new component to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

#### E. Maintenance of the Index

The Exchange will maintain the Index so that upon quarterly rebalancing (1) all component securities are traded on the Amex, NYSE, or traded through the facilities of the Nasdaq and are reported National Market System securities,<sup>15</sup> (2) the total number of component securities will not increase or decrease by more than 33-1/3% from the number of components in the Index at the time of its initial listing, and in no event will the Index have less than nine components; (3) component stocks constituting the top 90% of the Index by weight will have a minimum market capitalization of \$75 million and the component stocks constituting the bottom 10% of the Index by weight will have a minimum market capitalization of \$50 million; (4) stocks constituting

<sup>15</sup> Amendment No. 1, *supra* note 4.

85% of the Index have a monthly trading volume of at least 500,000 shares for each of the last six months and those stocks constituting 15% of the Index have a monthly trading volume of at least 300,000 shares for each of the last six months;<sup>16</sup> (5) no single component will represent more than 25% of the weight of the Index and the five highest weighted components will represent no more than 60% of the Index at each quarterly rebalancing; (6) at least 90% of the index's numerical index value and at least 80% of the total number of component securities individually will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (7) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.<sup>17</sup> If the Index fails to satisfy any of the maintenance criteria set forth above, the Exchange shall, in accordance with Rule 916C, take actions which include, but are not limited to, prohibiting the opening for trading of any additional option series,<sup>18</sup> unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on the Index has been approved by the Commission pursuant to Section 19(b)(2) of the Act.

#### F. Expiration and Settlement

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks on the last trading day prior to expiration. In the case of National Market securities traded through Nasdaq, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.<sup>19</sup>

<sup>16</sup> Amendment No. 2, *supra* note 5.

<sup>17</sup> Amendment No. 1, *supra* note 4.

<sup>18</sup> Amendment No. 2, *supra* note 5. See also *infra* note 28.

<sup>19</sup> The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's ("OCC") by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. See Securities Exchange Act Release

### G. Contract Specifications

The proposed options on the Index will be European-style (i.e., exercises permitted at expiration only), and cash-settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. The options on the Index will expire on the Saturday following the third Friday of the Expiration month ("Expiration Friday"). The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the February cycle. In addition, longer-term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options on a full value Index level, the Exchange may instead list long-term, reduced value put and call options based on one-tenth ( $\frac{1}{10}$ th) the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months.

### H. Exchange Rules Applicable to Stock Index Options

Because the Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1), Amex Rules 900C through 980C, which are applicable to the trading of narrow-based index options, will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, exercise prices,<sup>20</sup> position and exercise limits,<sup>21</sup> margin requirements,<sup>22</sup> and trading halts.<sup>23</sup> Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. Pursuant to Rule 903C(b) regarding exercise prices, the Exchange proposes to list near-the-money option series on the Index at  $2\frac{1}{2}$  point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Rule 904C(c) will result in a position limit of 9,000

contracts with respect to options on this Index.<sup>24</sup>

The trading of any long-term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European-style exercise. Position limits on reduced value long-term Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options. For example, if the position limit for the full value options is 9,000 contracts on the same side of the market, then the position limit for the reduced value options will be 90,000 contracts on the same side of the market.

### III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).<sup>25</sup> Specifically, the Commission finds that the trading of Index options will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the tobacco industry.<sup>26</sup> The trading of options in the Index, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for

<sup>24</sup> Amex Rule 904C(c) provides that the position limit for an industry index option will be 9,000 contracts if the Amex determines at the commencement of trading of the options that any single stock in the underlying stock index industry group accounted, on average, for 20% or more of the numerical index value or that any five stocks in the group together accounted, on average, for more than 50% of the numerical index value, but that no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the review.

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of any such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the tobacco industry in the U.S. stock markets.

the reasons discussed below, that the Amex has adequately addressed these issues.

### A. Index Design and Structure

The Commission believes it is appropriate and consistent with the Act for the Exchange to designate the Index as a narrow-based index for the purposes of options trading. The Index comprises a limited number (nine) of stocks intended to track the tobacco sector of the stock market. Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the Index options.<sup>27</sup> The Commission believes that the large market capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index.

First, the stocks that comprise the Index are actively traded, with a median and average of the minimum monthly trading volume for the six month period ending August 23, 1996 of 3.1 million shares and 7.6 million shares respectively. Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of \$73 billion to a low of \$762 million, with the median and average being \$6.9 billion and \$14 billion respectively. Third, because the index is equal-dollar weighted, no one particular stock dominates the Index. Specifically, as of August 23, 1996, no one stock accounted for more than 11.50% of the Index's total weight, and the percentage weighting of the five highest weighted stocks in the Index accounted for under 57% of the Index's value.

Fourth, the Index will be maintained so that in addition to the other maintenance criteria discussed above, at each quarterly review and rebalancing, at least 90% of the Index's numerical index value and at least 80% of the total number of component securities is accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915. The Commission believes that this requirement will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be easily manipulated by abusive trading in smaller stocks contained in the Index. All component stocks in the Index are eligible for standardized options trading, and all of the component stocks, other than Dimon, Inc. and UST, Inc., currently have standardized options trading on them.

<sup>27</sup> See *supra* Section II.H.

No. 37315 (June 17, 1996), 61 FR 42671 (order approving SR-OCC-95-19).

<sup>20</sup> See Amex Rule 903C(b).

<sup>21</sup> See Amex Rule 904C and 905C.

<sup>22</sup> See Amex Rule 462(d)(2)(D)(iv).

<sup>23</sup> See Amex Rule 918C.

Fifth, if the Index fails to satisfy any of the maintenance criteria set forth above, the Exchange shall, in accordance with Rule 916C, take actions which include, but are not limited to, prohibiting the opening for trading of any additional option series,<sup>28</sup> unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on the Index has been approved by the Commission pursuant to Section 19(b)(2) of the Act.

Sixth, the Amex will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S. pursuant to Rule 11Aa3-1 of the Act. This will further reduce the potential for manipulation in the value of the Index. Finally, the Commission believes that the existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks, will help as well as detect any illegal activity.

#### B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as other standardized index options currently traded on the Amex, the Commission believes that adequate standards are in place to ensure the protection of investors in Index options.

#### C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities

<sup>28</sup> Other action that might be taken in consultation with Commission staff for failure to meet the maintenance standards would include the prohibition of opening transactions. See *e.g.* AMEX Rule 916C.

markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less susceptible to manipulation.<sup>29</sup> In this regard, the Amex, NYSE, and National Association of Securities Dealers, Inc., on whose markets the component securities of the Index trade, are all members of the Intermarket Surveillance Group ("ISG"), which provide for exchange of all necessary surveillance information.<sup>30</sup> Options on the individual component securities also trade on markets which are ISG members.

#### D. Market Impact

The Commission believes that the listing and trading of Index options on the Amex will not adversely impact the underlying securities markets.<sup>31</sup> First, as described above, due to the "equal dollar-weighting" method, no one stock or group of stocks dominates the Index. The quarterly rebalancing of the Index also will continue to ensure that domination by one or more stocks will not occur. Second, the component stocks generally will be actively traded, highly capitalized stocks. Third, all stocks comprising the Index are options eligible, and the maintenance standards ensure that at least 90% of the Index's numerical index value will continue to be options eligible. Fourth, the 9,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fifth, existing Amex stock

<sup>29</sup> See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849.

<sup>30</sup> The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, dated July 14, 1983, amended January 29, 1990. The members of the ISG are: Amex; Boston Stock Exchange, Inc.; CBOE; Chicago Stock Exchange, Inc.; National Association of Securities Dealers, Inc.; NYSE; PSE; and Phlx. The major stock index futures exchanges, including the Chicago Mercantile Exchange and the Chicago Board of Trade, joined the ISG as affiliate members in 1990.

<sup>31</sup> In addition, the Amex has represented that the Amex and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support this new series of index options that would result from the introduction of Index options. See Letter from Edward Cook, Jr., Managing Director, Information Technology, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated October 30, 1996; Letter from Charles H. Faurot, Managing Director, Market Data Services, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated November 4, 1996; Letter from Joseph P. Corrigan, Executive Director, OPRA, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated November 4, 1996.

index option rules and surveillance procedures will apply to the Index options. Sixth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation, just like any other standardized option traded in the United States.

Finally, the Commission believes that settling expiring Index options based on the primary exchange regular way opening sale prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stocks underlying options on the Index.<sup>32</sup>

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, the amendments clarify and strengthen the proposal by adding maintenance criteria and providing other information about the Index. Furthermore, the Amex's original proposal was published in the Federal Register for the full 21 day comment period without any comments being received by the Commission. The Commission notes that, with the exception of the initial number of components underlying the Index and the trading volume of certain components, the proposal, as amended, satisfies the Exchange's generic narrow-based index option listing standards contained in Amex Rule 901C, Commentary .02. As discussed above, the Commission believes that accelerating approval of Amendment Nos. 1 and 2 will allow the Exchange to begin listing options on the Index without further delay in order to provide an additional exchange-traded hedging vehicle for investors with risk exposure to securities in the various technology industries.

Based on the above, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act, and that good cause exists to approve Amendment Nos. 1 and 2 to the Amex's proposal on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions

<sup>32</sup> Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-96-35 and should be submitted by February 6, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR-Amex-96-35), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-38156; File No. SR-NASD-96-43]

**Self-Regulatory Organizations;  
National Association of Securities  
Dealers, Inc.; Order Granting Partial  
Approval and Notice of Filing and  
Order Granting Accelerated Approval  
of Amendment No. 1 to Proposed Rule  
Change Relating to Implementation of  
the Commission's Order Handling  
Rules**

January 10, 1997.

On November 18, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder.<sup>2</sup> On January 9, 1997, the NASD submitted a letter amending the proposed rule change.<sup>3</sup>

The proposed rule change adopts a new rule, and amends existing NASD rules and The Nasdaq Stock Market's ("Nasdaq") Small Order Execution System ("SOES") and SelectNet Service to enable the NASD to implement on a timely basis the Commission's new limit order display rule, Rule 11Ac1-4 under the Act<sup>4</sup> ("Display Rule") and amendments to Rule 11Ac1-1 under the Act<sup>5</sup> ("Quote Rule").

Notice of the proposed rule change, together with the substance of the proposal as initially filed, was provided by issuance of a Commission release (Securities Exchange Act Release No. 38008, Dec. 2, 1996) and by publication in the Federal Register (61 FR 64550, Dec. 5, 1996). The Commission received over 350 comment letters on the proposal.

**I. Introduction and Background**

**A. The Commission's Order Handling Rules**

On August 28, 1996, the Commission adopted the Display Rule, which requires the display of customer limit orders priced better than a market maker or specialist's quote, and adopted amendments to the Quote Rule to enhance the quality of published quotations for securities, and competition and pricing efficiency in U.S. securities markets.<sup>6</sup> These rules (collectively, "Order Handling Rules") were designed to address growing concerns about the handling of customer orders for securities.

Specifically, the Display Rule<sup>7</sup> requires the display of a customer limit order priced better than a specialist's or over-the-counter ("OTC") market maker's quote or that adds to the size associated with such quote if that quote

for reduction of the market maker minimum quotation size in the fifty Nasdaq securities subject to the first phase-in of the Order Handling Rules; (2) state that a market maker's obligation to maintain its displayed quotation size at or above the applicable minimum quotation size does not apply when the market maker's quote size has been decremented by the execution of SOES orders, until that quotation size is decremented to zero; (3) make the decremting provision optional for market makers whose quotation in a particular security is equal to or greater than the SOES tier size for that security; and (4) permit market makers to enter riskless principal orders, in addition to agency orders, into the Small Order Execution System.

<sup>4</sup> 17 CFR 240.11Ac1-4.

<sup>5</sup> 17 CFR 240.11Ac1-1.

<sup>6</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Adopting Release"). See also Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (order revising the effective date of the Order Execution Rules to January 13, 1997); and 38139 (January 8, 1997) (order revising the effective date of the Order Execution Rules until January 20, 1997).

<sup>7</sup> 17 CFR 240.11Ac1-4.

is at the national best bid or offer ("NBBO"). An OTC market maker who receives a customer limit order meeting these parameters must immediately: (1) change its quote and the size associated with its quote to reflect the limit order; (2) execute the limit order; (3) deliver the limit order to an exchange-or association-sponsored system that complies with the requirements of the rule; (4) send the limit order to another market maker or specialist who complies with the requirements of the rule; or (5) deliver a limit order to an electronic communications network ("ECN") that meets certain requirements regarding the display of limit orders, as an alternative to representing the limit order in its quote.<sup>8</sup>

One amendment to the Quote Rule<sup>9</sup> requires an OTC market maker to make publicly available any superior prices that a market maker privately quotes through ECNs ("ECN Amendment"). A market maker may comply with this amendment by changing its quote to display any such superior prices privately quoted. Alternatively, a market maker can deliver better priced orders to an ECN without changing its public quote if that ECN: (i) ensures that the best prices market makers and specialists have entered therein are communicated to the public quotation system; and (ii) provides brokers and dealers equivalent access to orders entered by market makers and specialists into the ECN, so brokers and dealers that do not subscribe to the ECN can trade with those orders ("ECN Display Alternative").

The ECN amendment becomes effective on January 20, 1997 for exchange traded securities and 50 of the 1000 most actively traded OTC securities. These 50 securities have been identified by Nasdaq.<sup>10</sup> The phase-in date for the next 100 securities is scheduled for February 7, 1997. On February 28, 1997, the additional 850 of the 1000 most actively traded securities will be phased in. Finally, on March 28, 1997, the ECN amendment will apply to all remaining OTC securities.

The Limit Order Display Rule also becomes effective on January 20, 1997 for all exchange traded securities and 50 OTC securities identified by Nasdaq. Other Nasdaq securities will become

<sup>8</sup> The Display Rule does not apply to limit orders placed by customers requesting that they not be displayed, limit orders for odd-lots, and limit orders that are all-or-none orders. The rules do not require the display of limit orders of block size (10,000 shares or \$200,000) unless the customer requests that the order be displayed.

<sup>9</sup> 17 CFR 240.11Ac1-1.

<sup>10</sup> See Letter from S. William Broka, Senior Vice President, Trading & Market Service, Nasdaq Stock Market, Inc., dated December 23, 1996.

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Letter from Robert E. Aber, NASD to Robert L.D. Colby, Commission, dated January 9, 1997. The amendment would (1) establish a three month pilot

subject to the rule on a phased-in basis, with all Nasdaq securities phased in by August 28, 1997.

### B. Changes Required to NASD Rules and Systems

The Adopting Release recognized that the Order Handling Rules would require the NASD, as well as national securities exchanges ("exchanges"), to change certain systems and rules to facilitate compliance with the Order Handling Rules by January 20, 1997.<sup>11</sup> For example, the NASD's SOES system currently accepts limit orders. If a limit order is not immediately executable, or non-marketable, (*i.e.*, a limit order to buy priced below the offer price, or a limit order to sell priced above the bid price), it is placed in the SOES limit order file and subsequently executed if the best bid for a buy, or offer for a sell order becomes equal to the limit price. Limit orders placed into SOES are never publicly disseminated, included in the calculation of the best bid or offer, or matched against incoming market orders. Thus, an OTC market maker that places a customer limit order into the SOES limit order facility would not comply with the Display Rule.

In addition, NASD Rule 4613 currently requires Nasdaq market makers to display continuous two-sided quotations in Nasdaq National Market ("NNM") securities (approximately the top 4000 Nasdaq securities) in sizes of 1,000, 500 or 200 shares, depending upon the price and trading volume of the security. However, the Display Rule may require a market maker to display in its quote a customer limit order that is smaller than the mandatory quotation size imposed by NASD Rule 4613. This creates the possibility that a market maker could be required to publish a quote at a price and size that it is otherwise unwilling to trade at for its own account. The changes to the NASD's systems and rules approved today are intended to facilitate compliance with the Order Handling Rules and are intended to more closely tailor a market maker's obligations to the structure of the Nasdaq market anticipated to result from implementation of the Order Handling Rules.

## II. Proposed Rule Changes To Implement the Display Rule

### A. Minimum Quotation Size Requirements

#### 1. Quote Size When Displaying Customer Limit Orders

To facilitate the display of customer limit orders in accordance with the Display Rule, the NASD proposes to amend NASD Rules 4613 and 6330 to provide that Nasdaq market makers and CQS market makers may display a quotation size for one normal unit of trading (*i.e.*, 100 shares) or a larger multiple thereof to reflect the actual size of a customer limit order.<sup>12</sup> Thus, if a market maker is bidding 20 for 1000 shares and offering 1000 shares at 20 $\frac{1}{4}$  (20 bid—20 $\frac{1}{4}$  offered, 1000 $\times$ 1000), and the market maker receives a customer limit order to buy 100 shares at 20 $\frac{1}{8}$ , the market maker would be permitted to update its quote to 20 $\frac{1}{8}$ —20 $\frac{1}{4}$ , 100 $\times$ 1000. Market makers would not be responsible for executing any additional shares above the size of the limit order. The NASD believes that this rule change will promote market maker acceptance of limit orders priced inside quoted markets, thereby furthering the investor protection and market transparency objectives of the Order Handling Rules. Moreover, without these rule changes, in instances where a customer limit order is smaller than the applicable minimum quotation size requirement and a market maker's quote is inferior to the limit order price, market makers would be obligated to execute trades at prices superior to their proprietary quotations. The NASD and Nasdaq maintain that subjecting market makers to such an order execution requirement would be unfair and create a disincentive for firms to function as market makers.<sup>13</sup>

<sup>12</sup> As noted above, NASD Rule 4613 currently requires each market maker in a Nasdaq issue to enter and maintain two-sided quotations with a minimum size equal to or greater than the applicable SOES tier size for the security (*e.g.*, 1,000, 500, or 200 shares for NNM issues and 500 or 100 shares for Nasdaq SmallCap Market issues). NASD Rule 6330 requires registered market makers in exchange-listed securities to display a minimum quotation size of 200 or 500 shares in each reported security (as established and published from time to time by the Association) depending on trading characteristics of the security.

<sup>13</sup> The Commission stated in the Adopting Release:

The Commission believes that SROs should consider amending such rules and modifying certain systems to allow a specialist or market maker to quote in sizes smaller than the minimum quotation size when such quote represents a customer limit order. With these changes, a specialist or market maker that displays a customer limit order in its quote pursuant to the Display Rule would not be responsible for executing as principal any additional shares at the limit price where the

#### 2. Quote Size When Displaying Proprietary Market Maker Quotes

The NASD stated in its filing that market makers should not be subject to minimum quote size requirements greater than a normal unit of trading in an environment in which Nasdaq market makers will compete with customers to affect quotation prices. The NASD also stated that the new order-driven nature of Nasdaq brought about by the Display Rule will obviate the regulatory justification for minimum quote size requirements because investors will have the capability to display their own orders in the marketplace. The NASD stated that the inclusion of limit orders and ECN orders in Nasdaq quotations should also ensure that market liquidity and price continuity will not be harmed by the elimination of minimum quotation size requirements. Therefore, it proposed to amend NASD Rule 4613 to require market makers to quote in minimum trading increments of 100 shares.

On January 9, 1997 the NASD filed an amendment to its filing that proposes allowing market makers to quote in minimum sizes of 100 shares for a three-month pilot program in the 50 Nasdaq stocks subject to the first phase-in under the Order Handling Rules. The remaining securities would still be subject to the existing minimum quotation display requirements for proprietary quotes.

### B. Operation of SOES

#### 1. Current Operation of SOES

NASD Rule 4611(f) requires each market maker in an NNM security to register as a SOES market maker in that security. SOES is voluntary for market makers in Nasdaq SmallCap securities. The maximum SOES order size for a NNM security is either 1,000, 500, or 200 shares, depending on the price and volume of the security; the maximum order size for a Nasdaq SmallCap Market security is 500 shares.<sup>14</sup> SOES automatically executes unpreferred

size of the customer limit order is less than the minimum quotation size set by the SRO.

Adopting Release, *supra* note, 61 FR at 48301 n.144.

<sup>14</sup> A 1,000 share maximum order size applies to NNM securities with an average daily non-block volume of 3,000 shares or more per day, a bid price not exceeding \$100 and with three or more market makers. A 500 share maximum order size applies to NNM securities with an average daily non-block volume of 1,000 shares or more per day, a bid price not exceeding \$150 and with two or more market makers. A 200 share maximum order size applies to NNM securities with an average daily non-block volume of less than 1,000 shares per day, a bid price not exceeding \$250 and with two or more market makers. See NASD Notice to Members 88-43 (June 22, 1988).

<sup>11</sup> See *supra* note 6.

orders in rotation against those market makers who are at the best quoted bid or offer on Nasdaq at the time the order is entered. With the agreement of the market maker, SOES orders also may be routed or "preferenced" to a particular market maker for execution at the inside market, regardless of what price the preferred market maker is quoting. A SOES market maker is obligated to execute SOES orders up to the minimum SOES exposure limit for that stock or such greater exposure limit established by the market maker. The minimum exposure limit for a particular stock is two times the applicable maximum SOES order size (e.g., 2,000 shares for stocks in the 1,000 share tier size). If a market maker's exposure limit is exhausted, it is temporarily suspended from SOES, placed in a "closed quote state," and permitted a five-minute period to restore its exposure limit. If a market maker does not restore its exposure limit within five minutes, it is automatically withdrawn from the stock and cannot re-enter quotes in the issue for at least twenty business days.

Thus, SOES is currently designed to execute orders against market makers based on the tier size for a particular stock, without regard to the quotation size displayed by a market maker. Because the minimum quotation sizes for market makers are presently aligned with the maximum SOES order sizes, it would not be possible to enter into SOES an order greater in size than the market maker's quote.

## 2. Changes to SOES in Response to the Order Handling Rules

Because market maker quotes will at times reflect customer limit orders under the Display Rule, the NASD proposed to modify SOES to execute market orders only against market makers' displayed quotation sizes.

### a. Decrementation of displayed quotation sizes after SOES executions.

To avoid instances where a market maker could automatically receive multiple SOES executions because it displayed a customer's limit order at a price superior to the market maker's proprietary quote or increased its quote size because of the limit order, the NASD has proposed to modify SOES to decrement<sup>15</sup> a market maker's displayed quote size upon the execution of unpreferred SOES orders. For example, if a market maker's quote in security ABCD is 20-20 $\frac{1}{4}$  (1000  $\times$  1000), and it receives a customer limit order to

buy 500 shares at 20 $\frac{1}{8}$ , it would update its quote to 20 $\frac{1}{8}$ -20 $\frac{1}{4}$  (500  $\times$  1000).<sup>16</sup> Thereafter, if the market maker received a SOES execution at 20 $\frac{1}{8}$  for 500 shares, the size of its bid would be depleted to zero and the market maker would have to re-enter a new quotation within five minutes, or withdraw from the stock for 20 days.<sup>17</sup> The NASD states that this change is intended to encourage market makers to accept and display customer limit orders because they will not be subject to mandatory SOES executions larger than the size of the limit orders they display or at prices at which the market maker is not willing to trade for its proprietary account.<sup>18</sup>

The NASD filed a letter amending the proposal to make decrementing optional for market makers whose quotation in a particular security is equal to or greater than the SOES tier size for that security. Thus, market makers who are willing to commit greater capital will have the option of accepting repeated orders at their quoted price and size on a stock-by-stock basis.

In the NASD's proposal for a pilot program for the quotation requirement, the non-pilot stocks would still be subject to the decrementing proposal. Thus, market makers would be required to publish a quote in non-pilot stocks in the required quote size, but this quote could be decremented. Once the quote was decremented to zero, or the market maker chose to manually change the price or size of the proprietary quote, the market maker would be required to enter at least the minimum quote size.

b. *Split order execution.* The NASD proposal would limit a market maker's SOES exposure to its displayed quotation size, even if less than the SOES maximum order size. In addition, SOES would be modified to decrement market makers' displayed quotation sizes in response to unpreferred SOES executions. To ensure that a SOES order can be executed in full in an environment in which SOES maximum order sizes may be greater than a market maker's displayed quote, the NASD has proposed changes to SOES that would allow one order to be executed against

multiple market makers. In addition, the NASD has proposed to change SOES to reject "all-or-none" orders.<sup>19</sup>

For example, if the inside market for ABCD is 20-20 $\frac{1}{4}$  and two market makers are each at the inside bid for 500 shares, a SOES market order to sell 1,000 shares of ABCD would be executed at 20, with both market makers buying 500 shares. In addition, because all market maker quotations at the inside could be depleted by the execution of a SOES order, SOES is being modified to permit market orders to be filled at multiple price levels. For example, if the inside market for ABCD is 20-20 $\frac{1}{4}$  and Market Makers A and B are each at the inside bid for 100 shares, with Market Maker C bidding at 19 $\frac{7}{8}$  for 800 shares, a SOES market order to sell 1,000 shares of ABCD would be executed against all three market makers. Market Makers A and B would each buy 100 shares at 20 and Market Maker C would buy 800 shares at 19 $\frac{7}{8}$ . Finally, a marketable limit order entered into SOES that exceeds the size of market maker quotes at the limit price receives a partial fill. The unfilled portion of the order is returned to the entering firm.

c. *Displayed quotation sizes will constitute exposure limits.* Under the proposal, decrementing market maker quotes after unpreferred SOES executions will cause each market maker's displayed quotation size to become its exposure limit. SOES will cease executing orders against a market maker once its quote size has gone to zero. Therefore, the NASD has proposed to amend the SOES rules to replace references to exposure limits with references to a market maker's displayed size.

d. *Prohibition against the entry of non-marketable limit orders into SOES.* SOES currently accepts both market orders and limit orders. If a limit order is not immediately executable, or non-marketable, (i.e., a limit order to buy priced below the offer price, or a limit order to sell priced above the bid price) it is placed in the SOES limit order file and subsequently executed if the limit price becomes equal to the best bid or offer. Limit orders placed into SOES are never publicly disseminated, included in the calculation of the best bid or offer, or matched against incoming market orders. The NASD maintains that the processing of such orders conflicts with the requirements of the Display Rule and with the duty of best execution as articulated in the Adopting

<sup>16</sup>The market maker could elect to quote a size of 1500  $\times$  1000 if it wished to also represent its own proprietary trading interest at the price established by the customer limit order.

<sup>17</sup>If the market maker is using the auto-refresh feature, described below, the update would be automatic.

<sup>18</sup>The NASD and Nasdaq also propose that displayed quotations not be decremented after the execution of an odd-lot order (i.e., an order for less than 100 shares) and that the execution of a mixed lot order (i.e., an order for greater than 100 shares but in an increment other than 100 shares) will only decrement a market maker's quotation by the number of shares represented by the number of round lots contained in the mixed lot order.

<sup>19</sup>An "all or none" order is a buy or sell order marked to provide that no partial transaction is to be executed.

<sup>15</sup>The term "decrement" is used here to mean to automatically reduce the quote by the number of shares executed against it.

Release.<sup>20</sup> Therefore, the NASD has proposed that SOES no longer accept non-marketable limit orders.

e. *Modifications to the SOES automated quotation update feature.* Currently, the "auto-refresh" feature of SOES updates both sides of a market maker's quotation in parallel by a pre-determined amount after a SOES execution. The NASD has proposed that, with regard to the fifty stocks that would be included in the pilot, the Nasdaq Stock Market would re-establish the market maker's quote, when it is exhausted, for one normal unit of trading. For those securities not subject to the pilot, the market maker's quote would be refreshed for the SOES tier size. For both pilot stocks and all other securities the auto-refresh feature would be modified to only update the side of a market maker's quote that has been decremented.<sup>21</sup>

In its amendment, the NASD proposes to refresh all stocks for the SOES tier size, because most stocks would remain subject to initial quotation requirements at this size. The NASD would refresh stocks subject to the pilot at the SOES tier size, because of difficulties programming its system to provide different refresh sizes for particular stocks.

f. *Allowing SOES market makers to enter agency orders into SOES.* A SOES market maker currently is prohibited from entering agency orders into SOES unless a locked or crossed market exists. This rule was intended to prevent market makers from engaging in "fair weather" market making by executing unwanted orders against other market makers through SOES. However, a market maker's disseminated quote may now reflect a customer limit order displayed in accordance with the Display Rule. The NASD has proposed to amend NASD Rule 4730 to permit a SOES market maker to enter agency orders into SOES to ensure that a customer's order has access to a better-priced customer limit order displayed in a market maker's quote regardless of whether the customer's broker dealer is a SOES market maker. Pursuant to the amendment, market makers would be able to enter riskless principal orders into SOES if these orders reflect customer agency orders.<sup>22</sup>

<sup>20</sup> See Adopting Release, *supra* note 1, 61 FR at 48324.

<sup>21</sup> The NASD has also proposed to amend the auto-refresh feature to allow a market maker to maintain its quote at the inside market. With this auto-refresh feature, those market makers seeking to buy or sell more stock than its displayed quotation could auto-refresh at its same quotation price if the market maker entered a quotation size equal to or greater than the maximum SOES order size.

<sup>22</sup> See *supra* note 3.

g. *Processing of marketable limit orders.* SOES currently is designed to execute marketable limit orders ahead of market orders queued in SOES.

Although a marketable limit order is functionally equivalent to a market order when the limit price is equal or superior to the inside market,<sup>23</sup> SOES currently provides preferential treatment to marketable limit orders. To eliminate the disparate treatment of substantively identical orders, the NASD proposed to amend SOES to execute market and marketable limit orders on a time priority basis.

h. *Market maker withdrawal from Nasdaq SmallCap Market securities.* Because SOES is voluntary for Nasdaq SmallCap Market securities, when a market maker's exposure limit is exhausted in one of these securities, the NASD does not deem the market maker to have voluntarily withdrawn from the stock, because the market maker can continue to quote the issue without participating in SOES. If market maker quotations are decremented after SOES executions, however, it will now be possible for a market maker in a SmallCap security to go into a "closed quote" state because its quotation size has been depleted. Accordingly, the NASD proposal would amend NASD Rule 4730(b) to specify that a market maker in a SmallCap security shall be deemed to have voluntarily withdrawn from a stock if its quote size remains at zero at the close of the trading day, thereby precluding the market maker from being a market maker in the issue for twenty business days.

### C. Proposed Rule Changes to Implement the ECN Amendment

The NASD also proposed to amend certain rules and characteristics of the SOES and SelectNet systems to facilitate the development of a means for ECNs to comply with the requirements of the ECN Display Alternative. As noted above, the ECN Display Alternative relieves an exchange specialist or OTC market maker of the requirement to publicly quote any superior prices that it privately displays through an ECN if that ECN: (1) Ensures that the best priced orders entered by market makers and specialists into the ECN are communicated to an exchange or Nasdaq for public dissemination; and (2) provides brokers and dealers access to orders entered by exchange specialists and OTC market makers into the ECN, so that brokers and dealers who do not subscribe to that ECN can

<sup>23</sup> That is, a limit order to buy priced at or above the offer and a limit order to sell priced at or below the bid.

trade with those orders. This access must be equivalent to the access that would have been available had the market makers or specialists reflected these superior prices in their public quotes.<sup>24</sup>

The NASD has proposed to implement, on an interim basis, a linkage to facilitate the operation of the ECN Display Alternative<sup>25</sup> based on existing Nasdaq system platforms, SOES and SelectNet ("SelectNet Linkage"). The methodology for establishing the SelectNet Linkage and the rule changes proposed by the NASD are described below.

#### 1. Overview of the Operation of the SelectNet Linkage

The SelectNet Linkage is intended to provide a means for an ECN to disseminate publicly the price and full size of the orders entered by specialists and OTC market makers to the NASD and to provide access to other broker-dealers to trade at those prices, equivalent to that provided in the market where the prices are disseminated. The SelectNet Linkage would disseminate ECN prices and sizes by utilizing the methodology currently used for displaying Unlisted Trading Privileges ("UTP") exchange quotes,<sup>26</sup> and would provide access to ECN prices in the same manner that broker-dealers currently may preference orders through SelectNet.

The SelectNet Linkage would allow an ECN to enter its best-priced orders into Nasdaq for display on the Nasdaq Workstation. To effect transactions against these displayed prices, an NASD member that subscribes to the Nasdaq Workstation II service would be permitted to access the ECN prices by directing orders through SelectNet to the ECN. New NASD Rule 4623 would

<sup>24</sup> See Adopting Release, *supra* note 6.

<sup>25</sup> The NASD stated in the filing that they continue to examine other means to develop a longer-term mechanism that would provide a permanent means to establish an ECN Display Alternative that meets every aspect of the Commission's rule. The NASD stated that it would propose a permanent approach separately from the instant filing.

<sup>26</sup> Pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information For Exchange Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privileges Basis ("Nasdaq/NMS/UTP Plan"), Nasdaq acts as the facilities manager for itself and the UTP Exchanges in collecting, consolidating and disseminating quotes from Nasdaq market makers and UTP exchange specialists that trade Nasdaq securities pursuant to Section 12(f) of the Act. The prices quoted by UTP exchange specialists appear on the Nasdaq montage with those quoted by Nasdaq market makers. Currently, UTP exchange specialists are not subject to SOES executions.

provide for display of and access to ECN prices and sizes and would articulate the standards for ECN participation in the SelectNet Linkage.

Proposed NASD Rule 4623 provides that an ECN that wishes to use the SelectNet Linkage, or any future system Nasdaq develops to facilitate compliance with the ECN Display Alternative, must: (1) Demonstrate to the NASD that it meets the ECN definition found in the Quote Rule; (2) be registered as a NASD member; (3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement; (4) agree to provide for Nasdaq's dissemination in the quotation data stream that it makes available to quotation vendors, the prices and sizes of Nasdaq market maker orders<sup>27</sup> at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ECN; and (5) provide an automated execution of priced orders displayed through the linkage or, if the price is no longer available, an automated rejection of any order routed to the ECN through the Nasdaq-provided display alternative.

a. *Display of ECN prices.* For quotation display purposes, ECNs would deliver prices to Nasdaq reflecting customer orders in their systems, and Nasdaq would display and disseminate rounded prices.<sup>28</sup> Nasdaq would furnish ECNs with market maker identifiers ("MMIDs"). While ECNs would be assigned MMIDs, ECNs would not be registered as market makers. With

<sup>27</sup> The ECN Amendment does not require an ECN to provide non-market maker interest in the data that would be provided under the ECN Display Alternative. Nasdaq has been informed, however, by several ECNs that have non-NASD member participants, e.g., institutional investors, that these ECNs will deliver to Nasdaq the best prices for each security for which they permit orders to be entered, whether those best prices are from a market maker subject to the rule or an entity not subject to the rule. If the ECN so chooses, it may send priced orders to Nasdaq from other entities that are not Nasdaq market makers or exchange specialists. Nasdaq will display such prices as it does other ECN-provided prices.

<sup>28</sup> ECNs often display priced orders that are quoted in finer increments (e.g.,  $1/16$ ,  $1/32$ ,  $1/64$ ) than the minimum variation for Nasdaq (currently  $1/8$  for stocks over \$10). Under the ECN Amendment, Nasdaq would not be required to display the actual price of the finer-incremented order; instead, it would round the order to the nearest standard quote increment (rounding down for increments on the better-priced bids and up for better-priced offers). The Commission in the Adopting Release stated that Nasdaq should develop a capability in its quote dissemination system to flag or specially denote that an ECN priced order is rounded, but noted that this capability does not currently exist. Nasdaq has stated that it is developing a rounding indicator. See Letter from Alfred R. Berkeley, President, NASD to Richard R. Lindsey, Director, Division of Market Regulation, SEC, dated November 18, 1996, and letter from Richard R. Lindsey to Alfred R. Berkeley, dated November 22, 1996 (regarding display of rounded prices in public quotes).

the exception of certain rules such as the NASD's firm quote rule, the two-sided quote requirement,<sup>29</sup> and the locked and crossed markets rule discussed below, ECNs would not be subject to standard market maker requirements in the NASD's Rules. Nasdaq would include the ECN prices and sizes in the Nasdaq Workstation II quote montage with the ECN MMID and incorporate the ECN price in the Nasdaq best price calculation. When the ECN is at the best bid or offer in the market, its price would be included in the NBBO.

For example:

NBBO  $20\frac{1}{8}$ - $20\frac{1}{4}$ , 1000 x 1000  
 ABCD  $19\frac{7}{8}$ - $20\frac{1}{4}$ , 1000 x 1000  
 EFGH  $20$ - $20\frac{1}{2}$ , 1000 x 1000  
 ECNA  $20\frac{1}{8}$ - $20\frac{1}{4}$ , 1000 x 1000 (an ECN)

Following current practices for UTP exchanges, Nasdaq would not include the ECN as a SOES market maker. Consequently, an ECN participating in the SelectNet Linkage would not be subject to SOES executions. The NASD stated in its filing that it would not subject ECNs to SOES executions because the ECN would be exposed to the risk of double executions and the consequent need to take a principal position, which is inconsistent with the ECN's role of acting solely as agent on behalf of its customers. The NASD stated that the risk of double executions arises because, with electronic order entry capabilities, once an order is displayed in multiple execution systems, such as SOES and an ECN's own system, the same order can be accessed nearly simultaneously by different counterparties.

b. *Access to ECN prices.* NASD members would be able to reach ECN prices displayed in Nasdaq by directing orders through SelectNet, up to the size displayed in the ECN quote. The ECN would have the ability to accept orders at the displayed price, or accept orders at an improved price if its actual price is at an increment better than that displayed.<sup>30</sup> The ECN would review its

<sup>29</sup> The requirement for ECNs to display two-sided quotes is a temporary requirement, contingent on Nasdaq's development of a capability that permits ECNs to display a one-sided quote. Nasdaq recognizes that ECNs often have orders only on one side of the market. Currently, however, because Nasdaq's quote display system was built to display market maker quotations and market makers are required by rule to furnish both a bid and offer, Nasdaq's system would be unable to recognize an ECN price unless that price were also entered with a corresponding bid or offer. Accordingly, until such time as Nasdaq builds a one-sided ECN priced order display capability, ECNs must enter two-sided "quotations." The NASD and Nasdaq believe that the one-sided ECN order entry capability should be available sometime in the first quarter of 1997.

<sup>30</sup> See discussion below regarding the execution of SelectNet orders at rounded ECN prices when

own file to determine whether the priced order displayed in Nasdaq has already been executed in the ECN's own system. The ECN could reject the order if the order residing in its own system already has been executed by the time the SelectNet order is delivered to the ECN. An ECN cannot decline an order delivered through the SelectNet Linkage because it may find a better order elsewhere. The Commission understands that ECNs that wish to utilize the SelectNet Linkage will be required to provide virtually immediate responses to members entering orders seeking to access publicly displayed ECN orders.<sup>31</sup> The Nasdaq Workstation Subscriber Agreement would require prompt and non-discriminatory execution of linkage orders by the ECN.

In addition, as NASD members and subscribers to the Nasdaq Workstation II service, ECNs would be subject to contractual obligations to demonstrate that their systems are properly designed to operate in high volume trading environments and that they have adequate security and other operational procedures in place to maintain the integrity of Nasdaq systems. ECNs that are not willing or are unable to comply with such system requirements would not be permitted to establish a SelectNet Linkage for ECN Display Alternative purposes.

## 2. Other Rule Changes Necessitated By Development of the SelectNet Linkage

a. *SelectNet changes.* i. *Current operation of SelectNet.* SelectNet is an automated order routing and execution system that allows a member to direct buy or sell orders in Nasdaq securities to a single market maker (preferred orders) or broadcast orders to all market makers in the security. Upon receiving a SelectNet order, a member can accept the order, decline it (if consistent with its firm quote obligations), or send a counter-offer to the originating member.

ii. *Elimination of SelectNet Broadcast feature.* The NASD has proposed to eliminate the SelectNet Broadcast feature and allow only the entry of a SelectNet order directed to a specific market maker or ECN. The NASD offered several reasons for eliminating the Broadcast feature in its rule filing. The NASD noted that with the Broadcast feature, SelectNet falls within

such orders are priced at increments finer than those permitted to be displayed in the consolidated quote system.

<sup>31</sup> An ECN is expected to respond on an automated basis to orders delivered through the SelectNet Linkage much more rapidly than a market maker that receives an order delivered through SelectNet.

the definition of an ECN<sup>32</sup> because it is an "electronic system that widely disseminates to third parties orders entered therein by an exchange specialist or OTC market maker, and permits such orders to be executed against in whole or in part." The NASD stated that it would be unable to make the systems changes necessary to permit a market maker to rely upon the ECN Display Alternative if it entered a priced order into SelectNet. Consequently, market makers that entered priced orders into SelectNet Broadcast would be required to change their quotes in the Nasdaq Workstation display. The NASD also stated that the SelectNet Broadcast feature is a very significant drain on Nasdaq network capacity resources, and in the face of potentially heavy additional system usage pursuant to the Order Handling Rules, network resources are more appropriately devoted to establishing the ECN linkage for directed orders.

iii. *Acceptance of orders at improved prices.* The NASD has also proposed a modification to SelectNet to permit an ECN or market maker receiving an order through SelectNet at a specific price to execute that order at a price reflecting price improvement without having to go through the currently designed counter-offer mechanism. Currently, when a market maker receives a SelectNet order, it can accept at the price sent by the order entry firm; or it can counter with a different price or size. As soon as the market maker puts in a different price, however, the current system treats the new price as a counter-offer message. Because ECNs are likely to hold orders at increments that cannot currently be shown in Nasdaq, when an ECN attempts to accept an order at a better price, e.g., 1/16th better, the extant SelectNet system would treat the new price as a counter-offer. Accordingly, to comply with the ECN Amendment requirement that orders be executed at their actual prices, Nasdaq will change SelectNet to prevent the counter-offer mechanism from operating in such a situation and will deliver to the order entry firm and the ECN an execution report at the improved price.

b. *SOES rule change.* The NASD also has proposed an amendment to NASD Rule 4730 to modify the SOES system to reject orders entered when an ECN or UTP Exchange alone sets the price of the NBBO. Although UTP exchanges and ECNs can establish the best price in Nasdaq, they are not required to participate in SOES as market makers and therefore are not accessible through SOES. Proposed Rule 4730(b)(10)

provides that if there are no SOES market makers at the best bid or offer that is being disseminated by Nasdaq, orders entered into SOES will be returned to the order entry firm to permit the order entry firm to direct the order to the entity establishing the best price.

Because the ECN quote is incorporated in Nasdaq's inside price but is not accessible through SOES under this approach, and SOES is programmed to execute at the best price displayed, SOES, as currently designed and operating, would execute orders against the next available Nasdaq market maker at the inside price established by an ECN whether that Nasdaq market maker is at the better ECN price or at an inferior price. The NASD expressed concern that a person could "game" SOES by entering an order into an ECN that drives the Nasdaq inside quote and obtain multiple SOES automated executions at that price against Nasdaq market makers even though they are not quoting the ECN price.

Therefore, the NASD has proposed to modify SOES to return unexecuted SOES orders to the entering member when the inside quote consists of a SOES-inaccessible price. Order entry firms that enter orders into SOES during the period when there is no SOES market maker at the inside market will be informed that the order has been rejected and may choose to route that order into SelectNet to access the ECN order driving the inside market or take other measures, such as routing the order to a market maker that guarantees the best price.<sup>33</sup> The NASD stated that it believes that order entry firms could avoid submitting orders to SOES during times that a SOES-inaccessible price drives the inside by developing automated means to determine when an ECN or UTP exchange is alone at the inside and delivering orders at such times to an ECN through the SelectNet directed order capability.<sup>34</sup>

c. *Locked and crossed markets rule amendments.* The NASD has proposed amendments to its locked and crossed markets rule, Rule 4613(e), to state that the locked and crossed markets rule

<sup>33</sup> The NASD and Nasdaq have committed to continue to develop a longer-term approach to the ECN Display Alternative that would better integrate various electronic systems.

<sup>34</sup> The NASD considered the alternative of modifying SOES to ignore the ECN or UTP quote and execute SOES orders at the Nasdaq market maker's inferior price. The NASD expressed concern that this approach would raise best execution concerns because the customer's order entered in SOES would be executed at a price inferior to the best price displayed in Nasdaq's inside market.

applies to any NASD member, when that member enters into an ECN a priced order that is displayed in Nasdaq. The proposed amendment also states that the locked and crossed markets rule would apply to ECNs when the ECN, as an NASD member acting as agent, represents an institutional order or other non-NASD member order the price of which would lock or cross the best bid or offer in Nasdaq. Therefore, under the proposed locked and crossed markets rule, NASD members using ECNs, and ECNs themselves for non-member orders, must comply with Nasdaq's rule that before a market is locked or crossed, the locking or crossing party must first make reasonable efforts to execute the quote that would be locked.

The NASD believes that locked or crossed markets can cause investor confusion because investors will not know the true price of the security at the time when a locked or crossed quote is publicly displayed. The NASD also notes that broker-dealers operating internal order execution systems may be foreclosed from operating those systems when the market for a particular security is locked or crossed.

The NASD and Nasdaq believe that an ECN should be prohibited from entering an institutional order into Nasdaq until the ECN has made a reasonable effort to reach the entity on the other side of the market whose quote would be locked or crossed. It should be noted that if an ECN locks or crosses the market, is alone at that price, and a SOES order is entered against the ECN price that is causing the lock or cross, SOES will be programmed to reject such orders, rather than executing them against a Nasdaq market maker at a different price level.

### 3. Modifications to Autoquote Policy

Currently, the NASD's Autoquote Policy—which prohibits computer generated quotes—does not allow a market maker to autoquote to display a customer limit order. Although the NASD has previously interpreted the policy to permit a customer limit order to be displayed on an automated basis, because of the requirements of the Display Rule and the benefits to investors and the marketplace to be derived from the Display Rule, the NASD has proposed an amendment to the Autoquote Policy to clarify that it is permissible to autoquote to display a customer limit order.

Another amendment to the Autoquote Policy proposed by the NASD clarifies that ECNs may autoquote to maintain a continuous two-sided quote for as long as Nasdaq requires ECNs to enter two-sided quotes because of existing systems limitations. Once Nasdaq develops a

<sup>32</sup> SEC Rule 11Ac1-1(a)(8).

system capability that permits ECNs to display a one-sided quote, this exception would lapse.

### III. Comments

The Commission received 366 comment letters.<sup>35</sup> A separate summary of comments has been prepared and is available in the public file. The specific issues addressed by commenters will be discussed in the appropriate sections of this order.<sup>36</sup>

### IV. Discussion

The standard by which the Commission must evaluate proposed rule changes is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.<sup>37</sup> In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information.<sup>38</sup> After carefully

<sup>35</sup> The Commission received comment letters from numerous broker-dealer firms, some of which are market makers, and others that are order entry firms. The Commission received comment letters from a large number of individuals who could be identified as SOES traders. The Commission also received comment letters from one self-described entrepreneur, several individual investors and academic commenters. In addition, comment letters were received from several professional associations. The Commission also received comment letters from a member of Congress, Instinet, the American Stock Exchange ("Amex") and the Chicago Board Options Exchange ("CBOE").

<sup>36</sup> Several commenters asked that the Commission extend the comment period to allow additional comment. See letter from the Honorable Ralph Hall to Arthur Levitt, Chairman, SEC, dated January 8, 1997. The Commission provided the full comment period required under the statute and received over 350 comments. The Commission also has considered numerous comments received after the close of the comment period. In view of the importance of considering the NASD's proposals before the effective date of the Order Handling Rules, however, a longer comment period was not practicable.

<sup>37</sup> 15 U.S.C. §78s(b). The Commission's statutory role is limited to evaluating the rules as proposed against the statutory standards, and does not require the SRO to prove its proposal is the least burdensome solution to a problem.

<sup>38</sup> In the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress directed the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and promote the goals of economically efficient securities transactions, fair competition, and best execution. Congress granted the Commission "broad, discretionary powers" and "maximum flexibility" to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission "the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." S.Rep. No. 75, 94th Cong., 1st Sess., at 7 (1975).

considering all of the comments, and based on the Commission's experience and knowledge of current market practices and conditions, the Commission believes the NASD's proposed rule changes are consistent with the Act. As noted earlier, the Commission is not acting at this time on the NASD's proposed change to the SelectNet broadcast feature.

Section 15A of the Act, which incorporates by reference Section 11A of the Act, establishes specific standards for NASD rules against which the Commission must measure the NASD proposal.<sup>39</sup> As discussed below, the Commission has evaluated the NASD's proposed changes in light of the standards and objectives set forth in Sections 15A and 11A of the Act.

In enacting the 1975 Amendments and establishing the objective of achieving a national market system, Congress focused closely on the concept of best execution. To this end, Section 11A provides, among other things, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions; fair competition among market participants; the availability to brokers, dealers and investors of information with respect to quotations in securities; and the practicality of brokers executing orders in the best market.<sup>40</sup>

Further, as discussed in the Adopting Release for the Order Handling Rules, the 1975 Amendments contain an explicit statutory mandate for the establishment of a national market system. Congress considered mandating certain minimum components of the national market system, but instead created a statutory scheme granting the Commission broad authority to oversee the implementation, operation and regulation of the national market system.<sup>41</sup> In accordance with this mandate, the Commission adopted the Order Handling Rules last year.

The Commission believes that the rule changes proposed by the NASD are consistent with the NASD's obligations under the Order Handling Rules and with the regulatory framework for a national market system established by Congress in the 1975 Amendments. Congress envisioned a national market system supported by accurate and reliable public quotation and transaction information, and the

<sup>39</sup> See 15 U.S.C. §§ 78k-1 and 78o-3.

<sup>40</sup> 15 U.S.C. § 78k-1(a)(1).

<sup>41</sup> S. Rep. No. 75, 94th Cong., 1st Sess. 8-9 (1975) ("Senate Report").

practicability of brokers executing investors' orders in the best market.<sup>42</sup> The Commission expects that the NASD's rule changes will enhance transparency and facilitate best execution of customer orders, thereby contributing to the achievement of the full potential of the national market system. Further, the NASD's rule changes will bring its systems in compliance with the Order Handling Rules and ensure that its members will be able to meet their obligations under the Order Handling Rules.

The Commission also believes that the proposal advances the objectives of Section 11A of the Act.<sup>43</sup> The Commission believes that in furthering the objectives of the Order Handling Rules, the proposed changes submitted by the NASD are designed to remove impediments to the operation of a free and open market and a national market system, enhance the protection of investors and the public interest, and produce fair and informative quotations, consistent with Sections 15A(b)(6)<sup>44</sup> and 15A(b)(11)<sup>45</sup> of the Act. In addition, the Commission believes that the benefits of the proposal in terms of making the systems and regulatory changes necessary to provide for the enhanced opportunities for price improvement and greater transparency of customer limit orders under the Commission's Order Handling Rules outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission believes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>46</sup>

<sup>42</sup> Exchange Act Section 11A(a)(1)(C)(iii) & (iv), 15 U.S.C. § 78k-1(a)(1)(C)(iii) & (iv).

<sup>43</sup> See 15 U.S.C. § 78k-1.

<sup>44</sup> Section 15A(b)(6) authorizes the NASD to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Furthermore, the rules of the NASD must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

<sup>45</sup> Section 15A(b)(11) authorizes the NASD to adopt rules relating to quotations. Such rules must be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

<sup>46</sup> S.Rep. at 13-14. In weighing the competitive effects of an SRO rule filing, the Commission must

The Commission has determined at this time to approve the NASD's proposed rule change.<sup>47</sup> The Commission believes that the rules being approved today are consistent with the Act, in particular, with Sections 11A(a),<sup>48</sup> 15A(b)(6),<sup>49</sup> 15A(b)(9)<sup>50</sup> and 15A(b)(11)<sup>51</sup> of the Act and Rules 11Ac1-1 and 11Ac1-4 thereunder.

Various commenters supported the proposed rule change, including market makers, broker-dealers and associations representing broker-dealers. Most of these commenters believed that the proposed rule change would facilitate the implementation of the Order Handling Rules. Many commenters opposed to the proposed rule change cited a concern for decreased liquidity and increased volatility as a potential result of approving the proposed rule change. Still other commenters, including broker-dealers, individual investors and day traders, supported various aspects of the proposed rule change while opposing others. The Commission has determined, for the reasons discussed below, to partially approve the proposal, and to approve Amendment No. 1 on an accelerated basis.

Most of the favorable comments, as discussed below, supported the NASD's efforts to implement the Order Handling Rules by providing mechanisms for the display of customer limit orders and

balance any perceived anti-competitive effects against other statutory objectives. The statute does not require the NASD to achieve its objective by selecting the least anti-competitive alternative. See *infra* notes 86-87 and accompanying text.

<sup>47</sup> The Commission is not approving, however, the exception of the proposed elimination of the SelectNet broadcast feature, which the Commission is still considering. Furthermore, the Commission is approving the elimination of the minimum quotation requirement only for the NASD's pilot program for 50 stocks for a three-month period.

<sup>48</sup> Section 11A(a)(1)(C) provides that it is in the public interest among other things, to assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

<sup>49</sup> Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest.

<sup>50</sup> Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

<sup>51</sup> Section 15A(b)(11) requires the NASD, among other things, to formulate rules designed to produce fair and informative quotations.

orders placed in ECNs by market makers within the time frame set forth by the Commission in the Adopting Release. In light of all the comment letters received, the Commission believes that the proposal represents a workable first step in the implementation of the Order Handling Rules. In adopting the Order Handling Rules, the Commission firmly believed that they would increase investor protection by ensuring that customer limit orders were immediately displayed in the markets, thus narrowing the quote and increasing quote competition and customer interaction, and by providing investors information about and access to superior prices that specialists and market makers displayed in ECNs. To provide these benefits to the public as soon as possible, the Commission set an accelerated implementation period that was brief in view of the magnitude of the changes necessary to prepare for the Order Handling Rules.

In responding to the established deadlines with the necessary changes to its systems and rules, the NASD was subject to several significant constraints. First, the NASD sought to create a linkage with ECNs by modifying its existing systems because the schedule for implementation of the rules precluded developing new systems or making extensive revisions to its existing systems. Second, the redesign of the NASD's SOES and SelectNet systems ("Legacy systems"), which the NASD has proposed to replace with a newer NAqcess system, was limited by these existing Legacy systems' age and inflexibility. Third, the Nasdaq system has experienced rapid growth in trading and message volume, and has struggled to maintain sufficient capacity for this growth. The significant quote changes resulting from the Order Handling Rules are expected to place serious additional demands on Nasdaq system capacity. Because of these significant constraints and the need to comply with the Order Handling Rules' effective dates, the NASD made a number of compromises in adapting its systems and rules to the Order Handling Rule requirements. These compromises underlie many of the issues raised by commenters regarding the amendments. In a number of instances, the NASD intends to revise its systems after the rules go into effect, which will reduce some of the concerns raised by the commenters.

#### A. Changes to Minimum Quote Size Requirements

##### 1. Comments

Commenters favoring this aspect of the proposal include market makers,

professional associations, institutions and Instinet. These commenters generally agreed with the NASD that the Order Handling Rules will transform Nasdaq into more of an order-driven market, and that market makers should no longer be required to quote more than 100 shares because investor orders will be displayed to the market and included in Nasdaq quotations. These commenters did not believe that liquidity would be adversely affected by the amendment.

These commenters believe that the amendment will motivate market makers to display a size commensurate with their interest whether as principal or agent. They note that this will enhance price discovery, as market makers will not be forced to a quotation size that is not reflective of their actual trading interest, nor will market makers be restricted in their ability to commit capital without also having an opportunity to negotiate an appropriate clearing price.<sup>52</sup> Making the quotation requirement the lowest unit of trading, rather than an artificial minimum decreed by regulation, also conforms to the practices of other markets (e.g., the NYSE and Amex).<sup>53</sup> Finally, these commenters believe that the competitive environment that will result from allowing market makers to quote in sizes equal to their own freely determined trading interest will enhance pricing efficiency.<sup>54</sup>

<sup>52</sup> Letter from Peter W. Jenkins, Chairman, and Holly A. Stark, Vice Chairman, Security Traders Association Institutional Committee, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("STAIC Letter"); letter from William H. Sulya, Vice President-Manager & Director, Nasdaq/OTC Department, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("A.G. Edwards Letter"); letter from Taymond V. Wilmarth, Vice President and Manager, Equity Trading, Stephens Inc., to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("Stephens Letter"); letter from Antonio Cecin, Managing Director, Equity Trading, Piper Jaffray Inc., to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("Piper Jaffray Letter"); letter from Paul Schott Stevens, Senior Vice President and General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("ICI Letter"); letter from Robert J. McCann, Managing Director, Co-Head, Global Equity Markets, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated January 7, 1997 ("Merrill Lynch Letter").

<sup>53</sup> Letter from Dennis Marino, Chairman, and John N. Tognino, President, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("STA Letter"); letter from Dennis Marino, President and Chief Executive Officer, Sherwood Securities Corp., to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("Sherwood Securities Letter"); letter from Bart Green, Manager, OTC Trading, and Phil Schwab, Principal, Edward Jones, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("Edward Jones Letter"); Merrill Lynch Letter.

<sup>54</sup> Letter from Robert Padala, President, The Security Traders Association of New York, Inc., to

One supporting commenter noted that liquidity will not be reduced because many firms provide automated execution at the quote for small and medium sized customer orders and to other dealers in the market through systems other than SOES.<sup>55</sup> This commenter believes many dealers will continue this practice for competitive reasons.

Commenters opposing the proposal include several order entry firms, some academics, certain individual investors, the Amex and the CBOE. Most of these commenters argued that the proposal would adversely impact liquidity and create volatility. Several commenters were concerned that with the 100-share minimum quotation size all SOES market makers' quotations would easily be exhausted and result in a closed quote state.<sup>56</sup> The NASD rule, in the view of some, would reduce the value of displayed market maker quotes, provide no incentive to quote larger sizes and undermine the Quote Rule.<sup>57</sup>

Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("STANY Letter"); letter from Alan B. Levenson, Esq. and Robert H. Rosenblum, Esq., Fulbright & Jaworski L.L.P., on behalf of Herzog, Hein, and Geduld, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("Herzog, Heine, Geduld Letter"); letter from the Denver Security Traders Association, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("DSTA Letter"); letter from George K. Jennison, Managing Director, Nasdaq Trading, Wheat First Butch Singer, to Jonathan G. Katz, Secretary, SEC, dated December 31, 1996 ("Wheat First Letter"); Merrill Lynch Letter.

<sup>55</sup> Wheat First Letter.

<sup>56</sup> See Letters from Scott Dishner, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Dishner Letter"); Patrick G. Dolan, to Jonathan G. Katz, Secretary, SEC, dated December 30, 1996 ("Dolan Letter"); Joseph Pellechia, to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("Pellechia Letter"); Ishtaj Rahman, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Rahman Letter"); Joel Rebhun, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("J. Rebhun Letter"); letter from Timothy Whelan, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Whelan Letter").

<sup>57</sup> Letter from Bruce L. Miller, to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("B. Miller Letter"); letter from David K. Whitcomb, Professor of Finance, Graduate School of Management, Rutgers University, to Dr. Richard Lindsey, Director, Division of Market Regulation, SEC, dated November 21, 1996 ("Whitcomb Letter (11/21/96)"); letter from Ilian Petrov, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Petrov Letter"); letter from Sayan Bhattacharya, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Bhattacharya Letter"); letter from John Geisler, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Geisler Letter"); letter from William Turner, President, Turner Vision, to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("Turner Vision Letter"); letter from Paul Schultz, Associate Professor of Finance, College of Business, The Ohio State University, to Richard Lindsey, Director, Division of Market Regulation, SEC, dated December 13, 1996 ("Paul Schultz Letter"); letter from Winston Meyer, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Meyer Letter").

A few order entry firms asserted that the proposal effectively reduces market maker risk by 90%.<sup>58</sup> A number of commenters said that reducing the minimum quote size would effectively eliminate investors' ability to execute orders against market makers' quotes through SOES during volatile trading conditions in individual stocks or market-wide, under the theory that there would be no trading interest in the market from customers or market makers during such times. These commenters argue that this was the very reason that SOES was made mandatory after the 1987 Market Break.<sup>59</sup> One commenter representing a group of SOES users argued that the display of a limit order does not obviate the need for market maker quotes and that the Commission, in the Adopting Release, seemed to suggest that a need for market maker quotes would continue. This commenter argued that the NASD's proposal is thus inconsistent with the Adopting Release.<sup>60</sup>

Amex and CBOE expressed concern over the rule's impact on options market makers' ability to trade at the quote.<sup>61</sup> Several commenters believed the requirement will hurt small order entry firms without order routing arrangements.<sup>62</sup>

<sup>58</sup> Letter from Linda Lerner, General Counsel, All-Tech Investment Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated November 22, 1996 ("All-Tech Letter (11/22/96)"); letter from Marina Kaneti, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Kaneti Letter"); letter from Michael O'Reilly, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("O'Reilly Letter"); letter from Tolga Erman, to Jonathan G. Katz, Secretary, SEC, undated ("Erman Letter"); letter from David Sciortino, to Jonathan G. Katz, Secretary, SEC, December 19, 1996 ("Sciortino Letter"); letter from Frederick N. Balbi, President, FNB Management [sic] Inc., to Jonathan G. Katz, Secretary, SEC, undated ("FNB Letter").

<sup>59</sup> See e.g., letter from Jason Goldstein, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Jason Goldstein Letter"); letter from Rob Lindauer, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Lindauer Letter"); letter from Bryan Hollander, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Hollander Letter"); letter from James R. Gibbs, Jr., to Jonathan G. Katz, Secretary, SEC, dated December 15, 1996 ("Gibbs Letter"); letter from Alexander Goor, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Goor Letter").

<sup>60</sup> J. Lee Letter.

<sup>61</sup> The Amex also asked the Commission to clarify that the Limit Order Protection Interpretation of the NASD (Manning II) still requires market makers to fill customer limit orders at the quote prior to or at the same time as trading for its dealer account. The Commission notes that the present proposal has no effect on the outstanding Limit Order Protection Interpretation of the NASD. Letter from James F. Duffy, Executive Vice President and General Counsel, American Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("Amex Letter").

<sup>62</sup> Letter from Raymond L. Hope, Jr., to Jonathan G. Katz, Secretary, SEC, dated December 21, 1996 ("Hope Letter"); Turner Vision Letter; letter from

Many commenters, while opposed to the change in the minimum quote size requirement for the market maker's proprietary quote, were not opposed to the change in the minimum quote size for market makers displaying a customer limit order.<sup>63</sup>

Finally, a number of commenters opposed to the rule suggested an alternative under which a market maker would separately display both its own proprietary quote and any customer limit orders it holds.<sup>64</sup> They suggested that this could be accomplished either through separate quotes with separate market maker identifiers or as a separate field in the Nasdaq display.

## 2. Commission Analysis

The Commission has determined to approve the amendment to reduce quotation size requirements for market makers displaying customer limit orders. The Commission believes there are substantial reasons, as explained below, to expect that reducing market makers' proprietary quotation size requirements in light of the shift to a more order-driver market would be beneficial to investors. To gain practical experience with the proposal, the Commission has determined to approve, on a three-month pilot basis, the amendment reducing quotation size requirements for market makers displaying proprietary quotes for the 50 securities first subject to the Limit Order Display Rule.<sup>65</sup> During this pilot program, the Commission, the NASD

David K. Whitcomb, Professor of Finance, Graduate School of Management, Rutgers University, to Richard Lindsey, Director, Division of Market Regulation, SEC, dated January 7, 1997 ("Whitcomb Letter (1/7/97)"). See also letter from Yusuf Simaan, Associate Professor of Finance, Fordham University, to Richard Lindsey, Director, Division of Market Regulation, SEC, dated December 9, 1996 ("Simaan Letter"); letter from John M. Lang, President, I.Q. Management, Inc., to Jonathan G. Katz, dated December 19, 1996 ("I.Q. Letter").

<sup>63</sup> Letter from Elizabeth Erwin, President, Momentum Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("Momentum Letter"); letter from James H. Lee et al., to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("J. Lee Letter"); letter from Dongsoo Lee, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Dongsoo Lee Letter").

<sup>64</sup> Whitcomb Letter (11/21/96); letter from Michael F. Frey, President, A.J. Michaels & Co., Ltd., to Jonathan G. Katz, Secretary, SEC, dated November 20, 1996 ("A.J. Michaels Letter"); letter from Dennis Grossman, President, Grossman & Co., to Jonathan G. Katz, Secretary, SEC, dated December 21, 1996 ("Grossman Letter"); letter from Wesley Jordan, to Jonathan G. Katz, Secretary, SEC, undated ("W. Jordan Letter"); letter from David T.K. Lu, to Jonathan G. Katz, Secretary, SEC, undated ("Lu Letter").

<sup>65</sup> These securities, selected by Nasdaq from the 500 most actively traded securities, range in median daily dollar volume from first to 478th, cover a range of industry sectors, and have an average spread ranging from 1/8 to over one dollar.

and Nasdaq will evaluate the effect of reduced quotation sizes on the market for these securities. As discussed below, factors to be considered in this evaluation include, among others, the impact of reduced quotation sizes on liquidity, volatility and quotation spreads. The Commission believes that the quote size amendment is consistent with the Sections 11A and 15 of the Act both for proprietary and limit order quotes because, in the context of the implementation of the Order Handling Rules, it is designed to encourage fair competition and improved quotation prices, thus improving the quality of executions for investors.

The Commission believes that when an OTC market maker displays a customer limit order, it is appropriate to relieve the market maker of the obligation to quote a minimum size at the limit price. As noted by the NASD and many commenters, if the limit order is smaller than the minimum required quotation size, the quotation requirement would expose the market maker to a principal execution at a price established by the limit order, not by its own proprietary trading interest. In adopting the Limit Order Display Rule, the Commission did not intend to increase market makers' principal exposure and indeed expressly noted that the SROs should consider amending their rules as necessary to allow market makers displaying customer limit orders to quote in smaller size increments.<sup>66</sup>

The Commission is also approving, on a limited basis, the NASD's reduction of minimum quotation sizes for proprietary market maker quotes. The Commission recognizes the concerns of many of the opposing commenters regarding the provision's potential impact on liquidity and volatility. The Commission, based on its experience with the markets and discussions with market participants, believes that decreasing the required quote size will not result in a reduction in liquidity that will hurt investors. As discussed in its release adopting the Order Handling Rules, the Commission expects the public display of market makers' ECN orders and customer orders to add significant depth and stability to the market in OTC stocks. Indeed, the display of customer limit orders provides an unprecedented opportunity in the Nasdaq market for customer interest to interact without the intervention of a dealer. In this regard, the Commission also anticipates that many market makers will choose to display larger quotes as a competitive

matter. For these reasons, the Commission also does not believe that the amendments will result in smaller quotes that will prevent investors from obtaining executions in market crises. The Commission also notes that brokers often use other means, such as directing orders to market makers through SelectNet, routing orders on a pre-agreed basis through the NASD's ACES systems, or using private order routing systems, to obtain automated executions for retail investors at sizes larger than market makers' published quotations.

The Commission recognizes that with the shift to a more order driven market, the role of market makers in providing liquidity changes substantially. Currently, Nasdaq market makers are the principal source of liquidity for investors seeking immediacy (*i.e.*, seeking to buy or sell at the best currently available market price). In contrast, on exchanges, where the specialist market maker typically displays most customer orders, those orders provide the principal source of liquidity. With the display of ECN orders and retail and institutional customer limit orders in the Nasdaq market, Nasdaq market makers may frequently find themselves in a similar situation, with customer orders providing the primary source of liquidity and market makers providing liquidity during temporary imbalances in supply and demand.

The Commission believes that it is appropriate to consider whether, in a market displaying customer orders in competition with market maker quotes, there is justification for requiring market makers to quote at a mandatory size. Neither the Act nor the Commission's rules require a quote size larger than 100 shares. Historically, because customer trading interest was not displayed in the Nasdaq market, the NASD determined that it was appropriate that market makers display at least a minimum size in their quotes that would be representative of their trading interest in that security. In contrast, the exchanges have not imposed such a requirement on their own order-driven markets, where specialist market makers are permitted to quote sizes as small as one round lot (100 shares) when they are not representing customer orders. The Commission recognizes, of course, that exchange specialists, in consideration for their central role in a particular security on the exchange, are subject to various trading requirements which are intended to ensure the maintenance of stable and liquid markets.<sup>67</sup> However, a

substantial factor contributing to market depth on the exchanges is the peer allocation review process on many of the exchanges, under which specialists are rated on their performance in maintaining stable and liquid markets, and risk forfeiting their stock allocations should their performance lag. The Commission notes that on Nasdaq, not only will customer orders provide liquidity, but multiple market makers compete in various securities. Consequently, even though market makers do not risk losing a stock allocation to another market maker by regulation, they nevertheless risk losing business in the stock to another market maker, an ECN, or a customer order if they are not quoting competitive prices and significant size at those prices. In other words, given a choice between two market makers quoting different sizes at the same price, all else equal, a customer would be more likely to approach the market maker quoting the larger size.<sup>68</sup> Accordingly, at this time the Commission believes that there may be substantial reason to expect that various competitive pressures would encourage market makers to maintain deep markets.

The economic impact on the market of reducing the minimum market maker quote size from 1000 shares to 100 shares raises several issues. The Commission recognizes that the 1000-share quote minimum applicable to many Nasdaq stocks has been viewed as a means of providing liquidity to orders seeking the quoted price. However, the Commission preliminarily believes that a number of factors may well prevent a significant loss of liquidity in moving to 100-share quote minimums.

First, the presence of limit orders mitigates the loss of displayed trading interest by market makers. The Commission believes that the increased representation of customer limit orders is likely to add depth to the markets. As customer limit orders that are priced better than existing market maker quotes are displayed in the public quote, greater flexibility in market maker quotation size may increase trading

reasonably practicable, a fair and orderly market, as measured by price continuity and depth, and minimization of the effects of any temporary disparity between supply and demand. See Division of Market Regulation, SEC, The October 1987 Market Break Report, (February 1988) p.4-2.

<sup>68</sup> While, as pointed out by commenters, a significant share of retail order flow in the Nasdaq market is internalized or otherwise subject to predetermined order routing arrangements, the Commission nevertheless believes that market maker quotes should serve an important function in attracting trading interest, especially in an order driven environment where there is less incentive and flexibility for market makers to avoid displaying actual trading interest.

<sup>66</sup> Adopting Release, *supra* note 6, at n. 144.

<sup>67</sup> For example, New York Stock Exchange Rule 104.10 requires a specialist to maintain, as far as

interest from market professionals at the inside quotation, thereby adding to market depth. As noted by one commenter, revising minimum quote size will increase the information content of market maker quotes by facilitating different quote sizes from dealers who have a substantial interest in the stock at a particular time and those who do not.<sup>69</sup> This same commenter notes, and the Commission agrees, that for the most liquid Nasdaq securities, "the ability to interact with live bids and offers that represent real orders, where size is revealed at all price levels (depth of book) is the most fair for all market participants."<sup>70</sup>

Second, the 1000 share minimum quote size represents a barrier to entry for market making. Lowering this barrier to entry could attract more market makers, thereby increasing liquidity and competition across the market. Similarly, with large minimum quotes, smaller firms cannot effectively compete on a price basis for stocks with a high per-share price. For example, if security ABCD is trading at \$85 per share, the market maker would be exposed at its quote for executions at a minimum of \$85,000 when subject to a minimum quote size of 1000. If the minimum quote size is only 100 shares, the market maker's minimum capital exposure at its quote would be reduced to \$8500. The Commission believes that a lower minimum quotation size will likely attract smaller firms into the market, increasing both price competition and liquidity.

Moreover, a significant motivation for the Commission's approval, on a limited basis, of the reduction of minimum quotation sizes for market maker quotes is the belief that greater quotation flexibility is likely to lead to narrowing of the spread. Reducing the quotation size requirement reduces the risk that market makers must take, and should encourage them to quote more aggressive prices.<sup>71</sup> Thus, the Commission believes even if there were a decline in quoted depth in certain securities, many investors in those securities may well receive better executions with narrower spreads.

Even if the spread is not narrowed, reducing the required quotation size could encourage continued and even increased market maker participation at the inside market other prices to the extent that the minimum quotation size requirement poses a barrier to entry.

Thus, this change could help maintain or increase liquidity in the stock. This could be particularly significant if the display of customer limit orders reduces the profitability of market making in OTC securities, a possibility predicted by the Commission in the Adopting Release.<sup>72</sup> The reduction in risk resulting from reducing the required quotation size and the concomitant reduced exposure to automated executions should help preserve market maker participation that might otherwise be eroded by the display of limit orders and a larger market maker quote size. As noted below, the Commission has requested that the NASD study include information on the spreads and number of market makers of the 50 stocks that are the subject of the pilot program.<sup>73</sup>

Although the Commission preliminarily believes that the proposal will not adversely affect market quality and liquidity, the Commission believes that it is appropriate to take steps to further assess the effect on the markets. Therefore, the Commission is approving a lowering of the minimum quote size in a limited number of securities at this time to assess this provision's impact on a select group of Nasdaq securities. Thus, the Commission has determined that it is appropriate to allow the NASD to implement its proposed rule change reducing minimum quotation sizes for market makers' proprietary orders for the 50 stocks included in the first phase of the Limit Order Display Rule for a three-month period.<sup>74</sup> The Commission believes that these securities, all of which are among the 500 most actively traded Nasdaq securities, provide the most appropriate basis on which to assess the potential for any negative impact suggested by opposing commenters. The three-month pilot will give the Commission, the NASD and Nasdaq time to assess the impact of the change on the market, before

considering the rule change on a broader or permanent basis. The Commission is approving this pilot program to begin at the same time as the first phase of the Order Handling Rules because the Commission believes that it is important for the markets and the Commission, in its oversight role over these markets, to be able to evaluate the combined impact of the NASD's proposed changes to Nasdaq and the Order Handling Rules in a limited group of securities.

The Commission requests that the NASD and Nasdaq conduct a study during this pilot to gauge the effect of the reduction in minimum quote size on the market for these 50 stocks. The Commission notes that these 50 stocks were chosen to provide a broad cross section of the most liquid Nasdaq securities. The number of market makers in these stocks presently ranges from a low of three to a high of 49. The inside spread ranges from 1/8 to \$1 and the price ranges from approximately \$9 to \$141 with an average price of \$44.50. The current 1000 share minimum for these stocks therefore represents, on average, approximately \$44,000 per trade, a substantial amount in the retail context.

Specifically, the NASD study should include an analysis of: (1) The number of market makers in each of the 50 securities, and any change in the number over time; (2) the average aggregate dealer and inside spread by stock over time; (3) the average spread for each market maker by stock; (4) the average depth by market maker (including limit orders), and any change in the depth over time; (5) the fraction of volume executed by a market maker who is at the inside quote by stock; and (6) a measure of volume required to move the price of each security one increment (to determine the overall liquidity and volatility in the market for each stock). The Commission expects that these factors be contrasted over the time period immediately preceding the pilot and after the beginning of the pilot. Further, the Commission notes that beginning three weeks after the commencement of the pilot on 50 stocks, market makers will be required to display customer limit orders in 100 additional stocks pursuant to Rule 11Ac1-4. These 100 stocks will not be part of the pilot that the Commission is approving today, and therefore provide an opportunity for direct comparison with the stocks in the pilot. Thus, the Commission requests that the NASD and Nasdaq include in the study a matched pairs analysis of the 50 stocks in the pilot with 50 stocks in the second phase-in. This analysis should

<sup>69</sup> Adopting Release, *supra* note 6.

<sup>70</sup> The Commission is aware of several articles associating smaller quote sizes with narrower spreads. See Bacidore, *The Impact of Decimalization on Market Quality: An Empirical Investigation of the Toronto Stock Exchange* (Revised: July 1996); Harris, *Minimum Price Variations, Discrete Bid-Ask Spreads, and Quotation Sizes*, Review of Financial Studies 7 (1994); Copeland, T. and Galai D., *Information Effects of the Bid-Ask Spread*, 38 Journal of Finance (1983). Although cognizant of distinctions in the relevant markets involved in these studies that make comparisons with the Nasdaq market nondefinitive, the Commission believes that these studies provide additional support for the proposed pilot program.

<sup>71</sup> The Commission notes that at the conclusion of the three-month pilot, the market makers must quote the previously required size unless the Commission approves the change on an extended or permanent basis.

<sup>69</sup> STAIC Letter.

<sup>70</sup> STAIC Letter.

<sup>71</sup> See All-Tech Letter (11/22/96); Kaneti Letter; Petrov Letter. See *supra* note 58. Even opponents of change recognize that reducing the mandatory size for quotations reduces market maker risk.

encompass the six factors enumerated above. The Commission will consider the results of the study in determining whether to extend or expand the pilot.

Some commenters suggested that the Commission establish a system of dual quotes so that market makers could separately display limit orders and proprietary trading interest.<sup>75</sup> The Act does not require an exchange or association to separately display these two types of trading interest. These changes also could require extensive systems changes on the part of Nasdaq, and could absorb substantial additional Nasdaq systems capacity at a time when Nasdaq capacity may potentially be under strain. The Commission also does not believe that the NASD is statutorily required to move toward a central limit order book or "black box" system, as favored by some commenters.<sup>76</sup> It should be noted that the Commission was recently urged to adopt such approaches as alternatives to its Order Handling proposals. The Commission determined that at present it is in the best interest of investors, and consistent with the Act, to require the display of customer limit orders through the quotations communicated by market makers to the consolidated quotation stream, directly or through market or ECN systems.<sup>77</sup>

### B. Changes to SOES in Response to the Order Handling Rules

Many commenters addressed the NASD's proposed changes to SOES in response to the Order Handling Rules. Specific areas of concern are discussed below.

1. Decrementation of Displayed Quotation Sizes After SOES Executions

a. *Comments.* As noted above, the rule change provides that a market maker's displayed size will be decremented after each unpreferred SOES execution. Market makers generally, and the DSTA and STA, expressed support for the amendment. Several other market makers, while supportive of the provision, argued that a market maker should have the option to set a higher exposure limit than just its displayed quote size.<sup>78</sup> One market maker and the

SIA argued that there is no reason to distinguish between preferred and unpreferred orders in decrementing the quote, and that a market maker's quote should be decremented upon execution of preferred orders as well as non-preferred orders.<sup>79</sup>

Academics, order entry firms and SOES traders opposed the amendment to make the displayed quotation size a firm's exposure limit. Several commenters argued that the proposed reduction of minimum quotation sizes to 100 shares, together with the proposal to establish a market maker's displayed quotation size as its exposure limit, would effectively eliminate SOES.<sup>80</sup> One order entry firm expressed concern that it is not clear what maximum order size limits order entry firms will be held to in the future. In addition, several SOES traders suggested that if this amendment is adopted, the NASD interpretation limiting order entry firms to one 1000-share trade per security every five minutes ("five minute rule") should be eliminated.<sup>81</sup>

Several SOES traders argued that in light of the decrementing provision, the 15-second quote update period following an execution is too long and should be reduced or eliminated.<sup>82</sup> In addition, some of these commenters argued that the five minutes during which a market maker goes into a

"closed quote" status following decrementation to zero is too long.<sup>83</sup>

b. *Commission analysis.* The NASD has proposed to replace its current mandatory quote size and SOES exposure limits with voluntary quote size, decremented as executions occur against this quote size. As a result, the maximum exposure at the quote will be reduced from twice the SOES tier size to the displayed quote size. The NASD redesigned the SOES exposure limits to reflect the introduction of customer limit orders required by the Order Handling Rules. Decrementing the quote will ensure that quotes reflecting limit orders are withdrawn once the limit order is fully executed, consistent with display of customer limit orders. The NASD applied decrementing to market maker proprietary quotes as well as customer limit orders in part because of the inability of the system to differentiate between market maker limit order and proprietary quotes. In addition, the NASD believes that reducing the quotation to reflect SOES executions more accurately reflects the nature of the market maker quote when limit orders are required to be displayed.

The Commission believes that allowing both proprietary and customer quote sizes to be reduced to reflect executions may encourage more competitive market maker quotes because, as discussed previously, market makers can control more precisely the extent of their exposure in SOES at the quoted price. This in turn may improve customer execution prices and increase investor participation in the market. In addition, market makers may be encouraged to continue or increase their market making role, mitigating the competitive pressure resulting from the display of ECN prices and customer limit orders.

In addition, the Commission believes that the display of customer limit orders should result in an increase in the displayed quotation size, offsetting at least in part the reduced exposure limits for market maker quotes. The Commission believes that these potential benefits from quotes more representative of market makers' actual trading interest and the display of limit orders offsets the potential for reduced execution size against the quote in

<sup>79</sup> Letter from Bernard L. Madoff, Chairman, Trading Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC dated December 26, 1996 ("SIA Letter"); letter from Lon Gorman, Chief Executive Office, and Leonard Mayer, President, Mayer & Schweitzer, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 27, 1996 ("Mayer & Schweitzer Letter").

<sup>80</sup> All-Tech Letter (11/22/96); Whitcomb Letter (11/21/96); Simaan Letter; Momentum Letter; letter from Mark K. Sydenstricker, Vice President and Chief Financial Officer, The Exchange House, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Exchange House Letter").

<sup>81</sup> See e.g., letter from Adam Raichel, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Raichel Letter"); letter from Michael Gleeson, to Jonathan G. Katz, SEC, dated December 19, 1996 ("Gleeson Letter"); letter from Paul R. Rudd, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("P. Rudd Letter"); letter from Chris Boran, to Jonathan G. Katz, Secretary, SEC, undated ("Boran Letter"); letter from Arthur E. Herrmann, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1996 ("Herrmann Letter"); letter from Feral Talib, to Jonathan G. Katz, SEC, undated ("Talib Letter").

<sup>82</sup> Letter from Gil Shapiro, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Shapiro Letter"); letter from Joshua Pohl, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Pohl Letter"); Joseph Walsh, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Walsh Letter"); Raichel Letter; letter from Nancy Tom, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("Tom Letter"); letter from Charles Rhyee, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Rhyee Letter"); Whelan Letter.

<sup>83</sup> Letter from Matthew Kansler, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Kansler Letter"); letter from John Parente, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Parente Letter"); letter from Alexis Theofilactidis, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Theofilactidis Letter"); letter from Marcie D. Rebhun, to Jonathan G. Katz, Secretary, SEC, dated December 15, 1996 ("M. Rebhun Letter").

<sup>75</sup> See *supra* note 64.

<sup>76</sup> Whitcomb Letter (11/21/96); All-Tech Letter (11/22/96).

<sup>77</sup> Adopting Release, *supra* note 6. The Commission also does not believe that the liquidity available to options market makers, like other investors, will be reduced by the Amendments. Nor do the amendments approved today alter the access of options market makers to Nasdaq systems such as SOES or SelectNet.

<sup>78</sup> Letter from Edward J. Johnsen, Vice President and Counsel, Morgan Stanley & Co. Incorporated, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Morgan Stanley Letter"); Stephens Letter; Piper Jaffray Letter

SOES. Therefore, the Commission believes that the decrementing of quote size is consistent with the Act, in particular 11A.

In response to commenters who recommended that market makers have an option of setting a higher exposure limit, the NASD has amended the proposal to make the decrementing provision optional for quotes displaying size equal to or more than the SOES tier size for the security.<sup>84</sup> The Commission agrees that this modification is consistent with the Act. The Commission believes that allowing market makers that quote in substantial size to opt out of decrementing will encourage the display of greater quote size and allow market makers to maintain quotes that add depth to the markets.

The Commission notes that the NASD did not propose in the current filing any amendments to the 15-second period following an execution during which a market maker may update its quote, or the five-minute "closed quote" provision. These provisions thus are not under review at this time. Similarly, amendment of the five minute rule is not part of the current proposal, and thus not under review at this time.<sup>85</sup> However, the Commission believes that these time periods are not inappropriately long in the context of the instant SOES revisions. The Commission also believes that dropping a market maker with a zero quote to the bottom of the display screen helps reduce confusion and makes clear which market makers are "in the market."

Finally, the Commission believes that it is consistent with the Act to modify the quotation requirements for unpreferred orders only. The Commission recognizes that many firms have arrangements with correspondents by which they agree to execute order flow at the prevailing quote. These preferencing arrangements are wholly voluntary, and can be subject to conditions if so desired by the market maker. The Commission has considered such arrangements in the past,<sup>86</sup> and has not found them to be violative of the investor protection goals of the statute. For firms executing high volumes of trades pursuant to such arrangements, mandatory decrementing pursuant to such activity would require the market

maker to repeatedly update its quote in response to orders executed at its quote. The Commission does not believe this outcome is compelled by the statute. In any event, the NASD's current proposal does not include an optional decrementing provision for preferred order flow, and thus this issue is not currently before the Commission.

## 2. Split Order Execution

a. *Comments.* Order entry firms and SOES traders argued against allowing SOES executions at split prices. These commenters stated that order entry firms and their customers would experience added expense and delay because their orders could be subject to multiple executions against multiple parties.<sup>87</sup> Several commenters stated that a SOES order of 1000 shares could be split up into as many as 10 trades and executed against 10 separate market makers at a price inferior to the best displayed quote at the time the order was sent.<sup>88</sup> Several commenters also objected to the elimination of "all or none" orders from SOES.<sup>89</sup>

b. *Commission analysis.* The Commission is approving the proposed amendment because it is a necessary adjunct to eliminating required quote sizes for market makers, and allowing display of customer limit orders of less than the SOES order size. As discussed previously, the Commission does not believe that in a market displaying limit orders the Act compels a market maker to trade at a size greater than the minimum trading unit, thus assuming greater risk than it would otherwise.

<sup>87</sup> Letter from Kelly Jordan, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("K. Jordan Letter"); letter from Michael P. Doyle, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Doyle Letter"); letter from Brian Schartz, to Jonathan G. Katz, Secretary, SEC, undated ("Schartz Letter"); letter from Drew Sohn, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Sohn Letter"); Bhattacharya Letter, All-Tech Letter (11/22/96); letter from Paul Nadan, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("P. Nadan Letter"); letter from Steve Dworkin, to Jonathan G. Katz, Secretary, SEC, undated ("Dworkin Letter"); Petrov Letter, W. Jordan Letter; letter from Nicola Victory, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Victory Letter"); letter from Cornel Catrina, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Catrina Letter").

<sup>88</sup> Whitcomb Letter (11/21/96); Simaan Letter.

<sup>89</sup> Letter from Ed Chui, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Chui Letter"); letter from Tracy Clarke, to Jonathan G. Katz, Secretary, SEC, undated ("Clarke Letter"); letter from Robert Beers and Stephen Wilk, to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("Beers & Wilk Letter"); letter from Michael T. Studer, President, Castle Securities Corp., to Secretary, SEC, dated December 24, 1996 ("Castle Letter"); letter from Russell A. Grigsby, President, Cornerstone Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Cornerstone Letter"); FNB Letter.

Although split order executions can result in somewhat greater execution costs for an order entry firm, these split executions accurately reflect trading interest in the market at that time. In addition, the amendment is necessary to ensure the smooth functioning of SOES in an environment where market makers must regularly update their quotes to reflect customer limit orders and assess their own desire to assume market risk. Finally, if a customer wants to assure that it does not receive split executions, it may enter orders at the size of the best displayed quotes, or request that its order not be executed through SOES.

The NASD has proposed to prohibit entry of all-or-none orders in SOES because it believes that most users of all-or-none market orders do not expect execution of all-or-none orders at multiple prices. The amendment to the SOES system to allow split executions, combined with the proposed elimination of minimum quote size, could result in SOES orders being executed at more than one price. In addition, revising the SOES system to provide all-or-none executions in the context of the modified SOES system would require substantial Nasdaq resources. The Commission believes that the NASD's decision to not provide for all-or-none orders in the revised SOES system reduces the possibility of investor confusion regarding the execution prices that could result and, thus, is consistent with the directive in Section 15A(b)(6) that the NASD's rules be designed to facilitate the maintenance of fair and orderly markets.

## 3. Prohibition Against the Entry of Non-Marketable Limit Orders into SOES

a. *Comments.* Several market makers expressed support for prohibiting entry of non-marketable limit orders into SOES while several order entry firms and a SOES trader argued against it. These latter commenters generally argued that the NASD should not prohibit the entry of non-marketable limit orders into SOES and therefore should not eliminate the SOES limit order file.<sup>90</sup> One commenter said that the concept is not adequately described.<sup>91</sup>

b. *Commission analysis.* The Commission believes the prohibition is consistent with the Act because, as noted by the NASD, limit orders held in

<sup>90</sup> Letter from Warren E. Spehar and Michael J. Schunk, Managing Partners, First Westchester Securities, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("First Westchester Letter"); letter from Seth Hurwitz, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Hurwitz Letter"); FNB Letter.

<sup>91</sup> Grossman Letter.

<sup>84</sup> See *supra* note 3.

<sup>85</sup> The Commission notes that the NASD has proposed substantial revisions to small order execution in its NAcess proposal.

<sup>86</sup> See Securities Exchange Act Release No. 29810 (October 10, 1991), 56 FR 52098 (October 17, 1991) (order approving SR-NASD-91-18 and SR-NASD-91-26, amendments to SOES).

the SOES limit order file are not displayed in the public quote, thus making the file inconsistent with the Limit Order Display Rule. Further, because of its inherent limitations, the limit order file also was infrequently used, undermining its potential usefulness. Thus, the Commission agrees that it is appropriate to eliminate the file to assure compliance with the Order Handling Rules.<sup>92</sup>

#### 4. Modifications to the SOES Automated Quotation Update Feature

a. *Comments.* Several market makers supported the proposal to allow auto-refreshing of the market maker's quote.<sup>93</sup> One market maker commented that automation facilitates the efficient operation of the multiple market making system and fosters efficiency and liquidity. Without this modification, according to this commenter, market making would become prohibitively expensive for many firms.<sup>94</sup> Another market maker argued that if a market maker could have one side of its quote refreshed at an inferior price without also adjusting the other side of its quote, then the NASD also should modify Rule 4613(d), the NASD excess spread parameters rule.<sup>95</sup> Several commenters were concerned about the NASD's proposal to refresh market maker quotes for 100 shares instead of tier size.<sup>96</sup>

b. *Commission analysis.* The Commission is approving the modification because it believes an automatic quote update feature, which is currently available in SOES, is consistent with the Act. As originally proposed, the auto-refresh capability will update the quote for only the required minimum quote size. In the NASD's amendment establishing the pilot, however, for programming reasons the NASD proposed to auto-refresh the quotation up to the SOES order size for all securities, including the 50 pilot stocks. The market maker would be

allowed to reduce the size in these 50 pilot stocks if it wished to quote at a smaller size. The Commission believes that auto-refresh will be a helpful tool for market making in this new environment, and is consistent with the Act.

#### 5. Allowing SOES Market Makers to Enter Agency Orders into SOES

a. *Comments.* Several market makers expressed support for the proposal to allow SOES market makers to enter customer orders into SOES.<sup>97</sup> The SIA and several market makers argued that market makers should be allowed to enter riskless principal orders into SOES as well as agency orders, as these orders are the economic equivalent of agency orders.<sup>98</sup> Several market makers argued that market makers should also be permitted to enter proprietary orders into SOES.<sup>99</sup>

Several SOES traders opposed the proposal.<sup>100</sup> One SOES trader suggested that verification procedures were needed to assure that orders entered by market makers were legitimate agency orders.<sup>101</sup>

b. *Commission analysis.* In the Adopting Release for the Order Handling Rules, the Commission suggested that the NASD consider revising SOES to allow market makers to enter customer orders into SOES in particular to execute against displayed customer limit orders.<sup>102</sup> The Commission was concerned that firms operating internal automated execution systems could execute substantial customer orders based on individual limit orders establishing a best bid or offer price. The Commission suggested that while under best execution principles the firm would be expected to match the displayed quote up to its size, the firm should be provided a mechanism to instead execute the customer limit order directly against the superior displayed quote. The NASD proposal is consistent with this

suggestion. The NASD has not permitted market makers to enter orders into SOES for their own account, because to date the NASD has concluded that automated execution by one market maker against another would expose market makers to excessive risk and thus would discourage market making. Therefore, the proposal is limited to market maker riskless principal orders reflecting agency orders held by the market maker. The NASD intends to monitor for compliance with this condition as part of its regular examination program for market makers.

The Commission believes it is consistent with the Act to eliminate differentiating between agency orders entered in SOES by market makers or order entry forms. Accordingly, the Commission is approving the amendment. Furthermore, the Commission notes that riskless principal orders entered by market makers on behalf of customer orders will be accorded like treatment under the rule. The Commission agrees with the NASD that the amendment will help to ensure that all customer orders receive the benefit of interaction with other interest in the market and enhanced price improvement opportunities.

#### 6. Processing of Marketable Limit Orders

a. *Comments.* Only one commenter addressed the issue of eliminating the priority accorded marketable limit orders over market orders in SOES, expressing support for the proposal.<sup>103</sup>

b. *Commission analysis.* The Commission believes the amendment is consistent with the Act, and therefore approves this modification. This amendment will eliminate an unwarranted advantage to investors placing marketable limit orders over those placing market orders. This result recognizes the functional equivalency of these two types of orders.

#### 7. Market Maker Withdrawal from Nasdaq SmallCap Market Securities

a. *Comments.* Only one commenter addressed this issue; this market maker believed the provision should be modified such that a market maker would be deemed to have voluntarily withdrawn from the market if its quote remained at zero at the opening of the following trading day.<sup>104</sup>

b. *Commission analysis.* The Commission believes this amendment is consistent with the Act, and therefore

<sup>92</sup> The Commission notes that the NASD's NAQcess proposal, which would create a publicly displayed limit order book, is still under consideration. See Securities Exchange Act Release No. 37302 (June 11, 1996), 61 FR 31574 (June 20, 1996).

<sup>93</sup> DSTA Letter; Edward Jones Letter; Herzog, Heine, Geduld Letter.

<sup>94</sup> Edward Jones Letter.

<sup>95</sup> Morgan Stanley Letter.

<sup>96</sup> Castle Letter; Gleeson Letter; letter from Wayne Hong, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Hong Letter"); letter from James B. Carpenter, to Jonathan G. Katz, Secretary, SEC, undated ("Carpenter Letter"); letter from Tai Truong, to Jonathan G. Katz, Secretary, SEC, dated December 15, 1996 ("Truong Letter"); letter from Daniel Balber, to Jonathan G. Katz, Secretary, SEC, undated ("Balber Letter"); letter from John Cassimatis, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Cassimatis Letter").

<sup>97</sup> See e.g., Herzog, Heine, Geduld Letter; Edward Jones Letter.

<sup>98</sup> SIA Letter; letter from Peter C. Cohan, Managing Director, Pershing to Jonathan G. Katz, Secretary, SEC, dated January 2, 1997 ("Pershing Letter"); Mayer & Schweitzer Letter.

<sup>99</sup> Letter from Dan B. Franks, Senior Vice President, Equity Trading, Scott & Stringfellow, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("Scott & Stringfellow Letter"); letter from Leslie Seff, Fidelity Capital Markets, to Jonathan G. Katz, dated December 23, 1996 ("Fidelity Capital Letter").

<sup>100</sup> Gleeson Letter; letter from Stephen Kovacs, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Kovacs Letter"); Grossman Letter.

<sup>101</sup> Letter from Hendrickson, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Hendrickson Letter").

<sup>102</sup> Adopting Release, *supra* note .

<sup>103</sup> Herzog, Heine, Geduld Letter.

<sup>104</sup> Herzog, Heine, Geduld Letter.

approves this modification. The Commission does not believe that requiring a market maker to reenter a quote in a SmallCap security by the close of trading for the day presents a significant hardship to market makers in a security. Furthermore, establishing an outer time frame by which a market maker must reenter its quote makes it clear to the market which market makers in a security are willing to continue market making in the security.

### C. Implementing the SelectNet Linkage

As noted above, the NASD proposed to change certain rules and aspects of the SOES and SelectNet systems to implement the SelectNet Linkage, which is intended to facilitate the operation of the ECN Display Alternative based on existing Nasdaq system platforms, SOES and SelectNet. The nature of this linkage was constrained by the needs of the ECNs and the limitations on the Nasdaq computer systems discussed previously.

#### 1. Display of ECN Prices

a. *Comments.* Several market makers and the SIA supported the proposal for the display of ECN prices and characterized it as a "reasonable interim approach."<sup>105</sup> Those favoring the proposal praised the consolidated market maker/ECN quote as increasing market transparency.

Comments criticizing the proposal were submitted by Instinet, individual investors, academics, order entry firms and SOES traders. The majority of critical comments concerned the rounding indicator. Many commenters objected to the determination of the NASD not to disseminate the actual prices displayed by ECNs if those prices are in increments finer than the NASD's minimum quotation increments.<sup>106</sup> Some commenters argued that the failure to display the actual price or an indicator that a price was rounded would make it impossible for brokers to find the best price for retail customers.<sup>107</sup> These commenters requested either that rounding not be approved without the indicator, or encouraged the NASD and Nasdaq to implement the rounding indicator as soon as possible, and move to finer increments or decimal pricing as soon

as feasible.<sup>108</sup> One commenter, noting that ECNs with rounded prices will not have display priority over market makers at an inferior, displayed price, but instead will be treated as if their rounded price were their actual price and entered according to time priority, questioned whether any technological reason existed for this approach.<sup>109</sup> One order entry firm suggested that rounding without an indicator permits an ECN to "hide its market" which is inconsistent with the Order Handling Rules.<sup>110</sup> This firm also suggested that once the rounding indicator is available, market makers should be allowed to quote with the indicator. Finally, several order entry firms suggested that rounding permits the market maker to trade at the superior price with the ECN, give its customer a fill at the posted quote, and keep the "hidden" fraction.<sup>111</sup>

b. *Commission analysis.* While recognizing and sharing concern about the lack of a rounding indicator, the Commission believes that this amendment represents a significant step forward in the public display of prices entered into ECNs. For the first time, a consolidated montage displaying both quotes of market makers and ECN prices will enable investors and market professionals alike to view in one place all the trading interest in a particular security in the market. In addition to providing improved transparency, the proposed Nasdaq linkage will enable investors to access prices that previously were available only to subscribers to an ECN. Thus, investors will have access to better prices and the goal of best execution for all customers will be advanced.

The Commission has determined the NASD's proposal to develop the SelectNet linkage is consistent with Act and, thus, is approving the proposal. The Commission believes the SelectNet linkage furthers the Section 11A objective of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market. Specifically, the development of the SelectNet linkage will facilitate the display of customer limit orders, thereby advancing the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, and best execution. The enhanced transparency

of these orders also increases the likelihood that limit orders will be executed because contra-side market participants will have a more accurate picture of trading interest in a given security.

In adopting the Order Handling Rules, the Commission recognized that ECNs may display orders in increments smaller than the minimum quotation increments used in the public trading markets. The Order Handling Rules sought to publicize the ECN prices in the existing public quotation systems, but in doing so did not require the SROs to alter their existing trading increment. Rather, the Commission allowed market makers' and specialists' quotes in ECNs at finer increments to be displayed in the SROs markets at prices rounded to the SROs' quotation increment, with a rounding indicator.<sup>112</sup> The NASD and other SROs have indicated that, as a technical matter, display of a rounding indicator is not possible by the implementation date of the rules.

Many commenters stated that the lack of a rounding indicator will make it difficult to determine if an improved price is available from an ECN. The NASD and Nasdaq have acknowledged this difficulty and have committed to resolving this problem by implementing a rounding indicator as soon as possible. The Commission believes the NASD and Nasdaq are acting in good faith and have granted the SROs no-action relief concerning the lack of a rounding indicator until July 31, 1997.<sup>113</sup> The Commission believes that there is much to be gained by going forward with the SelectNet linkage without the indicator, pending Nasdaq's development of an appropriate format for such a notation. The Commission notes that, consistent with the Order Handling Rules, when an order is sent through SelectNet to an ECN and a market maker or specialist has entered an order at a better price, which is rounded for display in Nasdaq, the order sent through SelectNet will receive the better price available in the ECN. Moreover, broker-dealers will be able to enter orders through the SelectNet linkage priced at finer increments than the rounded quotes. Broker-dealers and their customer can use such orders to define the prices at which they are willing to trade.

#### 2. Access to ECN Prices

##### a. *Comments.*

Some commenters criticized the lack of an electronic linkage between the ECNs and SOES, and argued that it should be possible for SOES orders to be

<sup>105</sup> Herzog, Heine, Geduld Letter; Mayer & Schweitzer Letter; SIA Letter; Pershing Letter.

<sup>106</sup> A.J. Michaels Letter; All-Tech (12/23/96); Grossman Letter; Hope Letter; I.Q. Letter; Hurwitz Letter; Simaan Letter; Whitcomb Letter (11/21/96).

<sup>107</sup> All-Tech Letter (12/23/96), Whitcomb Letter (11/21/96); Simaan Letter; letter from Seth Modlin, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Modlin Letter").

<sup>108</sup> A.J. Michaels Letter; All-Tech Letter (12/23/96); Simaan Letter; Whitcomb Letter (11/21/96). See also Hope Letter; I.Q. Letter; Hurwitz Letter.

<sup>109</sup> Whitcomb Letter (12/10/96). See also Instinet Letter.

<sup>110</sup> All-Tech Letter (12/23/96).

<sup>111</sup> A.J. Michaels Letter; First Westchester Letter.

<sup>112</sup> Adopting Release, *supra* note .

<sup>113</sup> See *supra* note .

electronically routed to an ECN.<sup>114</sup> Several commenters noted that the lack of the linkage could eliminate the market maker's risk of exposure to executions at the ECN price.<sup>115</sup> Furthermore, commenters argued that without automated execution through the linkage, ECNs would be able to favor their own customers in executions.<sup>116</sup> Other commenters expressed concern that because a SOES/SelectNet linkage was not required, the execution of small orders entered into SOES, but rejected on the basis of a superior ECN quote, will be delayed while they are manually rerouted to SelectNet.<sup>117</sup> In contrast, Instinet argued that the proposal's requirement that ECNs automate SelectNet response functions is costly and excessively burdensome. Instinet further maintained that ECNs should be given flexibility to evaluate the credit worthiness of non-ECN subscribers.

b. *Commission analysis.* As discussed above, some commenters criticized the lack of an automated execution between SOES and the ECNs. The Commission, in the Adopting Release, stated that ECNs must provide broker-dealers who use SOES with equivalent automated access to the best priced market maker orders in the ECN for NNM and SmallCap securities.<sup>118</sup> This could be accomplished either through an electronic linkage to SOES or by other means agreed upon with the NASD.<sup>119</sup> The Commission recognizes that the SelectNet Linkage does not include an electronic linkage to SOES. The SelectNet linkage was developed to accommodate the ECNs, at least on an interim basis, to receive an order rather than an automated execution such as provided by SOES. The ECNs by definition provide automated executions of orders internally. Linking to an external automated execution system would create the risk of two simultaneous executions against the same order, thereby forcing the ECN operator to trade as principal without an order on the other side. Because the Commission expressed strong support for an effective ECN display alternative as an element of the Order Handling Rules,<sup>120</sup> the NASD determined to create the SelectNet linkage as an interim

measure to implement the ECN display alternative by the implementation date of the rules. Because of the age and inflexibility of the SOES and SelectNet systems, the NASD was unable to link its SOES system to the SelectNet system by the effective date of the rules, in order to allow SOES orders to be routed to the ECN via SelectNet when the ECN displayed a superior price. The NASD has indicated that the existing linkage is in its view an interim measure, and that it intends to link these functions in the future. The NASD also intends to include in its proposed ECN addendum to the Nasdaq Workstation subscriber agreement requirements that the ECN respond promptly to a SelectNet linkage order.

In response to Instinet's comment opposing the requirement of automated responses from ECNs, the Commission believes that this requirement is necessary to assure the smooth functioning of the SelectNet linkage. The Commission believes that, because the SelectNet linkage does not provide automated executions, any significant delay in response to a SelectNet order from the ECN will unreasonably prolong execution time for the customer. However, the Commission believes that the NASD requirements for ECNs will result in execution response times of a matter of seconds, so that use of the linkage will be virtually immediate.

The Commission takes very seriously the concern expressed that ECNs could potentially favor their own customers. The Commission is satisfied, however, that adequate safeguards are in place to prevent ECNs from discriminating between customers in a manner inconsistent with the Order Handling Rules. First, ECNs will be required to execute an ECN addendum to the Nasdaq Workstation subscriber agreement providing that they cannot prefer their own customers in executions or discriminate against linkage orders. Second, the subscriber agreement requires prompt responses to linkage orders. Finally, the Quote Rule only excepts a broker-dealer from honoring its quote if it is effecting a transaction or is in the process of updating its quote. If an ECN cannot demonstrate that one of these exceptions applies, it will be liable for a violation of its Quote Rule obligations as well as the NASD ECN subscriber agreement.

In response to Instinet's concern about the need for time to examine the credit worthiness of customers, the Commission notes that a key condition of performing as a display alternative under the Order Handling Rules is that the ECN provide access to its prices to

broker-dealers equivalent to that provided by market makers and specialists. Market makers and specialists must be firm at their quotes for orders from at a minimum all brokers and dealers. The ECN must satisfy the same standard. The Commission staff has interpreted the Quote Rule to allow a narrow exception so that the market maker may take into account the substantial likelihood that a counterparty may not perform in determining whether to trade with the counterparty at its quote.<sup>121</sup> The SelectNet linkage and the NASD ECN addendum would not preclude an ECN from declining an order from a counterparty if it had a substantial basis for believing the counterparty would not perform; indeed, an ECN could program its system to reject linkage orders from particular counterparties if the ECN can satisfy this narrow exception from the Quote Rule. Rejection of linkage orders for generalized credit concerns would not constitute providing equivalent access as required to qualify as an ECN display alternative.

### 3. Implementation of the ECN Linkage

a. *Comments.* Instinet argued that the Workstation Subscriber Agreement required by the rule should not contain substantive conditions not imposed on other users Nasdaq workstation users. Instinet also objected to the characterization of the linkage by the NASD and Nasdaq as "interim," and expressed its opposition to further modifications that may make the linkage resemble a consolidated limit order file. Instinet requested that the SEC monitor negotiations regarding further modification between the ECNs and the NASD.

b. *Commission analysis.* In its November interpretive letter,<sup>122</sup> the Commission staff recognized that the SROs should have the ability to establish reasonable conditions on ECNs linking with the SRO pursuant to the ECN display alternative. The Commission believes that the NASD's Workstation Subscriber Agreement addendum is an appropriate vehicle for establishing reasonable conditions for ECNs linking with Nasdaq. Regarding

<sup>114</sup> Morgan Stanley Letter; Instinet Letter; Exchange House Letter; Grossman Letter; Lu Letter.

<sup>115</sup> See e.g., Grossman Letter; Hurwitz Letter.

<sup>116</sup> See e.g., Cornerstone Letter; All-Tech Letter (12/23/96).

<sup>117</sup> All-Tech Letter (11/22/96); Pompeo Letter; Beers & Wilk Letter; Edward Jones Letter.

<sup>118</sup> Adopting Release, *supra* note . The Commission also discussed the provision of telephonic access to ECN prices.

<sup>119</sup> *Id.*

<sup>120</sup> Adopting Release, *supra* note .

<sup>121</sup> The Commission staff interpreted the Quote Rule as permitting a market maker from refraining from trading at its displayed quote if it had a substantial basis for believing that the counterparty to the transaction will not be able to honor the trade. Letter from Richard Lindsey, Director, Division of Market Regulation, SEC, to Richard Grasso, Chairman and CEO, NYSE, dated November 22, 1996, p. 17.

<sup>122</sup> See letter from Richard R. Lindsey, Director, Division of Market Regulation, SEC, to Richard Grasso, Chairman and CEO, NYSE, dated November 22, 1996.

Instinet's concerns about the NASD's further modifications to the interim approach, the Commission believes it is premature to consider the nature of potential revisions at this time. The Commission believes that it is important to enhance the SelectNet linkage to connect the market order executions systems with the ECN linkages; however, the design of these future enhancements has not been determined and is not before the Commission in the present filing. Any future changes would be filed by the NASD and Nasdaq as a rule filing with the Commission and published for comment. The Commission will fully consider the issues presented by, and comments on, such a filing at that time. The Commission intends to monitor future negotiations between the ECNs and the NASD regarding the design of this linkage.

#### 4. Eliminating SelectNet Broadcast Feature

a. *Comments.* Several market makers, the STA and the DSTA favor the elimination of the SelectNet broadcast feature.<sup>123</sup> Several commenters expressed support for the elimination of the counter-offer function.<sup>124</sup>

Many commenters, including academics, order entry firms and SOES traders, objected to eliminating the SelectNet broadcast feature.<sup>125</sup> Several commenters argued that eliminating the SelectNet broadcast feature effectively eliminated the ability of SelectNet to function as an electronic stock market.<sup>126</sup> These commenters argued that the proposal turns SelectNet into "nothing more than a message routing system."<sup>127</sup>

It was argued that eliminating the SelectNet broadcast feature, together with eliminating the SOES limit order file, meant that public orders could be

entered into the market only if a market maker or ECN chose to accept that order in its sole discretion.<sup>128</sup> Another order entry firm echoed this comment and stated that order entry firms will now have no means of displaying orders between the spread.<sup>129</sup> Several order entry firms stated that the elimination of the broadcast function forces order entry firms to subscribe to an ECN.<sup>130</sup>

b. *Commission analysis.* The Commission is not taking action on the SelectNet broadcast feature at this time, pursuant to an NASD consent to an extension of time for consideration of this portion of its proposal. The NASD said that a major basis for its proposal to eliminate the SelectNet broadcast feature was concern that the Nasdaq system had inadequate capacity to continue all current functions once the Order Handling Rules went into effect. The NASD indicated that the SelectNet broadcast feature uses substantial systems capacity. The Commission intends to monitor the impact on Nasdaq systems capacity and quote traffic of the phase-in of the Order Handling Rules before reaching a determination regarding elimination of the SelectNet broadcast feature.

#### 5. Rejection of SOES Orders When ECN or UTP Exchange Is at the Inside Quote

a. *Comments.* Market makers generally were in favor of the proposal to reject SOES orders when no Nasdaq market maker was quoting at the inside quote. They believe it is appropriate for the order to be returned to the entering firm when an exchange or ECN is driving the inside. Order entry firms and SOES traders generally opposed the proposal. One order entry firm argued that it would be possible for an order to be sent to an ECN through the SelectNet Linkage, rejected by the ECN, returned to the broker who then enters the order into SOES, which then rejects the order because in the interim, an ECN established a better price.<sup>131</sup> Another stated that the proposal would render SOES unusable for most large issues for many periods if market makers use the display alternative.<sup>132</sup> Several

commenters believed this aspect of the proposal creates a risk that some market makers would improperly use ECNs to avoid being subject to SOES executions.<sup>133</sup> Another order entry firm claimed that the proposal undermines competition and legitimizes collusive behavior.<sup>134</sup> One order entry firm argued that the rule change moves the market from an environment where a customer cannot hope to obtain best execution to an environment where the customer must obtain best execution or no execution at all.<sup>135</sup> This commenter stated that the customer preferring speed and certainty of execution over price improvement is disadvantaged.

b. *Commission analysis.* The Commission is approving the amendment to effect this change as consistent with the Act and the rules thereunder, particularly the Order Handling Rules. As discussed below, the NASD was unable to link the SOES system with the SelectNet linkage by the implementation date for the Order Handling Rules. Therefore, when an ECN or a UTP exchange is alone at the best quote, the SOES system must either reject orders, execute them against Nasdaq market makers at the ECN or UTP exchange quote, or execute them at the Nasdaq market makers' best quote even though that quote is inferior to the NBBO. The Commission agrees with the NASD's analysis that to hold the market maker to a SOES execution at a price that is being driven by the ECN or exchange would be competitively unfair, and to execute SOES orders at the market maker's own quote would result in customer executions at a price that is inferior to the NBBO, generally violating best execution duties of broker-dealers entering the orders.

The Commission recognizes that the shutdown of SOES when better ECN or UTP exchange quotes are displayed in the NBBO will reduce the ability to execute customer orders immediately on an automated basis. At the same time, it will contribute to competitive quotations by encouraging customer orders to be routed to the ECN or UTP exchange displaying the best quote. Market makers that want to attract SOES order flow in these securities will be encouraged to publish a Nasdaq quote equal to or better than that displayed by the ECN or UTP exchange. This competition could improve market quotation quality and produce better prices for investors.

The proposed amendment is intended to address a problem arising from the

<sup>123</sup> A.G. Edwards Letter; letters from Daryl Andersen (Nasdaq Equity Trading), Joseph G. Geelan (Vice President, Institutional Trading), Jeff Peterson (Vice President, Senior Trader), Daniel L. Henn (Vice President, Nasdaq Equity Trading), Dede Yurecko (Vice President, Senior Trader), Art Kearney (Executive Vice President, Director of Capital Markets), Beth McCann (Vice President, Institutional Trading), John G. Kinnard & Co., to Secretary, SEC, dated December 24, 1996 ("Kinnard Letters"); DSTA Letter, Edward Jones Letter; Mayer & Schweitzer Letter; STA Letter; STAIC Letter; STANY Letter.

<sup>124</sup> Edward Jones Letter.

<sup>125</sup> See e.g., All-Tech Letter (12/23/96); Boran Letter; Frame Letter; Grossman Letter; letter from Gerard Hunter, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("G. Hunter Letter"); FNB Letter, W. Jordan; Cornerstone Letter.

<sup>126</sup> Whitcomb Letter (11/21/96); Simaan Letter.

<sup>127</sup> Simaan Letter, Whitcomb Letter (11/21/96); letter from Jerry Putnum, Terra Nova Trading, LLC, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1996 ("Terra Nova Letter").

<sup>128</sup> See e.g. First Westchester Letter; Cornerstone Letter.

<sup>129</sup> Cornerstone Letter.

<sup>130</sup> First Westchester Letter; Grossman Letter.

<sup>131</sup> All-Tech Letter (11/22/96). See also Beers & Wilk Letter; letter from Geoffrey Dubey, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Dubey Letter"); Edward Jones Letter, Lu Letter; letter from Michael McLoughlin, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("McLoughlin Letter"); letter from Dario Pompeo, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Pompeo Letter") (discussing the delay involved with this aspect of the proposal).

<sup>132</sup> Exchange House Letter.

<sup>133</sup> Cornerstone Letter; Morgan Stanley Letter.

<sup>134</sup> First Westchester Letter.

<sup>135</sup> All-Tech Letter (11/22/96).

lack of an interconnectivity between the SOES system and the SelectNet linkage. As discussed previously, the NASD was unable to complete the programming for the SelectNet linkage and the necessary changes to the SOES rules, and also link the separate SelectNet and SOES systems, both of which are aging Legacy systems. As discussed previously, the NASD has indicated that it plans to develop a revised system that will connect its market order execution system with its linkage to ECNs. When this system is developed, it should be possible to route market orders directly to the best market maker or ECN quote prevailing at that time.

In the meantime, the Commission believes that order entry firms should be able to reprogram their systems to scan the quote line and direct their order either into SOES or the SelectNet link, depending on where the best quote is at the time of the order's entry. In this manner, order entry firms can improve the efficiency of order routing and reduce the number of rejections received in the SOES system. The Commission notes that many SOES users are already frequent SelectNet users for orders not eligible for SOES.

The Commission also notes that during the initial stages of implementation of the Order Handling Rules when the rounding indicator is not available, SOES orders will be rejected only when ECN prices are a full quotation increment better than the best bid or offer. When a price is displayed in an ECN at a superior price at a smaller increment, such as 20 1/16, and rounded to a price reflecting a standard trading increment, such as 20 1/8, SOES executions will not stop if the best market maker quote is also at 20 1/8. This should substantially reduce the number of SOES rejections resulting from superior ECN prices, because ECN prices often are superior to Nasdaq by only a smaller quotation increment.

The Commission acknowledges that this provision creates a risk that market makers could enter orders into ECNs to avoid being subject to SOES executions. The Commission preliminarily believes that such activity would raise concerns under a broker-dealer's obligation to observe SRO just and equitable principles of trade.<sup>136</sup> The Commission encourages the NASD to monitor such activity carefully and to consider disciplinary action where warranted.

#### 6. Summary and Effect on SOES Users

A number of commenters argued that the NASD was using the proposed changes as a whole to limit the ability

of customers of order entry firms to trade efficiently through SOES. In particular, these commenters argue that the reduction in market makers' minimum quote size to 100 shares, the potential that SOES orders would receive split executions, the inability to enter all-or-none orders, and the inability to enter SOES orders when one or more ECNs are alone at the inside quote would limit their ability to execute orders rapidly and at low cost over SOES.

As discussed above, the Commission has reviewed each of these proposed revisions individually and has determined each of them to be consistent with the purposes of the Act. Furthermore, the Commission does not believe that these revisions, taken together, necessarily adversely affect the ability of customers of order entry firms to trade through SOES. As noted above, far from commenters' predictions of a market of uniform 100-share quotes, the Commission believes that the display of ECN orders and customer limit orders in the market should increase liquidity and narrow spreads in Nasdaq securities. In such an environment, customers entering orders through SOES would be expected to benefit from the better prices in the market. To the extent a SOES order would be subject to multiple executions, any improved prices could in fact offset the increased transactions costs attributable to split executions. Finally, as discussed above, the Commission believes that order entry firms should be able to program their systems to reroute SOES orders through SelectNet when SOES is disabled because one or more ECNs are alone at the inside price.

Therefore, while it is true that the NASD's proposed revisions will require changes in how orders are executed through SOES, the Commission does not believe that the revisions, individually or in the aggregate, impose unfair competitive burdens on SOES order entry firms or their customers, nor do they unfairly discriminate against investors who actively trade on the SOES system or the broker-dealers which service these investors.

After considering the comments, the Commission believes that at this time the NASD's proposed amendment is necessary to promptly effectuate the Order Handling Rules given the abbreviated time frames and the limitations on the NASD's system. The Commission also believes that the ultimate benefits of the availability to the customer of superior quotes resulting from display of ECN prices outweigh the inefficiencies resulting

from rejections of SOES orders when ECNs are at better prices.

#### 7. Locked and Crossed Markets Rule Amendments

a. *Comments.* Several market makers, the STA and the STANY commented in favor of applying the locked and crossed markets rule to market makers and other NASD members entering orders into ECNs, and to ECNs that are displaying orders in Nasdaq for non-NASD members.<sup>137</sup> The STANY supports the application of the locked and crossed markets rule to ECNs, because of the market confusion and inefficiency that results from locked and crossed quotes in Nasdaq. A few commenters offered suggestions to modify the rule,<sup>138</sup> including a requirement that a locking or crossing market maker should be required to notify the NASD, which notifies the potentially locked or crossed market maker, before entering the quote.<sup>139</sup> Another market maker supported the amendment as a first step, and suggested that the NASD should have authority to halt trading in locked and crossed markets, as do the exchanges.<sup>140</sup>

Instinet argued that an ECN does not trade as principal and does not have the ability to make "reasonable efforts" to avoid a locked or crossed market. Two commenters questioned the meaning of the exception for "extraordinary circumstances."<sup>141</sup> Another order entry firm stated that the rule is unclear.<sup>142</sup>

Amex and CBOE argued that applying the locked and crossed markets rule, Rule 4613(e), to ECNs, would inhibit the ability of options specialists and market makers to hedge in an ECN. Amex stated that it is impractical to require an options market maker to first "clear the Street" of all Nasdaq market maker quotes that it might cross when entering a hedging order into an ECN. It argued that the effects of the proposed application of the locked and crossed markets rule to ECNs and their users during volatile markets are uncertain and may cause a disruption in the ECN trading of Nasdaq stocks and may further disrupt trading in their options.

b. *Commission analysis.* The NASD has proposed the amendment to the locked and crossed markets rule to

<sup>137</sup> DSTA Letter; Herzog, Heine, Geduld Letter; letter from David Kuang, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Kuang Letter"); Mayer & Schweitzer Letter; STA Letter; STANY Letter.

<sup>138</sup> STA Letter; Herzog, Heine, Geduld Letter; Morgan Stanley Letter.

<sup>139</sup> Morgan Stanley Letter.

<sup>140</sup> Herzog, Heine, Geduld Letter.

<sup>141</sup> Amex Letter; Cornerstone Letter.

<sup>142</sup> Grossman Letter.

<sup>136</sup> NASD Rule 2110.

reduce the potential for a very significant and disruptive incidence of locked and crossed markets arising from ECN prices. The NASD argues that locked and crossed quotes interfere with the operation of the Nasdaq market by obscuring the true bid and offer prices at the time, and also may impact the use of firm, automated order execution systems. The NASD thus believes that NASD members, including ECNs, should attempt to trade with a market maker quote before locking or crossing that quote. The Commission believes that it is consistent with the purposes of the Act to maintain Nasdaq quotations that are informative and reliable. The Commission further believes that the NASD's proposal is reasonably designed to maintain the integrity of Nasdaq quotes by reducing the incidence of locking and crossing quotations displayed in Nasdaq by ECNs. The Commission urges the NASD to consider other means of reducing the incidence of locked and crossed quotes such as efficient means of executing against market maker quotes before entering a locking or crossing order.

The Commission notes that the term "extraordinary circumstance" is existing language in the locked and crossed markets rule. It would encourage any market participants unclear about the meaning of this language to seek interpretive guidance from the NASD.

#### 8. Modifications to Autoquote Policy

a. *Comments.* Several commenters expressed support for the modification to the autoquote policy to permit computer generated display of limit orders, responses to executions and ECN prices.<sup>143</sup> One order entry firm argued that autoquoting should not be available in response to a partial fill.<sup>144</sup> One academic argued that the temporary requirement permitting ECNs to autoquote to post two-sided quotes (until technical modifications can permit one-sided quotes) forces ECNs to post "phantom" quotes, further debasing the meaning of quotes in the Nasdaq market.<sup>145</sup>

b. *Commission analysis.* The Commission has determined that the NASD's proposal is consistent with the Act and, therefore, is approving the amendment. The proposed amendments are narrow exceptions to the autoquote policy designed to help effectuate the Order Handling Rules. In the Adopting Release, the Commission urged the NASD to reconsider its general ban on

computer generated quotes to allow members to use computer generated quotes that add value to the market.<sup>146</sup> The Commission understands that the NASD continues to consider this policy generally, while proposing these specific modifications to facilitate the Order Handling Rules.

The Commission also notes that the NASD's method of adapting its existing quotation system to accept quotes from ECNs, by permitting ECNs to autoquote to maintain two-sided quotes is only a temporary solution until the NASD can modify its system to accept one-sided quotes from ECNs.

#### V. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Commission approval of the request made in Amendment No. 1 to grant temporary approval, on a three-month pilot basis, to the minimum quotation size requirements will allow market participants and the Commission to assess the effects of these changes. In addition, the Order Handling Rules will become effective on January 20, 1997. To facilitate the implementation of these rules, the NASD must make changes to its current rules that will affect manner of operation of its systems. The Commission believes that industry participants must be provided sufficient time to acclimate to these changes. Therefore, the Commission believes that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 15A and Section 19(b)(2) of the Act.<sup>147</sup>

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 1 that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and

copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-96-43 and should be submitted by February 6, 1997.

#### VI. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes the proposed rule change is consistent with Section 15A(b)(6) of the Act<sup>148</sup> because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.<sup>149</sup> In addition, the Commission believes the proposed rule change is consistent with Section 15A(b)(9)<sup>150</sup> and Section 15A(b)(11)<sup>151</sup> of the Act because it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act and because it is designed to produce fair and informative quotations.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>152</sup> that the proposed rule change (SR-NASD-96-43) is partially approved, including Amendment No. 1 on an accelerated basis. The Commission is not approving at this time the NASD's elimination of the SelectNet broadcast feature and the elimination of minimum market maker quotation size for securities other than those covered by Amendment No. 1. The pilot program established by Amendment No. 1 expires on April 18, 1997.

By the Commission.

Dated: January 10, 1997.

Margaret H. McFarland

*Deputy Secretary.*

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<sup>148</sup> 15 U.S.C. §78o-3(b)(6).

<sup>149</sup> In making this finding, the Commission notes that the proposal should promote efficiency and competition in the securities markets. 15 U.S.C. §78c(f).

<sup>150</sup> 15 U.S.C. §78o-3(b)(9).

<sup>151</sup> 15 U.S.C. §78o-3(b)(11).

<sup>152</sup> 15 U.S.C. §78s(b)(2).

<sup>143</sup> Herzog, Heine, Geduld Letter; Kuang Letter.

<sup>144</sup> All-Tech Letter (12/23/96).

<sup>145</sup> Whitcomb Letter (11/21/96).

<sup>146</sup> Adopting Release, *supra* note.

<sup>147</sup> 15 U.S.C. §§78o-3, 78s(b)(2).

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of publication.

**SUMMARY:** This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

**FOR FURTHER INFORMATION CONTACT:** James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 400 7th Street, SW., Suite PL200-A, Washington, DC 20590; telephone (202) 366-4118.

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the Federal Register (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a

subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative. Since that first index was issued on October 26, 1990, the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions.

The indexes of the Administrator's decisions and orders have been published as follows:

| Dates of quarter       | FEDERAL REGISTER publication |
|------------------------|------------------------------|
| 11/1/89-9/30/90 .....  | 55 FR 45984; 10/31/90        |
| 10/1/90-12/31/90 ..... | 56 FR 44886; 2/6/91          |
| 1/1/91-3/31/91 .....   | 56 FR 20250; 5/2/91          |
| 4/1/91-6/30/91 .....   | 56 FR 31984; 7/12/91         |
| 7/1/91-9/30/91 .....   | 56 FR 51735; 10/15/91        |
| 10/1/91-12/31/91 ..... | 57 FR 2299; 1/21/92          |
| 1/1/92-3/31/92 .....   | 57 FR 12359; 4/9/92          |
| 4/1/92-6/30/92 .....   | 57 FR 32825; 7/23/92         |
| 7/1/92-9/30/92 .....   | 57 FR 48255; 10/22/92        |
| 10/1/92-12/31/92 ..... | 58 FR 5044; 1/19/93          |
| 1/1/93-3/31/93 .....   | 58 FR 21199; 4/19/93         |
| 4/1/93-6/30/93 .....   | 58 FR 42120; 8/6/93          |
| 7/1/93-9/30/93 .....   | 58 FR 58218; 10/29/93        |
| 10/1/93-12/31/93 ..... | 59 FR 5466; 2/4/94           |
| 1/1/94-3/31/94 .....   | 59 FR 22196; 4/29/94         |
| 4/1/94-6/30/94 .....   | 59 FR 39618; 8/3/94          |
| 7/1/94-12/31/94 .....  | 60 FR 4454; 1/23/95          |
| 1/1/95-3/31/95 .....   | 60 FR 19318; 4/17/95         |
| 4/1/95-6/30/95 .....   | 60 FR 36854; 7/18/95         |
| 7/1/95-9/30/95 .....   | 60 FR 53228; 10/12/95        |
| 10/1/95-12/31/95 ..... | 61 FR 1972; 1/24/96          |
| 1/1/96-3/31/96 .....   | 61 FR 16955; 4/18/96         |
| 4/1/96-6/30/96 .....   | 61 FR 37526; 7/18/96         |
| 7/1/96-9/30/96 .....   | 61 FR 54833; 10/22/96        |

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

The Administrator's final decisions and orders, indexes, and digests are

available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Also, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

**Civil Penalty Actions—Orders Issued by the Administrator, Order Number Index**

(This index includes all decisions and orders issued by the Administrator from January 1, 1996, to December 31, 1996.)

- 96-1—[Airport Operator]
- 1/4/96—CP94\*\*0089
- 96-2—Skydiving Center of D.C.
- 1/5/96—CP94EA0261
- 96-3—America West Airlines
- 2/13/96—CP93WP0172, CP93WP0173, CP93WP0174
- 96-4—South Aero
- 2/13/96—CP94SW0023
- 96-5—Alphin Aircraft, Inc.
- 2/13/96—CP93EA0334
- 96-6—Evgeniy V. Ignatov
- 2/13/96—CP94GL0076
- 96-7—Delta Air Lines, Inc.
- 2/15/96—CP94SO0003
- 96-8—Empire Airlines, Inc.
- 2/29/96—CP95NM0034
- 96-9—[Airport Operator]
- 3/5/96—CP94\*\*0089
- 96-10—USAir, Inc.
- 3/11/96—CP95EA0100
- 96-11—USAir, Inc.
- 3/19/96—CP94GL0190
- 96-12—USAir, Inc.
- 3/19/96—CP94EA0126
- 96-13—Kennelm H. Winslow
- 4/19/96—CP94SO0153
- 96-14—Midtown Neon Sign Corp.
- 4/19/96—CP94EA0057
- 96-15—Valley Air Services, Inc.
- 5/3/96—CP94NE0095/94EAJANE0017
- 96-16—WestAir Commuter Airlines, Inc.
- 5/3/96—CP94WP0019
- 96-17—Ramon C. Fenner
- 5/3/96—CP93SO0414
- 96-18—Thomas Kilrain
- 5/3/96—CP94NE0268
- 96-19—[Air Carrier]
- 6/4/96—CP94\*\*0140
- 96-20—Donald M. Missilrian
- 7/31/96—CP95WP0282
- 96-21—Matthew Houseal
- 8/2/96—CP95EA0302
- 96-22—Mary Woodhouse
- 8/13/96—CP94WP0184, 94EAJAWP0017
- 96-23—Thomas Kilrain
- 8/13/96—CP94NE0268
- 96-24—Horizon Air Industries
- 8/13/96—CP94NM0228

96-25—USAir, Inc.  
8/13/96—CP94EA0045  
96-26—Midtown Neon Sign Corp.  
8/13/96—CP94EA0057

**Civil Penalty Actions—Orders Issued  
by the Administrator Subject Matter  
Index**

(Current as of December 31, 1996)

Note: No new decisions were issued during the fourth quarter of 1996. Therefore, the subject matter index published at 61 FR 54833, 54834, on October 22, 1996, remains current, and should be referred to for information about the Administrator's decisions and orders.

**Civil Penalty Actions—Orders Issued  
by the Administrator Digests**

Note: No new decisions and orders were issued during the fourth quarter of 1996. Therefore, there are no case digests to report for this period.

**Commercial Reporting Services of the  
Administrator's Civil Penalty Decisions  
and Orders**

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

*Civil Penalty Cases Digest Service*, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798-1677;  
*Federal Aviation Decisions*, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1-800-221-9428.

2. *CD-ROM.* The Administrator's orders and decisions are available on CD-ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733-2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available on CompuServe, FedWorld, and Westlaw. The Database ID for Westlaw is FTRAN-FAA.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

**FAA Offices**

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in

FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267-3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC-7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954-3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL-7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271-5269.

Office of the Assistant Chief Counsel for the Central Region (ACE-7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426-5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA-7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553-3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL-7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294-7108.

Office of the Assistant Chief Counsel for the New England Region (ANE-7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803-5299; (617) 238-7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM-7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055-4056; (206) 227-2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO-7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305-5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW-7), Southwest Region Headquarters, 2601 Meacham Blvd, Fort Worth, TX 76137-4298; (817) 222-5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT-7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485-7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP-7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725-7100.

Issued in Washington, DC on January 9, 1997.

James S. Dillman,

*Assistant Chief Counsel for Litigation.*

[FR Doc. 97-1113 Filed 1-15-97; 8:45 am]

BILLING CODE 4910-13-M

**Surface Transportation Board**

[Finance Docket No. 32760]

**Union Pacific Railroad Company—  
Control and Merger—Southern Pacific  
Transportation Company: Reno  
Mitigation Study**

**AGENCY:** Surface Transportation Board.

**ACTION:** Public information meeting.

**SUMMARY:** The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) will hold a public meeting concerning its Reno Mitigation Study. In its decision of August 12, 1996, the Board directed SEA to conduct this study in order to develop further mitigation to address the merger-related environmental impacts of increased railroad traffic on the existing Union Pacific (formerly Southern Pacific) right-of-way that runs through Reno, NV. The study will include publication of a draft mitigation plan to submit to the public for review and comment and issuance of a final mitigation plan.

The public information meeting will provide an opportunity for the public to meet members of the study team and to ask questions about and comment on the study process to date. In order to accommodate various Reno citizen scheduling needs, the meeting will be held twice on February 13 at Reno City Hall, Room 211, 490 S. Center St., Reno, NV. An informal open house will be held from 1:30 P.M. to 2:30 P.M. and then again from 6:00 P.M. to 7:00 P.M. during which times the public may review maps and graphics illustrating the study area and the mitigation options under consideration by SEA at this time. The open houses will be followed by public meetings from 2:30 P.M. to 4:30 P.M. and then again from 7:00 P.M. to 9:00 P.M. at which the SEA team will make a brief presentation.

**FOR FURTHER INFORMATION CONTACT:**

Harold McNulty, Section of Environmental Analysis, Rm. 3219, Surface Transportation Board, 12th & Constitution Ave., Washington, DC 20423; Phone Number (202) 927-6217; TDD for the hearing impaired (202) 927-5721.

By the Board, Elaine K. Kaiser, Chief,  
Section of Environmental Analysis.

Vernon A. Williams,  
Secretary.

[FR Doc. 97-1104 Filed 1-15-97; 8:45 am]

BILLING CODE 4915-00-P

**[STB Docket No. AB-33 (Sub-No. 106X)]**

**Union Pacific Railroad Company—  
Abandonment Exemption—in Santa  
Clara County, CA**

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon an approximately 0.44-mile line of railroad known as the San Jose Industrial Lead from milepost 22.45 (West Carlos Street) to the end of the line at milepost 22.89 (West San Fernando Street, near West San Jose, in Santa Clara County, CA.

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on 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 Surface Transportation Board (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 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 February 15, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup>

<sup>1</sup> 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

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by January 27, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 5, 1997, 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: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP 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 January 21, 1997. 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: January 8, 1997.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,  
Secretary.

[FR Doc. 97-1105 Filed 1-15-97; 8:45 am]

BILLING CODE 4915-00-P

**DEPARTMENT OF THE TREASURY**

**Submission for OMB Review;  
Comment Request**

January 7, 1997.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

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.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*Special Request:* In order to begin the survey described below on January 20, 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by January 15, 1997. To obtain a copy of this survey, please contact the U.S. Mint Clearance Officer at the address listed below.

U.S. Mint

*OMB Number:* 1525-0006.

*Project Number:* 15250006-2.

*Type of Review:* Revision.

*Title:* 1997 U.S. Mint Customer Satisfaction Survey.

*Description:* This 1997 survey will provide the first follow-up information on customer satisfaction since the 1995 baseline survey and the introduction of new customer service standards in 1996. The 1997 survey will be used for three major purposes: (1) to assess current customer satisfaction with the services and program provided by the Mint; (2) to track changes in customer satisfaction since the 1995 survey and the development of a customer service plan; and (3) to guide development of strategic actions and service standards to improve customer satisfaction.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 1,100.

*Estimated Burden Hours Per Respondent:* 12 minutes.

*Frequency of Response:* Other.

*Estimated Total Reporting Burden:* 220 hours.

*Clearance Officer:* Mike Green (202) 326-1600, United States Mint, 633 Third Street, NW, Washington, DC 20220.

*OMB Reviewer:* Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

*Departmental Reports Management Officer.*

[FR Doc. 97-1058 Filed 1-15-97; 8:45 am]

BILLING CODE 4810-37-P

**Internal Revenue Service****Proposed Collection; Comment Request for Form 8832**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8832, Entity Classification Election.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instruction should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Entity Classification Election.

*OMB Number:* 1545-1516.

*Form Number:* 8832.

*Abstract:* An eligible entity that chooses not to be classified under the default rules of Treas. Reg. 301.7701 or that wishes to change its current classification must file Form 8832 to elect a classification. The IRS will use the information entered on this form to establish the entity's filing and reporting requirements for Federal tax purposes.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations and farms.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 4 hrs. 31 min.

*Estimated Total Annual Burden Hours:* 22,500.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

**Request for Comments:**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1117 Filed 1-15-97; 8:45 am]

BILLING CODE 4830-01-U

**Proposed Collection; Comment Request for Form 8300**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Report of Cash Payments Over \$10,000 Received in a Trade or Business.

*OMB Number:* 1545-0892.

*Form Number:* Form 8300.

*Abstract:* Internal Revenue Code section 6050I requires any person in a trade or business who, in the course of the trade or business, receives more than \$10,000 in cash or foreign currency in one or more related transactions to report it to the IRS and provide a statement to the payer. Form 8300 is used for this purpose.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, farms, and the Federal government.

*Estimated Number of Respondents:* 45,800

*Estimated Time Per Respondent:* 1 hr., 22 min.

*Estimated Total Annual Burden Hours:* 62,512.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1118 Filed 1-15-97; 8:45 am]

BILLING CODE 4830-01-U

### Proposed Collection; Comment Request for Forms 8027 and 8027-T

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips and Form 8027-T, Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027) and Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027-T).

*OMB Number:* 1545-0714.

*Form Number:* Forms 8027 and 8027-T.

**Abstract:** To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees. Forms 8027 and 8027-T are used for this purpose.

**Current Actions:** There are no changes being made to the forms at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit organizations, individuals or households, not-for-profit institutions and state, local or tribal governments.

**Estimated Number of Respondents:** 52,050.

**Estimated Time Per Respondent:** 6 hr., 53 min.

**Estimated Total Annual Burden Hours:** 358,170.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1119 Filed 1-15-97; 8:45 am]

BILLING CODE 4830-01-P

### Proposed Collection; Comment Request for Form 5304-SIMPLE

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5304-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institution Rules).

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institution Rules).

*OMB Number:* 1545-1502.

*Form Number:* Form 5304-SIMPLE.

**Abstract:** Form 5304-SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). The data is used to verify that the employer has a qualified SIMPLE IRA and may deduct contributions to the SIMPLE IRA on the employer's tax return.

**Current Actions:** There are no changes being made to the form at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit organizations and individuals or households.

**Estimated Number of Respondents:** 100,000.

**Estimated Time Per Respondent:** 6 hr., 51 min.

**Estimated Total Annual Burden Hours:** 684,000

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1120 Filed 1-15-97; 8:45 am]

BILLING CODE 4830-01-U

#### Proposed Collection; Comment Request for Form 1099-LTC

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-LTC, Long-Term Care and Accelerated Death Benefits.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

**Title:** Long-Term Care and Accelerated Death Benefits.

**OMB Number:** 1545-1519.

**Form Number:** Form 1099-LTC.

**Abstract:** Under the terms of Internal Revenue Code sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of \$175 per day are taxable. Section 6050Q requires all such amounts to be reported.

**Current Actions:** There are no changes being made to the form at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit organizations, individuals or households, not-for-profit institutions and state, local or tribal government.

**Estimated Number of Respondents:** 1,000.

**Estimated Time Per Respondent:** 4 hr., 45 min.

**Estimated Total Annual Burden Hours:** 4,750.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1121 Filed 1-15-97; 8:45 am]

BILLING CODE 4830-01-U

#### Proposed Collection; Comment Request for Form 1099-MSA

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-MSA, Distributions From Medical Savings Accounts.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distributions From Medical Savings Accounts.

*OMB Number:* 1545-1517.

*Form Number:* Form 1099-MSA.

*Abstract:* This form will be used to report distributions from a medical savings account as required by Internal Revenue Code section 220(h).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 150,000.

*Estimated Time Per Respondent:* 18 min.

*Estimated Total Annual Burden Hours:* 45,000.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1122 Filed 1-15-97; 8:45 am]

BILLING CODE 4830-01-P

**Proposed Collection; Comment Request for Form 5498-MSA**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498-MSA, Medical Savings Account Information.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Medical Savings Account Information.

*OMB Number:* 1545-1518.

*Form Number:* Form 5498-MSA.

*Abstract:* This form will be used to report contributions to a medical savings account as required by Internal Revenue Code section 220(h).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 150,000.

*Estimated Time Per Respondent:* 24 min.

*Estimated Total Annual Burden Hours:* 60,000.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1123 Filed 1-15-97; 8:45 am]

BILLING CODE 4830-01-U

**Proposed Collection; Comment Request for Forms 6559 & 6559-A**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 6559 and 6559-A, Transmitter Report and Summary of Magnetic Media and Continuation Sheet for Form 6559.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Transmitter Report and Summary of Magnetic Media and Continuation Sheet for Form 6559.

*OMB Number:* 1545-0441.

*Form Number:* Forms 6559 and 6559-A.

*Abstract:* Forms 6559 and 6559-A are used by filers of Form W-2 Wage and Tax Data to transmit filings on magnetic media. SSA and IRS need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, farms, Federal Government and state, local or tribal government.

*Estimated Number of Respondents:* 100,000.

*Estimated Time Per Respondent:* 18 min.

*Estimated Total Annual Burden Hours:* 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1124 Filed 1-15-97; 8:45 am]

**BILLING CODE 4830-01-U**

**Proposed Collection; Comment Request for Revenue Procedure 96-61**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96-61, Electronic Filing Program.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Filing Program.

*OMB Number:* 1545-1512.

*Revenue Procedure Number:* Revenue Procedure 96-61.

*Abstract:* Revenue Procedure 96-61 informs those who participate in the Electronic Filing Program for Form 1040, Form 1040A, and Form 1040EZ, of their obligations to the Internal Revenue Service, taxpayers, and other participants.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 75,000.

*Estimated Time Per Respondent:* 15 hours, 17 minutes (or approximately six (6) minutes per electronically filed return).

*Estimated Total Annual Burden Hours:* 1,146,272.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97-1125 Filed 1-15-97; 8:45 am]

**BILLING CODE 4830-01-U**

**Proposed Collection; Comment Request for Revenue Procedure 96-62**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96-62, On-Line Filing Program.

**DATES:** Written comments should be received on or before March 17, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* On-Line Filing Program.  
*OMB Number:* 1545-1513.

*Revenue Procedure Number:* Revenue Procedure 96-62.

*Abstract:* Revenue Procedure 96-62 informs those who participate in the On-Line Filing Program for Form 1040, Form 1040A, and Form 1040EZ, of their obligations to the Internal Revenue Service, taxpayers, and other participants.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 14.

*Estimated Time Per Respondent:* 423 hours (or approximately two (2) minutes per on-line electronically filed return).

*Estimated Total Annual Burden Hours:* 5,919.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 1997.  
Garrick R. Shear,  
*IRS Reports Clearance Officer.*  
[FR Doc. 97-1126 Filed 1-15-97; 8:45 am]  
**BILLING CODE 4830-01-U**

**DEPARTMENT OF VETERANS AFFAIRS**

**Department of Veterans Affairs' Advisory Committee on Minority Veterans, Notice of Charter Renewal**

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1992, that the Department of Veterans Affairs' Advisory Committee on Minority Veterans has been renewed for a 2-year period beginning December 30, 1996, through December 30, 1998.

Dated: January 7, 1997.  
By direction of the Secretary.  
Heyward Bannister,  
*Committee Management Officer.*  
[FR Doc. 97-1050 Filed 1-15-97; 8:45 am]  
**BILLING CODE 8320-01-M**

**Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee; Notice of Charter Renewal**

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee has been renewed for a 2-year period beginning January 3, 1997, through January 3, 1999.

Dated: January 7, 1997.

By direction of the Secretary.  
Heyward Bannister,  
*Committee Management Officer.*  
[FR Doc. 97-1051 Filed 1-15-97; 8:45 am]  
**BILLING CODE 8320-01-M**

**Cost-of-Living Adjustments and Headstone or Marker Allowance Rate**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Notice.

**SUMMARY:** As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1996. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1997, which began on October 1, 1996.

**DATES:** These COLAs are effective December 1, 1996. The headstone or marker allowance rate is effective October 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Paul Trowbridge, Consultant, Compensation and Pension Service (213B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273-7218.

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101-508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17-90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA

costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1996 under the above computation method was \$96. Therefore, effective October 1, 1996, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1997 is \$96.

**Cost of Living Adjustments**

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95-588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the Federal Register.

The Social Security Administration has announced that there will be a 2.9 percent cost-of-living increase in social security benefits effective December 1, 1996. Therefore, applying the same percentage, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1996:

**Table 1.—Improved Pension**

*Maximum annual rates*

- (1) Veterans permanently and totally disabled (38 U.S.C. 1521):  
 Veteran with no dependents, \$8,486  
 Veteran with one dependent, \$11,115  
 For each additional dependent, \$1,445
- (2) Veterans in need of aid and attendance (38 U.S.C. 1521):  
 Veteran with no dependents, \$13,573  
 Veteran with one dependent, \$16,201  
 For each additional dependent, \$1,445
- (3) Veterans who are housebound (38 U.S.C. 1521):  
 Veteran with no dependents, \$10,373  
 Veteran with one dependent, \$13,001  
 For each additional dependent, \$1,445
- (4) Two veterans married to one another, combined rates (38 U.S.C. 1521):  
 Neither veteran in need of aid and attendance or housebound, \$11,115  
 Either veteran in need of aid and attendance, \$16,201  
 Both veterans in need of aid and

- attendance, \$21,286  
 Either veteran housebound, \$13,001  
 Both veterans housebound, \$14,889  
 One veteran housebound and one veteran in need of aid and attendance, \$18,085  
 For each dependent child, \$1,445
- (5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):  
 Surviving spouse alone, \$5,688  
 Surviving spouse and one child in his or her custody, \$7,450  
 For each additional child in his or her custody, \$1,445
- (6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):  
 Surviving spouse alone, \$9,096  
 Surviving spouse with one child in his or her custody, \$10,854  
 For each additional child in his or her custody, \$1,445
- (7) Surviving spouses who are housebound (38 U.S.C. 1541):  
 Surviving spouse alone, \$6,954  
 Surviving spouse and one child in his or her custody, \$8,712  
 For each additional child in his or her custody, \$1,445
- (8) Surviving child alone (38 U.S.C. 1542), \$1,445

*Reduction for income.* The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

*Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by \$1,922. (38 U.S.C. 1521(g)).

**Parents' DIC**

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

*One parent.* If there is only one parent, the monthly rate of DIC paid to such parent shall be \$403 reduced on the basis of the parent's annual income according to the following formula:

**TABLE 2**  
[For each \$1 of annual income]

| The \$403 monthly rate shall be reduced by | Which is more than | But not more than |
|--|--------------------|-------------------|
| \$0.00 .....                               | \$0                | \$800             |
| .08 .....                                  | 800                | 9,654             |

No DIC is payable under this table if annual income exceeds \$9,654.

*One parent who has remarried.* If there is only one parent and the parent

has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

*Two parents not living together.* The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be \$290 reduced on the basis of each parent's annual income, according to the following formula:

**TABLE 3**  
[For each \$1 of annual income]

| The \$290 monthly rate shall be reduced by | Which is more than | But not more than |
|--|--------------------|-------------------|
| \$0.00 .....                               | \$0                | \$800             |
| .06 .....                                  | 800                | 900               |
| .07 .....                                  | 900                | 1,100             |
| .08 .....                                  | 1,100              | 9,654             |

No DIC is payable under this table if annual income exceeds \$9,654.

*Two parents living together or remarried parents living with spouses.* The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be \$272 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

**Table 4**  
[For each \$1 of annual income]

| The \$272 monthly rate shall be reduced by | Which is more than | But not more than |
|--|--------------------|-------------------|
| \$0.00 .....                               | \$0                | \$1,000           |
| .03 .....                                  | 1,000              | 1,500             |
| .04 .....                                  | 1,500              | 1,900             |
| .05 .....                                  | 1,900              | 2,400             |
| .06 .....                                  | 2,400              | 2,900             |
| .07 .....                                  | 2,900              | 3,200             |
| .08 .....                                  | 3,200              | 12,977            |

No DIC is payable under this table if combined annual income exceeds \$12,977.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the

|  |   |  |
|--|---|--|
| <p>parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.</p> <p><i>Aid and attendance.</i> The monthly rate of DIC payable to a parent under Tables</p> | <p>2 through 4 shall be increased by \$216 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need</p> | <p>or require the regular aid and attendance of another person.</p> <p><i>Minimum rate.</i> The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than \$5.</p> |
|--|---|--|

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TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

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- (1) Veteran or surviving spouse with no dependents, \$9,654 (Pub. L. 95-588, section 306(a)).
  - (2) Veteran with no dependents in need of aid and attendance, \$10,154 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
  - (3) Veteran or surviving spouse with one or more dependents, \$12,977 (Pub. L. 95-588, section 306(a)).
  - (4) Veteran with one or more dependents in need of aid and attendance, \$13,477 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
  - (5) Child (no entitled veteran or surviving spouse), \$7,891 (Pub. L. 95-588, section 306(a)).
  - (6) Spouse income exclusion (38 CFR 3.262), \$3,079 (Pub. L. 95-588, section 306(a)(2)(B)).
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TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

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- (1) Veteran or surviving spouse without dependents or an entitled child, \$8,450 (Pub. L. 95-588, section 306(b)).
  - (2) Veteran or surviving spouse with one or more dependents, \$12,184 (Pub. L. 95-588, section 306(b)).
- 

Dated: January 6, 1997.

Jesse Brown,

*Secretary of Veterans Affairs.*

[FR Doc. 97-1052 Filed 1-15-97; 8:45 am]

**BILLING CODE 8320-01-P**

# Corrections

Federal Register

Vol. 63, No. 11

Thursday, January 16, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

RIN 0648-XX71

[Docket No. 961114318-6318-01; I.D. 110496A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 1997 Harvest Specifications

##### Correction

In rule document 96-30046, beginning on page 60044, in the issue of

Tuesday, November 26, 1996, make the following correction:

On page 60047, at the end of Table 2, under Footnote 5, insert "(6) Exempt".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 93

[Docket No. 28537; Amendment Nos. 91-253, 93-73, 121-262, 135-66]

RIN 2120-AF93

#### Special Flight Rules in the Vicinity of Grand Canyon National Park

##### Correction

In rule document 96-33146, beginning on page 69302, in the issue of Tuesday, December 31, 1996, make the following correction:

##### § 93.301 [Corrected]

1. On page 69330, in the second column, in § 93.301, in the sixteenth line from the bottom, "Lat. 35°5751 N.,

Long. 113°1106" should read "35°57'51" N., Long. 113°11'06"".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 28765; Amdt. No. 1773]  
RIN 2120-AA65

#### Standard Instrument Approach Procedures; Miscellaneous Amendments

##### Correction

In rule document 97-314 beginning on page 1051 in the issue of Wednesday, January 8, 1997 make the following correction:

##### § 97.23, 97.25, 97.29, 97.31, 97.33 and 97.35 [Corrected]

On page 1052, in the 3rd column, in the 24th and 23rd lines from the bottom "Penn Yan, NDB RWY" should read "Penn Yan, GPS RWY".

BILLING CODE 1505-01-D

Federal Reserve

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Thursday  
January 16, 1997

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**Part II**

**United States  
Information Agency**

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**Revised Exchange-Visitor Skills List;  
Notice**

## UNITED STATES INFORMATION AGENCY

### Revised Exchange-Visitor Skills List

**SUMMARY:** The Exchange-Visitor Skills List which follows incorporates all previous revisions and amendments still in effect, and has been developed after consultation with foreign governments.

**DATES:** In order to provide time for the dissemination of this list to Foreign Service posts abroad and to interested persons and organizations in the United States, the following Exchange-Visitor Skills List shall become effective March 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stanley S. Colvin or William G. Ohlhausen, Assistant General Counsels, United States Information Agency, Suite 700, 301-4th Street, SW., Washington, DC 20547. Telephone 202-619-6829.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e), and 22 CFR 41.65(b), The Secretary of State designated on April 25, 1972, and revised on February 10, 1978, a list of fields of specialized knowledge or skills (referred to as the Exchange-Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange-visitor visa and/or became a participant in an Exchange-Visitor Program involving a designated field of specialized knowledge or skill after the effective date of those public notices was subject to the two-year foreign residence (home-country physical presence) requirement of section 212(e) of said Immigration and Nationality Act as provided by said section and 22 CFR 41.65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of the United States Information Agency Authorization Act of August 24, 1982 (Pub.L. 97-241) and Executive Orders Nos. 12038 of March 27, 1978 and 12388 of October 14, 1982, the Director, United States Information Agency, further revised the 1972 Exchange-Visitor Skills List on: September 30, 1986; February 5, 1987; March 19, 1987; April 1, 1987; December 16, 1988 and on July 28, 1993.

Exchange visitors who entered the country prior to said effective date shall continue to be governed by the 1972 Exchange-Visitor Skills List, as amended. The Skills Lists have been developed after consultation with foreign governments, USIA area offices,

USIS posts abroad, and with the assistance of foreign services officers assigned to USIA's Office of the General Counsel, Waiver Branch, Exchange Visitor Program Services.

Dated: January 7, 1997.

Les Jin,  
General Counsel.

The *Revised Exchange Visitor Skills List* appears as follows:

#### Revised Skills (Master)

##### *Group (1). Fields in the Administration of Public or Public-Oriented Affairs:*

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

1O. Labor Union Administration

##### *Group (2). Fields in the Medical Profession:*

2A. General Practice of Medicine (including Osteopaths who also practice Medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice Medicine)

2M. Medical Cybernetics

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2O. Medical Statistics and Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

2S. Medical Research

##### *Group (3). Fields in Computer Science and Related Professions:*

3A. Computer Science

3B. Information Science and Systems Analysis

3C. Data Processing (including, but not limited to the use of data in analyzing census financial planning and feasibility studies)

3D. Computer Programming

3E. Computer Maintenance Technologies

##### *Group (4). Fields in Engineering and Related Professions:*

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4D. Civil Engineering (including

Airport Engineering)

4E. Communication Engineering

4F. Computer Engineering and

Technologies

4G. Electrical Engineering

4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical

Engineering

4K. Industrial Engineering

4L. Marine and Aeronautical

Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4N. Mechanical Engineering

(including, but not limited to: systems,

safety and production engineers, and including Automatic Data Processing)

4O. Mining and Lumbering

Engineering and Technology

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

4T. Surveying (including Oceanography)

4U. Agricultural Engineering

4V. Nuclear Engineering

4W. Natural Resource Management Engineering (including but not limited to Water Resource Management)

4X. Environmental Engineering

*Group (5). Fields in the Natural Sciences and Mathematics:*

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology

(including, but not limited to physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including but not limited to Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance

Technology

5L. Agriculture and Agronomy

(including, but not limited to veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5P. Fisheries (or other Marine Products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalination

5U. Population Studies

5V. Botany

5W. Entomology

*Group (6). Fields in the Social Sciences:*

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including

Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

6O. Theology

6P. Cultural Diversity (including, but not limited to Women's, Minority, Ethnic and Area Studies)

6Q. Fashion and Textile Design

6R. Graphic Design

6S. Geography

6T. Home Economics

6U. Language Studies

*Group (7). Fields in the Study and Practice of Education:*

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7H. College and University Teaching of Education

7I. College and University Teaching of Business

7J. Agricultural School Teaching

7K. Education of the Physically Handicapped (including Education of

the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7N. Teaching in Medical Schools

(including, but not limited to lecturers)

7O. Teaching in Law Schools

(including, but not limited to lecturers)

7P. Career Guidance and Counseling

7Q. Camp Counselor

7R. Educational Technology

(Instructional Systems Technology)

7S. Educational Psychology

7T. Curriculum Planning

*Group (8). Fields in Communication, Transport and Construction Professions and Skills:*

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

8L. Telecommunications

*Group (9). Fields in Business:*

9A. Industrial and Business Administration and Management

(including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9J. Insurance (including Actuaries)

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

## 90. Farm Management and Administration

- 9P. Hotel and Motel Management  
9R. Marketing  
9S. Finance

*Group (10). Fields of Library Science:*

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

## Afghanistan

Please Note: the Skills List For Afghanistan Is Currently Suspended.

## Albania

## Group (1)

All fields listed in part I.

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

All fields listed in part I.

## Group (6)

All fields listed in part I.

## Group (7)

All fields listed in part I.

## Group (8)

All fields listed in part I.

## Group (9)

All fields listed in part I.

## Group (10)

All fields listed in part I.

## Algeria

## Group (1)

All fields listed in part I.

## Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive

Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

All fields listed in part I.

## Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Child Psychology, Psychometrics and Psychobiology)

6H. Economics

## Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7J. Agricultural School Teaching

7N. Teaching in Medical Schools (including, but not limited to lecturers)

7O. Teaching in Law Schools (including, but not limited to lecturers)

## Group (8)

All fields listed in part I.

## Group (9)

All fields listed in part I.

## Argentina

## Group (1)

1A. Public Administration (including but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1E. Drug Abuse and Narcotics Control

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

## Group (2)

2C. Veterinary Medicine

## Group (3)

All fields listed in part I.

## Group (4)

4E. Communication Engineering

4H. Electronic Engineering (including Radio Engineering)

4J. Genetic and Biomedical Engineering

4L. Marine and Aeronautical Engineering and Technology including, but not limited to: Marine and Flight Engineers)

4U. Agricultural Engineering

4W. Natural Resource Management Engineering (including but not limited to Water Resource Management)

4X. Environmental Engineering

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: Physical and Chemistry Laboratory Technicians)

5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)

5L. Agriculture and Agronomy

(including, but not limited to: Veterinarians, Plant Pathologists, Poultry and Dairy Scientists, Animal Husbandry and Animal Nutrition)

5M. Food Science and Technology

5P. Fisheries (or other Marine Products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all

branches of Applied Geology including Geophysicists and Geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalination

5U. Population Studies

Group (6)

6J. Instructional Media and Technology

6M. Linguistics

Group (7)

7B. Educational Testing, Evaluation and Measurement

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7H. College and University Teaching of Education

7I. College and University Teaching of Business

7J. Agricultural School Teaching

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7R. Educational Technology (Instructional Systems Technology)

7T. Curriculum Planning

Group (8)

8L. Telecommunications

Group (9)

9I. Statistics

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Azerbaijan

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic

Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2D. Emergency Medicine

2H. Medical Instruments and Technology

2M. Medical Cybernetics

2O. Medical Statistics and Documentation

2P. Cancer Research

2R. Environmental Health

Group (3)

3B. Information Science and Systems Analysis

3D. Computer Programming

Group (4)

4B. Cartography

4H. Electronic Engineering (including Radio Engineering)

4J. Genetic and Biomedical Engineering

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, Plastics, Wood, Paper and Metal, but not including Metal Fabrication)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4S. Printing and Photographic Engineering and Technology

Group (5)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5M. Food Science and Technology

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including Geophysicists and Geochemists)

5S. Ecology and Environmental Protection (including Conservation)

Group (6)

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6R. Graphic Design

6T. Home Economics

Group (7)

7B. Educational Testing, Evaluation and Measurement

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7N. Teaching in Medical Schools (including, but not limited to lecturers)

7R. Educational Technology (Instructional Systems Technology)

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8F. Merchant Marine

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8L. Telecommunications

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: Programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9D. Labor and Industrial Relations

9F. Economic Information Analysis (including, but not limited to Management Studies)

9H. Cybernetic Technology

9J. Insurance (including Actuaries)

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9M. Operations Research

9N. Banking

9P. Hotel and Motel Management

9R. Marketing

9S. Finance

Bahamas

Group (1)

1A. Public Administration (including but Not Limited To: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1M. Technical or Vocational School Administration

1O. Labor Union Administration

Group (3)

All fields listed in part I.

Group (4)

4D. Civil Engineering (including Airport Engineering)

4G. Electrical Engineering

4L. Marine and Aeronautical

Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)

5F. Mathematics

5L. Agriculture and Agronomy (including, but not limited to: Veterinarians, Plant Pathologists, Poultry and Dairy Scientists, Animal Husbandry and Animal Nutrition)

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, eg. Oceanology, and all branches of Applied Geology including Geophysicists and Geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5T. Desalinization

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6H. Economics

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics,

Engineering and Technology (except Agriculture)

7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7H. College and University Teaching of Education

7J. Agricultural School Teaching

7M. Physical Education and Recreation (including, but not limited to Coaching)

7N. Teaching in Medical Schools (including, but not limited to lecturers)

7O. Teaching in Law Schools (including, but not limited to lecturers)

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8C. Electrical Communication Technology

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9N. Banking

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Bahrain

Group (1)

1A. Public Administration (including but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1K. Secondary School Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)

2N. All Therapies, Prosthetics And Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

Group (3)

All fields listed in part I.

Group (4)

4D. Civil Engineering (including Airport Engineering)

4G. Electrical Engineering

4H. Electronic Engineering (including Radio Engineering)

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)

4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5T. Desalinization

Group (6)

6H. Economics

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

Group (8)

8C. Electrical Communication Technology

8D. Radio Operation

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: Programmers and Project Evaluation, Business, Total Quality Management)

9I. Statistics

9B. Banking

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Bangladesh

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6H. Economics

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7H. College and University Teaching of Education

7J. Agricultural School Teaching

7N. Teaching in Medical Schools (including, but not limited to lecturers)

Group (8)

8C. Electrical Communication Technology

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9N. Banking

Benin

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1J. Primary School Administration

1K. Secondary School Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2O. Medical Statistics and Documentation

- 2P. Cancer Research
- 2Q. Medical Photography
- 2R. Environmental Health
- 2S. Medical Research

Group (3)

All Files Listed in Part I.

Group (4)

- 4D. Civil Engineering (including Airport Engineering)
- 4G. Electrical Engineering
- 4H. Electrical Engineering (including Radio Engineering)
- 4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
- 4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)
- 4O. Mining and Lumbering Engineering and Technology
- 4T. Surveying (including Oceanography)
- 4U. Agricultural Engineering

Group (5)

- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
- 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
- 5F. Mathematics
- 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
- 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
- 5K. Repair and Maintenance Technology
- 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
- 5O. Forestry
- 5P. Fisheries (or other Marine Products)
- 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
- 5R. Hydrology (including, but not limited to Water Pollution)

Group (6)

- 6A. Sociology (except Economics and including Criminology)
- 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
- 6H. Economics

Group (7)

- 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
- 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
- 7E. Vocational and Technical School Teaching
- 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
- 7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
- 7H. College and University Teaching of Education
- 7J. Agricultural School Teaching
- 7N. Teaching in Medical Schools (including, but not limited to lecturers)
- 7O. Teaching in Law Schools (including, but not limited to lecturers)

Group (8)

- 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
- 8C. Electrical Communication Technology
- 8D. Radio Operation
- 8G. Architecture (including Marine Architecture)
- 8H. Construction (including but not limited to builders, but not including skilled and unskilled laborers)
- 8J. Drafting
- 8K. Skilled Operation of Construction Machines

Group (9)

- 9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
- 9I. Statistics
- 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
- 9N. Banking

Group (10)

- 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Bolivia

Group (1)

- 1A. Public Administration (including but Not Limited To: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
- 1B. Public Social Administration (including, but not limited to: Welfare,

Dietetics, Nutrition, Family Planning and Public Health)

- 1J. Primary School Administration
- 1K. Secondary School Administration
- 1M. Technical or Vocational School Administration
- 1N. Hospital Administration

Group (2)

- 2A. General Practice of Medicine (including Osteopaths who also practice medicine)
- 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
- 2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
- 2H. Medical Instruments and Technology
- 2I. Dentistry
- 2J. Dental Technology
- 2K. Optometry
- 2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)
- 2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

Group (3)

All fields listed in part I.

Group (4)

- 4D. Civil Engineering (including Airport Engineering)
- 4G. Electrical Engineering
- 4H. Electronic Engineering (including Radio Engineering)
- 4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)
- 4O. Mining and Lumbering Engineering and Technology
- 4T. Surveying (including Oceanography)

Group (5)

- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to Skilled Metal Crafts Workers)

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

#### Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)

6H. Economics

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

#### Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7H. College and University Teaching of Education

7J. Agricultural School Teaching

7N. Teaching in Medical Schools (including, but not limited to lecturers)

7O. Teaching in Law Schools (including, but not limited to lecturers)

#### Group (8)

8A. Journalism (including, but not limited to editors and reporters, and

including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

#### Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9J. Insurance (including Actuaries)

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

#### Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

#### Botswana

#### Group (1)

All fields listed in part I.

#### Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology,

Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

#### Group (3)

All fields listed in part I.

#### Group (4)

4D. Civil Engineering (including Airport Engineering)

4G. Electrical Engineering

4H. Electronic Engineering (including Radio Engineering)

4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)

4O. Mining and Lumbering

Engineering and Technology

4T. Surveying (including Oceanography)

#### Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to Skilled metal crafts workers)

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists,

poultry and dairy scientists, animal husbandry and animal nutrition)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6H. Economics

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7J. Agricultural School Teaching

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8C. Electrical Communication Technology

8D. Radio Operation

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9N. Banking

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Brazil

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

1O. Labor Union Administration

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2J. Dental Technology

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2S. Medical Research

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance

Technology

5L. Agriculture and Agronomy (including, but not limited to:

Veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

5V. Botany

5W. Entomology

Group (6)

6J. Instructional Media and Technology

Group (7)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7H. College and University Teaching of Education

- 7J. Agricultural School Teaching  
7N. Teaching in Medical Schools (including, but not limited to lecturers)  
7R. Educational Technology (Instructional Systems Technology)  
7T. Curriculum Planning
- Group (8)  
8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8I. Construction-Project Management  
8J. Drafting  
8L. Telecommunications
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9I. Statistics  
9J. Insurance (including Actuaries)
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Burkina Faso
- Group (1)  
1A. Public Administration (including but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1J. Primary School Administration  
1K. Secondary School Administration  
1L. College, University and Higher Education Administration  
1M. Technical or Vocational School Administration  
1N. Hospital Administration
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
9L. Financial Planning  
9M. Operations Research  
9N. Banking  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Burma (see Myanmar)
- Burundi
- Group (1)  
All fields listed in part I.
- Group (2)  
2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
2H. Medical Instruments and Technology  
2I. Dentistry  
2J. Dental Technology  
2K. Optometry  
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
4A. Aerospace Engineering  
4B. Cartography  
4C. Chemical Engineering  
4D. Civil Engineering (including Airport Engineering)  
4E. Communication Engineering  
4F. Computer Engineering and Technologies  
4G. Electrical Engineering  
4I. Energy Engineering and Technology (but not including

Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4L. Marine and Aeronautical

Engineering and Technology (including, but not limited to: marine and flight engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including metal fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4O. Mining and Lumbering

Engineering and Technology

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas

Engineering and Technology

4S. Printing and Photographic

Engineering and Technology

4T. Surveying (including

Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5E. Genetics

5F. Mathematics

5G. Laboratory Technology

(including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance

Technology

5L. Agriculture and Agronomy

(including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal

Behavior and Physiology)

5O. Forestry

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including

Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to

International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and

Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to:

programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and

Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and

Planning (including Rural Development)

9F. Economic Information Analysis

(including, but not limited to

Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9K. Administration of Financial

Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Cameroon

Group (1)

1A. Public Administration (including but Not Limited To: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery,

Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2M. Medical Cybernetics

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2O. Medical Statistics and Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance

Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5P. Fisheries (Or Other Marine Products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

Group (6)

6A. Sociology (except Economics and including Criminology)

6C. History (including Art History)

6D. Philosophy (including

Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and

Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and

Planning (including Rural Development)

9F. Economic Information Analysis

(including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Cape Verde

Group (1)

1A. Public Administration (including but Not Limited To: Urban Studies/ Planning, Urban Transportation, City Planning and Public Health)

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1N. Hospital Administration

Group (3)

All fields listed in part I.

Group (4)

4C. Chemical Engineering

4D. Civil Engineering (including Airport Engineering)

4F. Computer Engineering and Technologies

4G. Electrical Engineering

4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4K. Industrial Engineering

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4U. Agricultural Engineering

4W. Water Resource Management

4X. Environmental Engineering

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to:

Marine Science, Meteorology and Oceanography

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

Group (6)

6E. Anthropology and Archaeology

6H. Economics

6J. Instructional Media and Technology

Group (7)

7E. Vocational and Technical School Teaching

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8G. Architecture (including Marine Architecture)

8L. Telecommunications

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9N. Banking

9P. Hotel and Motel Management

9R. Marketing

9S. Finance

Central African Republic

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to management studies)

9G. Accounting

- 9H. Cybernetic Technology  
9I. Statistics  
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
9L. Financial Planning  
9M. Operations Research  
9N. Banking  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Group (10)
- 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Chad
- Group (1)
- 1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1J. Primary School Administration  
1K. Secondary School Administration  
1L. College, University and Higher Education Administration  
1M. Technical or Vocational School Administration  
1N. Hospital Administration
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.
- Group (4)
- All fields listed in part I.
- Group (5)
- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
- 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)
- 6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)
- All fields listed in part I.
- Group (8)
- 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)
- 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8J. Drafting  
8K. Skilled Operation of Construction Machines
- Group (9)
- 9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
9L. Financial Planning  
9M. Operations Research  
9N. Banking  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Group (10)
- 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Chile
- Group (1)
- All fields listed in part I.
- Group (2)
- 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine

- 2F. Geriatrics  
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
2I. Dentistry  
2M. Medical Cybernetics  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Child Psychology, Psychometrics and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
7H. College and University Teaching of Education  
7I. College and University Teaching of Business
- 7J. Agricultural School Teaching  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7N. Teaching in Medical Schools (including, but not limited to lecturers)  
7P. Career Guidance and Counseling
- Group (8)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8E. Airplane Piloting (including, but not limited to Airline Piloting)  
8F. Merchant Marine  
8I. Construction-Project Management
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Development, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
9L. Financial Planning  
9M. Operations Research  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- People's Republic of China  
Please note that the skills list for the People's Republic of China does not apply to the citizens of Taiwan.
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Colombia  
Group (1)  
1A. Public Administration (including but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1J. Primary School Administration  
1K. Secondary School Administration  
1L. College, University and Higher Education Administration  
1M. Technical or Vocational School Administration  
1O. Labor Union Administration
- Group (2)  
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2M. Medical Cybernetics

2O. Medical Statistics and Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4E. Communication Engineering

4F. Computer Engineering and

Technologies

4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: marine and flight engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4O. Mining and Lumbering Engineering and Technology

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

Group (5)

5C. Study of Drugs and Allied Sciences

5E. Genetics

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

Group (6)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7I. College and University Teaching of Business

7J. Agricultural School Teaching

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)

8F. Merchant Marine

8I. Construction-Project Management

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Development, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis

(including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9L. Financial Planning

9M. Operations Research

9O. Farm Management and Administration

9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Costa Rica

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

6O. Theology

6P. Cultural Diversity (including, but not limited to Women's, Minority, Ethnic and Area Studies)

6Q. Fashion and Textile Design

6R. Graphic Design

6S. Geography

6T. Home Economics

6U. Language Studies

## Group (7)

- 7A. Teaching and Religious Education
- 7B. Educational Testing, Evaluation and Measurement
- 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
- 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
- 7E. Vocational and Technical School Teaching
- 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
- 7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
- 7H. College and University Teaching of Education
- 7I. College and University Teaching of Business
- 7J. Agricultural School Teaching
- 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
- 7L. Education of Exceptional Children
- 7M. Physical Education and Recreation (including, but not limited to Coaching)
- 7N. Teaching in Medical Schools (including, but not limited to lecturers)
- 7P. Career Guidance and Counseling
- 7Q. Camp Counselor
- 7R. Educational Technology (Instructional Systems Technology)
- 7S. Educational Psychology
- 7T. Curriculum Planning

## Group (8)

- 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
- 8B. Communication Media (including Television and Film)
- 8C. Electrical Communication Technology
- 8F. Merchant Marine
- 8I. Construction-Project Management
- 8K. Skilled Operation of Construction Machines
- 8L. Telecommunications

## Group (9)

All fields listed in part I.

## Group (10)

- 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Cote d'Ivoire (formerly Ivory Coast)

## Group (1)

- 1A. Public Administration (including, but not limited to: City Planning, Urban

Studies/Planning, Urban Transportation, and Public Health)

- 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
- 1C. Public Social Services
- 1D. Sanitation
- 1E. Drug Abuse and Narcotics Control
- 1F. International Health
- 1G. Tourism and Travel
- 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
- 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
- 1J. Primary School Administration
- 1K. Secondary School Administration
- 1L. College, University and Higher Education Administration
- 1M. Technical or Vocational School Administration
- 1N. Hospital Administration

## Group (2)

- 2A. General Practice of Medicine (including Osteopaths who also practice medicine)
- 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
- 2C. Veterinary Medicine
- 2D. Emergency Medicine
- 2E. Nuclear Medicine
- 2F. Geriatrics
- 2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
- 2H. Medical Instruments and Technology
- 2I. Dentistry
- 2J. Dental Technology
- 2K. Optometry
- 2M. Medical Cybernetics
- 2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
- 2O. Medical Statistics and Documentation
- 2P. Cancer Research

2Q. Medical Photography  
2R. Environmental Health

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
  - 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
  - 5C. Study of Drugs and Allied Sciences
  - 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
  - 5E. Genetics
  - 5F. Mathematics
  - 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
  - 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
  - 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
  - 5J. Astronomy and Space Technology
  - 5K. Repair and Maintenance Technology
  - 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
  - 5M. Food Science and Technology
  - 5N. Zoology (including Animal Behavior and Physiology)
  - 5O. Forestry
  - 5P. Fisheries (or other marine products)
  - 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
  - 5R. Hydrology (including, but not limited to Water Pollution)
  - 5S. Ecology and Environmental Protection (including Conservation)
  - 5U. Population Studies
- Group (6)
- 6A. Sociology (except Economics and including Criminology)
  - 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
  - 6C. History (including Art History)
  - 6D. Philosophy (including Humanities)
  - 6E. Anthropology and Archaeology
  - 6F. Demography
  - 6G. Government and Politics (including, but not limited to International Relations)

- 6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
All fields listed in part I.
- Group (8)  
8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)  
8H. Construction (including but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8J. Drafting  
8K. Skilled Operation of Construction Machines
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
9L. Financial Planning  
9M. Operations Research  
9N. Banking  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Croatia  
Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Cyprus  
Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to, Psychometrics, Child Psychology and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
- 6L. Estate Management  
6M. Linguistics
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
7E. Vocational and Technical School Teaching  
7I. College and University Teaching of Business  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7P. Career Guidance and Counseling
- Group (8)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8E. Airplane Piloting (including, but not limited to Airline Piloting)  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)  
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8J. Drafting  
8K. Skilled Operation of Construction Machines
- Group (9)  
All fields listed in part I.
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)  
Czech Republic
- Group (1)  
1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health

- 1G. Tourism and Travel  
 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
 1J. Primary School Administration  
 1K. Secondary School Administration  
 1L. College, University and Higher Education Administration  
 1M. Technical or Vocational School Administration  
 1N. Hospital Administration
- Group (2)  
 2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
 2C. Veterinary Medicine  
 2D. Emergency Medicine  
 2F. Geriatrics  
 2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
 2H. Medical Instruments and Technology  
 2I. Dentistry  
 2J. Dental Technology  
 2K. Optometry  
 2M. Medical Cybernetics  
 2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
 2O. Medical Statistics and Documentation  
 2P. Cancer Research  
 2Q. Medical Photography  
 2R. Environmental Health  
 2S. Medical Research
- Group (3)  
 All fields listed in part I.
- Group (4)  
 All fields listed in part I.
- Group (5)  
 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: Physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited To: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5T. Desalinization  
 5U. Population Studies  
 5V. Botany  
 5W. Entomology
- Group (6)  
 All fields listed in part 1.
- Group (7)  
 All fields listed in part 1.
- Group (8)  
 All fields listed in part 1.
- Group (9)  
 All fields listed in part 1.
- Group (10)  
 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Dominican Republic
- Group (1)  
 All fields listed in part I.
- Group (2)  
 All fields listed in part I.
- Group (3)  
 All fields listed in part I.
- Group (4)  
 All fields listed in part I.
- Group (5)  
 All fields listed in part I.
- Group (6)  
 6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics  
 6O. Religion and Theology (including, but not limited to Ministry)
- Group (7)  
 7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
 7E. Vocational and Technical School Teaching  
 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
 7H. College and University Teaching of Education  
 7I. College and University Teaching of Business  
 7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)

7N. Teaching in Medical Schools (including, but not limited to lecturers)  
7P. Career Guidance and Counseling

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Ecuador

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

Group (2)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2H. Medical Instruments and Technology

2J. Dental Technology

2M. Medical Cybernetics

2O. Medical Statistics and

Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4E. Communication Engineering

4F. Computer Engineering and Technologies

4G. Electrical Engineering

4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, Plastics, Wood, Paper and Metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: Systems, safety, and production engineers, and including Automatic Data Processing)

4O. Mining and Lumbering

Engineering and Technology

4P. Navigation and Transportation

Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas

Engineering and Technology

4S. Printing and Photographic

Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5C. Study of Drugs and Allied Sciences

5E. Genetics

5F. Mathematics

5G. Laboratory Technology

(including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance

Technology

5L. Agriculture and Agronomy

(including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal

Behavior and Physiology)

5O. Forestry

5P. Fisheries (or other marine

products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to International Relations)

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7H. College and University Teaching of Education

7I. College and University Teaching of Business

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)

8C. Electrical Communication

Technology

8D. Radio Operation

8F. Merchant Marine

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to:

programmers and Project Development, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9O. Farm Management and Administration

9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

El Salvador

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal

Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2M. Medical Cybernetics

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2O. Medical Statistics and Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4E. Communication Engineering

4F. Computer Engineering and Technologies

4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5C. Study of Drugs and Allied Sciences

5E. Genetics

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5N. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

Group (6)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

- 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
- 7H. College and University Teaching of Education
- 7J. Agricultural School Teaching
- 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
- 7L. Education of Exceptional Children
- 7M. Physical Education and Recreation (including, but not limited to Coaching)
- 7N. Teaching in Medical Schools (including, but not limited to lecturers)
- 7P. Career Guidance and Counseling
- Group (8)
- 8B. Communication Media (including Television and Film)
- 8E. Airplane Piloting (including, but not limited to Airline Piloting)
- 8F. Merchant Marine
- 8I. Construction-Project Management
- Group (9)
- 9B. International Business and Commerce
- 9C. Industrial Organization
- 9D. Labor and Industrial Relations
- 9E. Economic Development and Planning (including Rural Development)
- 9F. Economic Information Analysis (including, but not limited to Management Studies)
- 9G. Accounting
- 9H. Cybernetic Technology
- 9L. Financial Planning
- 9M. Operations Research
- 9O. Farm Management and Administration
- 9P. Hotel and Motel Management Equatorial Guinea
- Group (1)
- 1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
- 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
- 1C. Public Social Services
- 1D. Sanitation
- 1E. Drug Abuse and Narcotics Control
- 1F. International Health
- 1G. Tourism and Travel
- 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
- 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
- 1J. Primary School Administration
- 1K. Secondary School Administration
- 1L. College, University and Higher Education Administration
- 1M. Technical or Vocational School Administration
- 1N. Hospital Administration
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.
- Group (4)
- All fields listed in part I.
- Group (5)
- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
- 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
- 5C. Study of Drugs and Allied Sciences
- 5E. Genetics
- 5F. Mathematics
- 5G. Laboratory Technology (including, but not limited to: Physical and chemistry laboratory technicians)
- 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
- 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
- 5J. Astronomy and Space Technology
- 5K. Repair and Maintenance Technology
- 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
- 5M. Food Science and Technology
- 5N. Zoology (including Animal Behavior and Physiology)
- 5O. Forestry
- 5P. Fisheries (or other marine products)
- 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
- 5R. Hydrology (including, but not limited to Water Pollution)
- 5S. Ecology and Environmental Protection (including Conservation)
- 5U. Population Studies
- Group (6)
- 6A. Sociology (except Economics and including Criminology)
- 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
- 6C. History (including Art History)
- 6D. Philosophy (including Humanities)
- 6E. Anthropology and Archaeology
- 6F. Demography
- 6G. Government and Politics (including, but not limited to International Relations)
- 6H. Economics
- 6I. Literature
- 6J. Instructional Media and Technology
- 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
- 6L. Estate Management
- 6M. Linguistics
- Group (7)
- All fields listed in part I.
- Group (8)
- 8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)
- 8B. Communication Media (including Television and Film)
- 8C. Electrical Communication Technology
- 8D. Radio Operation
- 8F. Merchant Marine
- 8G. Architecture (including Marine Architecture)
- 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
- 8I. Construction-Project Management
- 8J. Drafting
- 8K. Skilled Operation of Construction Machines
- Group (9)
- 9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
- 9B. International Business and Commerce
- 9C. Industrial Organization
- 9D. Labor and Industrial Relations
- 9E. Economic Development and Planning (including Rural Development)
- 9F. Economic Information Analysis (including, but not limited to Management Studies)
- 9G. Accounting
- 9H. Cybernetic Technology
- 9I. Statistics
- 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
- 9L. Financial Planning
- 9M. Operations Research
- 9N. Banking
- 9O. Farm Management and Administration
- 9P. Hotel and Motel Management
- Group (10)
- 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

- Ethiopia  
Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Fiji  
Group (1)  
1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1L. College, University and Higher Education Administration  
1M. Technical or Vocational School Administration  
1N. Hospital Administration  
1O. Labor Union Administration
- Group (2)  
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery,
- Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2H. Medical Instruments and Technology  
2I. Dentistry  
2J. Dental Technology  
2K. Optometry  
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)  
2M. Medical Cybernetics  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
5E. Genetics  
5F. Mathematics  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5P. Fisheries (or other marine products)
- 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5T. Desalinization  
5U. Population Studies
- Group (6)  
All fields listed in part 1.
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
7E. Vocational and Technical School Teaching  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7H. College and University Teaching of Education  
7I. College and University Teaching of Business  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7N. Teaching in Medical Schools (including, but not limited to lecturers)  
7O. Teaching in Law Schools (including, but not limited to lecturers)  
7P. Career Guidance and Counseling
- Group (8)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8E. Airplane Piloting (including, but not limited to Airline Piloting)  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)  
8I. Construction-Project Management  
8J. Drafting
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

- 9B. International Business and Commerce
- 9C. Industrial Organization
- 9D. Labor and Industrial Relations
- 9E. Economic Development and Planning (including Rural Development)
- 9F. Economic Information Analysis (including, but not limited to Management Studies)
- 9G. Accounting
- 9H. Cybernetic Technology
- 9I. Statistics
- 9J. Insurance (including Actuaries)
- 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
- 9L. Financial Planning
- 9M. Operations Research
- 9N. Banking
- 9O. Farm Management and Administration
- 9P. Hotel and Motel Management
- Group (10)
- 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Gabon
- Group (1)
- 1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
- 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
- 1C. Public Social Services
- 1D. Sanitation
- 1E. Drug Abuse and Narcotics Control
- 1F. International Health
- 1G. Tourism and Travel
- 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
- 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
- 1J. Primary School Administration
- 1K. Secondary School Administration
- 1L. College, University and Higher Education Administration
- 1M. Technical or Vocational School Administration
- 1N. Hospital Administration
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.
- Group (4)
- All fields listed in part I.
- Group (5)
- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
- 5B. Life Sciences (including, but not limited to Pharmacy and Biology)
- 5C. Study of Drugs and Allied Sciences
- 5E. Genetics
- 5F. Mathematics
- 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
- 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
- 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to Marine Science, Meteorology and Oceanography)
- 5J. Astronomy and Space Technology
- 5K. Repair and Maintenance Technology
- 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
- 5N. Zoology (including Animal Behavior and Physiology)
- 5O. Forestry
- 5P. Fisheries (or other marine products)
- 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
- 5R. Hydrology (including, but not limited to Water Pollution)
- 5S. Ecology and Environmental Protection (including Conservation)
- 5U. Population Studies
- Group (6)
- 6A. Sociology (except Economics and including Criminology)
- 6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
- 6C. History (including Art History)
- 6D. Philosophy (including Humanities)
- 6E. Anthropology and Archaeology
- 6F. Demography
- 6G. Government and Politics (including, but not limited to International Relations)
- 6H. Economics
- 6I. Literature
- 6J. Instructional Media and Technology
- 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
- 6L. Estate Management
- 6M. Linguistics
- Group (7)
- All fields listed in part I.
- Group (8)
- 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
- 8B. Communication Media (including Television and Film)
- 8C. Electrical Communication Technology
- 8D. Radio Operation
- 8F. Merchant Marine
- 8G. Architecture (including Marine Architecture)
- 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
- 8I. Construction-Project Management
- 8J. Drafting
- 8K. Skilled Operation of Construction Machines
- Group (9)
- 9A. Industrial and Business Administration and Management (including, but not limited to programmers and Project Evaluation, Business, Total Quality Management)
- 9B. International Business and Commerce
- 9C. Industrial Organization
- 9D. Labor and Industrial Relations
- 9E. Economic Development and Planning (including Rural Development)
- 9F. Economic Information Analysis (including, but not limited to Management Studies)
- 9G. Accounting
- 9H. Cybernetic Technology
- 9I. Statistics
- 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
- 9L. Financial Planning
- 9M. Operations Research
- 9N. Banking
- 9O. Farm Management and Administration
- 9P. Hotel and Motel Management
- Gambia
- Group (1)
- All fields listed in part I.
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.
- Group (4)
- All fields listed in part I.
- Group (5)
- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
- 5B. Life Sciences (including, but not limited to Pharmacy and Biology)
- 5C. Study of Drugs and Allied Sciences
- 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

- 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5P. Fisheries (or other marine products)  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies
- Group (6)  
 6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics  
 6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- Group (7)  
 All fields listed in part I.
- Group (8)  
 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8D. Radio Operation  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines
- Group (9)  
 All fields listed in part I.
- Group (10)  
 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Ghana
- Group (1)  
 All fields listed in part I.
- Group (2)  
 All fields listed in part I.
- Group (3)  
 All fields listed in part I.
- Group (4)  
 All fields listed in part I.
- Group (5)  
 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
- 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5P. Fisheries (or other marine products)  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies
- Group (6)  
 6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics
- Group (7)  
 All fields listed in part I.
- Group (8)  
 All fields listed in part I.
- Group (9)  
 All fields listed in part I.
- Group (10)  
 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Guatemala
- Group (1)  
 1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation and Public Health)  
 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
 1C. Public Social Services  
 1D. Sanitation  
 1E. Drug Abuse and Narcotics Control  
 1F. International Health

- 1G. Tourism and Travel  
 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
 1J. Primary School Administration  
 1K. Secondary School Administration  
 1L. College, University and Higher Education Administration  
 1M. Technical or Vocational School Administration  
 1O. Labor Union Administration
- Group (2)
- 2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
 2C. Veterinary Medicine  
 2D. Emergency Medicine  
 2E. Nuclear Medicine  
 2F. Geriatrics  
 2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
 2H. Medical Instruments and Technology  
 2I. Dentistry  
 2J. Dental Technology  
 2M. Medical Cybernetics  
 2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
 2O. Medical Statistics and Documentation  
 2P. Cancer Research  
 2Q. Medical Photography  
 2R. Environmental Health
- Group (3)
- All fields listed in part I.
- Group (4)
- 4A. Aerospace Engineering  
 4B. Cartography  
 4C. Chemical Engineering  
 4E. Communication Engineering
- 4F. Computer Engineering and Technologies  
 4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)  
 4J. Genetic and Biomedical Engineering  
 4K. Industrial Engineering  
 4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)  
 4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
 4O. Mining and Lumbering Engineering and Technology  
 4P. Navigation and Transportation Engineering  
 4Q. Optical Engineering (including, but not limited to: light and sound technology)  
 4R. Petroleum and Natural Gas Engineering and Technology  
 4S. Printing and Photographic Engineering and Technology
- Group (5)
- 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5E. Genetics  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5P. Fisheries (or other marine products)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies
- Group (6)
- 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management
- 6M. Linguistics
- Group (7)
- 7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7I. College and University Teaching of Business  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7N. Teaching in Medical Schools (including, but not limited to lecturers)  
 7P. Career Guidance and Counseling
- Group (8)
- 8B. Communication Media (including Television and Film)  
 8F. Merchant Marine  
 8I. Construction-Project Management  
 8K. Skilled Operation of Construction Machines
- Group (9)
- 9A. Industrial and Business Administration and Management (including, but not limited to Programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management
- Guinea
- Group (1)
- 1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
 1C. Public Social Services  
 1D. Sanitation  
 1E. Drug Abuse and Narcotics Control

1F. International Health  
 1G. Tourism and Travel  
 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
 1J. Primary School Administration  
 1K. Secondary School Administration  
 1L. College, University and Higher Education Administration  
 1M. Technical or Vocational School Administration  
 1N. Hospital Administration

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5P. Fisheries (or other marine products)  
 5Q. Geology (including all branches and specialties, e.g., Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies

## Group (6)

6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics

## Group (7)

All fields listed in part I.

## Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8D. Radio Operation  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited

to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management  
 Guinea-Bissau

## Group (1)

All fields listed in part I.

## Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
 2C. Veterinary Medicine  
 2D. Emergency Medicine  
 2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
 2H. Medical Instruments and Technology  
 2I. Dentistry  
 2J. Dental Technology  
 2K. Optometry  
 2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)  
 2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
 2O. Medical Statistics and Documentation

## Group (3)

All fields listed in part I.

## Group (4)

4B. Cartography  
 4D. Civil Engineering (including Airport Engineering)  
 4E. Communication Engineering  
 4F. Computer Engineering and Technologies  
 4G. Electrical Engineering  
 4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4K. Industrial Engineering

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4O. Mining and Lumbering Engineering and Technology

4P. Navigation and Transportation Engineering

4S. Printing and Photographic Engineering and Technology

4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6J. Instructional Media and Technology

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

6O. Religion and Theology (including, but not limited to Ministry)

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

8L. Telecommunications

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9I. Statistics

9J. Insurance (including Actuaries)

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Guyana

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Haiti

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

- Honduras  
Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Hungary  
Group (1)  
1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1L. College, University and Higher Education Administration  
1N. Hospital Administration
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
6A. Sociology (except Economics and including Criminology)
- 6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
7B. Educational Testing, Evaluation and Measurement  
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
7E. Vocational and Technical School Teaching  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
7H. College and University Teaching of Education  
7I. College and University Teaching of Business  
7J. Agricultural School Teaching  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7N. Teaching in Medical Schools (including, but not limited to lecturers)  
7O. Teaching in Law Schools (including, but not limited to lecturers)  
7P. Career Guidance and Counseling
- Group (8)  
8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8F. Merchant Marine
- 8G. Architecture (including Marine Architecture)  
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8J. Drafting  
8K. Skilled Operation of Construction Machines
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9J. Insurance (including Actuaries)  
9L. Financial Planning  
9M. Operations Research  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- India  
Group (1)  
All fields listed in part I.
- Group (2)  
2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2E. Nuclear Medicine

2F. Geriatrics  
 2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
 2H. Medical Instruments and Technology  
 2I. Dentistry  
 2J. Dental Technology  
 2K. Optometry  
 2M. Medical Cybernetics  
 2O. Medical Statistics and Documentation  
 2P. Cancer Research  
 2Q. Medical Photography  
 2R. Environmental Health

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering  
 4B. Cartography  
 4C. Chemical Engineering  
 4E. Communication Engineering  
 4F. Computer Engineering and Technologies  
 4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)  
 4J. Genetic and Biomedical Engineering  
 4K. Industrial Engineering  
 4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
 4O. Mining and Lumbering Engineering and Technology  
 4P. Navigation and Transportation Engineering  
 4Q. Optical Engineering (including, but not limited to: light and sound technology)  
 4R. Petroleum and Natural Gas Engineering and Technology  
 4S. Printing and Photographic Engineering and Technology  
 4T. Surveying (including Oceanography)

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5C. Study of Drugs and Allied Sciences  
 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5T. Desalinization  
 5U. Population Studies

## Group (6)

6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics

## Group (7)

7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
 7H. College and University Teaching of Education  
 7I. College and University Teaching of Business  
 7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7N. Teaching in Medical Schools (including, but not limited to lecturers)  
 7P. Career Guidance and Counseling

## Group (8)

8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology

8D. Radio Operation  
 8F. Merchant Marine  
 8I. Construction-Project Management  
 8K. Skilled Operation of Construction Machines

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management

## Indonesia

## Group (1)

All fields listed in part I.

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

All fields listed in part I.

## Group (6)

All fields listed in part I.

## Group (7)

All fields listed in part I.

## Group (8)

All fields listed in part I.

## Group (9)

All fields listed in part I.

## Group (10)

All fields listed in part I.

Ivory Coast (see Cote d'Ivoire)

## Jamaica

## Group (1)

All fields listed in part I.

## Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2M. Medical Cybernetics

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2O. Medical Statistics and Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

All fields listed in part I.

## Group (6)

All fields listed in part I.

## Group (7)

All fields listed in part I.

## Group (8)

All fields listed in part I.

## Group (9)

All fields listed in part I.

## Group (10)

All fields listed in part I.

Jordan

## Group (1)

All fields listed in part I.

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4D. Civil Engineering (including Airport Engineering)

4E. Communication Engineering

4F. Computer Engineering and Technologies

4G. Electrical Engineering

4H. Electrical Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

4U. Agricultural Engineering

4V. Nuclear Engineering

4W. Natural Resource Management Engineering (including but not limited to Water Resource Management)

4X. Environmental Engineering

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy

(including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

5V. Botany

5W. Entomology

## Group (6)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

6O. Theology

6P. Cultural Diversity (including, but not limited to Women's, Minority, Ethnic and Area Studies)

6Q. Fashion and Textile Design

6R. Graphic Design

6S. Geography

6T. Home Economics

6U. Language Studies

## Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

- 7I. College and University Teaching of Business
- 7J. Agricultural School Teaching
- 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
- 7L. Education of Exceptional Children
- 7M. Physical Education and Recreation (including, but not limited to Coaching)
- 7P. Career Guidance and Counseling
- 7Q. Camp Counselor
- 7R. Educational Technology (Instructional Systems Technology)
- 7S. Educational Psychology
- 7T. Curriculum Planning
- Group (8)
- 8B. Communication Media (including Television and Film)
- 8C. Electrical Communication Technology
- 8F. Merchant Marine
- 8I. Construction-Project Management
- 8K. Skilled Operation of Construction Machines
- 8L. Telecommunications
- Group (9)
- All files listed in Part I.
- Group (10)
- All files listed in Part I.
- Kazakstan
- Group (1)
- All fields listed in part I.
- Group (2)
- All fields listed in part I.
- Group (3)
- 3A. Computer Science
- 3B. Information Science and Systems Analysis
- 3C. Data Processing (including, but not limited to the use of data in analyzing census, financial planning and feasibility studies)
- Group (4)
- All fields listed in part I.
- Group (5)
- 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
- 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
- 5F. Mathematics
- 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
- 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
- 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
- 5M. Food Science and Technology
- 5N. Zoology (including Animal Behavior and Physiology)
- 5O. Forestry
- 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
- 5R. Hydrology (including, but not limited to Water Pollution)
- 5S. Ecology and Environmental Protection (including Conservation)
- 5T. Desalinization
- 5U. Population Studies
- Group (6)
- 6F. Demography
- 6G. Government and Politics (including, but not limited to International Relations)
- 6H. Economics
- 6M. Linguistics
- 6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- 6U. Language Studies
- Group (7)
- 7B. Educational Testing, Evaluation and Measurement
- 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
- 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
- 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
- 7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
- 7I. College and University Teaching of Business
- 7J. Agricultural School Teaching
- 7N. Teaching in Medical Schools (including, but not limited to lecturers)
- 7O. Teaching in Law Schools (including, but not limited to lecturers)
- 7P. Career Guidance and Counseling
- 7R. Educational Technology (Instructional Systems Technology)
- Group (8)
- 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
- 8C. Electrical Communication Technology
- 8G. Architecture (including Marine Architecture)
- 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
- 8I. Construction-Project Management
- 8J. Drafting
- 8K. Skilled Operation of Construction Machines
- 8L. Telecommunications
- Group (9)
- All fields listed in part I.
- Group (10)
- 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Kenya
- Group (1)
- All fields listed in part I.
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.
- Group (4)
- All fields listed in part I.
- Group (5)
- All fields listed in part I.
- Group (6)
- All fields listed in part I.
- Group (7)
- All fields listed in part I.
- Group (8)
- All fields listed in part I.
- Group (9)
- All fields listed in part I.
- Group (10)
- All fields listed in part I.
- Korea
- Group (1)
- 1C. Public Social Services
- 1D. Sanitation
- 1E. Drug Abuse and Narcotics Control
- 1F. International Health
- 1G. Tourism and Travel
- 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
- 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
- 1L. College, University and Higher Education Administration
- Group (2)
- 2A. General Practice of Medicine (including Osteopaths who also practice medicine)
- 2C. Veterinary Medicine
- 2D. Emergency Medicine
- 2E. Nuclear Medicine
- 2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2M. Medical Cybernetics  
2O. Medical Statistics and Documentation

2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering  
4B. Cartography  
4C. Chemical Engineering  
4D. Civil Engineering (including Airport Engineering)  
4E. Communication Engineering  
4F. Computer Engineering and Technologies  
4G. Electrical Engineering  
4H. Electronic Engineering (including Radio Engineering)  
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering  
4K. Industrial Engineering  
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4P. Navigation and Transportation Engineering  
4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5C. Study of Drugs and Allied Sciences  
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology

(including, but not limited to: physical and chemistry laboratory technicians)  
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)

5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies

Group (6)

6C. History (including Art History)  
6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)

6I. Literature  
6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management  
6M. Linguistics

Group (7)

7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7I. College and University Teaching of Business

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)

7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)

8D. Radio Operation

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management

(including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce

9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics

9L. Financial Planning  
9M. Operations Research  
9O. Farm Management and Administration

9P. Hotel and Motel Management

Kuwait

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Laos

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Lebanon
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Lesotho
- Group (1)  
1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1J. Primary School Administration  
1K. Secondary School Administration  
1L. College, University and Higher Education Administration  
1M. Technical or Vocational School Administration
10. Labor Union Administration
- Group (2)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
2H. Medical Instruments and Technology  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
4A. Aerospace Engineering  
4B. Cartography  
4C. Chemical Engineering  
4D. Civil Engineering (including Airport Engineering)  
4E. Communication Engineering  
4F. Computer Engineering and Technologies  
4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)  
4J. Genetic and Biomedical Engineering  
4K. Industrial Engineering  
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
4P. Navigation and Transportation Engineering  
4Q. Optical Engineering (including, but not limited to: light and sound technology)  
4R. Petroleum and Natural Gas Engineering and Technology  
4S. Printing and Photographic Engineering and Technology
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5E. Genetics  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists,
- poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics  
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7E. Vocational and Technical School Teaching  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
7H. College and University Teaching of Education  
7I. College and University Teaching of Business  
7J. Agricultural School Teaching  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7P. Career Guidance and Counseling
- Group (8)  
8A. Journalism (including, but not limited to editors and reporters, and

including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8F. Merchant Marine

8I. Construction-Project Management

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and

Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Liberia

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and

Technology

2I. Dentistry

2K. Optometry

2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)

2M. Medical Cybernetics

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2O. Medical Statistics and

Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Macedonia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Madagascar
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Malawi
- Group (1)  
All fields listed in part I.
- Group (2)  
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2I. Dentistry  
2M. Medical Cybernetics  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5E. Genetics  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology, and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5P. Fisheries (or other marine products)  
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)
- 6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics  
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- Group (7)  
All fields listed in part I.
- Group (8)  
8B. Communication Media (including Television and Film)  
8D. Radio Operation  
8E. Airplane Piloting (including, but not limited to Airline Piloting)  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)  
8I. Construction-Project Management  
8K. Skilled Operation of Construction Machines
- Group (9)  
All fields listed in part I.
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Malaysia
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.

## Group (10)

All fields listed in part I.

## Mali

## Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

## Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

## Group (7)

All fields listed in part I.

## Group (8)

All fields listed in part I.

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

## Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

## Malta

## Group (1)

All fields listed in part I.

## Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2M. Medical Cybernetics

2O. Medical Statistics and Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4D. Civil Engineering (including Airport Engineering)

4E. Communication Engineering

4F. Computer Engineering and Technologies

4G. Electrical Engineering

4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g., Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7C. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7D. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7E. College and University Teaching of Education

7F. College and University Teaching of Business

7G. Agricultural School Teaching

7H. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7I. Education of Exceptional Children

7J. Physical Education and Recreation (including, but not limited to Coaching)

7K. Teaching in Medical Schools (including, but not limited to lecturers)

7L. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8F. Merchant Marine

8I. Construction-Project Management

Group (9)

All fields listed in part I.

Mauritania

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited To: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology  
 2I. Dentistry  
 2J. Dental Technology  
 2K. Optometry  
 2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)  
 2M. Medical Cybernetics  
 2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
 2O. Medical Statistics and Documentation  
 2P. Cancer Research  
 2Q. Medical Photography  
 2R. Environmental Health

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering  
 4B. Cartography  
 4C. Chemical Engineering  
 4D. Civil Engineering (including Airport Engineering)  
 4E. Communication Engineering  
 4F. Computer Engineering and Technologies  
 4G. Electrical Engineering  
 4H. Electronic Engineering (including Radio Engineering)  
 4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
 4J. Genetic and Biomedical Engineering  
 4K. Industrial Engineering  
 4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)  
 4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
 4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)  
 4P. Navigation and Transportation Engineering  
 4Q. Optical Engineering (including, but not limited to: light and sound technology)  
 4R. Petroleum and Natural Gas Engineering and Technology  
 4S. Printing and Photographic Engineering and Technology  
 4T. Surveying (including Oceanography)

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences  
 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5P. Fisheries (or other marine products)  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5T. Desalinization  
 5U. Population Studies

## Group (6)

6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics

## Group (7)

7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching  
 7I. College and University Teaching of Business

7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7P. Career Guidance and Counseling

## Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8D. Radio Operation  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management

## Mauritius

## Group (1)

- 1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
- 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
- 1C. Public Social Services
- 1D. Sanitation
- 1E. Drug Abuse and Narcotics Control
- 1F. International Health
- 1G. Tourism and Travel
- 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
- 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
- 1J. Primary School Administration
- 1K. Secondary School Administration
- 1L. College, University and Higher Education Administration
- 1M. Technical or Vocational School Administration
- 1N. Hospital Administration

## Group (2)

- 2A. General Practice of Medicine (including Osteopaths who also practice medicine)
- 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
- 2C. Veterinary Medicine
- 2D. Emergency Medicine
- 2E. Nuclear Medicine
- 2F. Geriatrics
- 2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
- 2H. Medical Instruments and Technology
- 2I. Dentistry
- 2J. Dental Technology
- 2K. Optometry
- 2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)

- 2M. Medical Cybernetics
- 2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
- 2O. Medical Statistics and Documentation
- 2P. Cancer Research
- 2Q. Medical Photography
- 2R. Environmental Health

## Group (3)

All fields listed in part I.

## Group (4)

- 4A. Aerospace Engineering
- 4B. Cartography
- 4C. Chemical Engineering
- 4D. Civil Engineering (including Airport Engineering)
- 4E. Communication Engineering
- 4F. Computer Engineering and Technologies
- 4G. Electrical Engineering
- 4H. Electronic Engineering and Technology (including Radio Engineering)
- 4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)
- 4J. Genetic and Biomedical Engineering
- 4K. Industrial Engineering
- 4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
- 4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
- 4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
- 4P. Navigation and Transportation Engineering
- 4Q. Optical Engineering (including, but not limited to: light and sound technology)
- 4R. Petroleum and Natural Gas Engineering and Technology
- 4S. Printing and Photographic Engineering and Technology
- 4T. Surveying (including Oceanography)

## Group (5)

- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
- 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
- 5C. Study of Drugs and Allied Sciences
- 5E. Genetics
- 5F. Mathematics
- 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

- 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
- 5J. Astronomy and Space Technology
- 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
- 5M. Food Science and Technology
- 5N. Zoology (including Animal Behavior and Physiology)
- 5O. Forestry
- 5P. Fisheries (or other marine products)
- 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
- 5R. Hydrology (including, but not limited to Water Pollution)
- 5S. Ecology and Environmental Protection (including Conservation)
- 5T. Desalinization
- 5U. Population Studies

## Group (6)

- 6A. Sociology (except Economics and including Criminology)
- 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
- 6C. History (including Art History)
- 6D. Philosophy (including Humanities)
- 6E. Anthropology and Archaeology
- 6F. Demography
- 6G. Government and Politics (including, but not limited to International Relations)
- 6H. Economics
- 6I. Literature
- 6J. Instructional Media and Technology
- 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
- 6L. Estate Management
- 6M. Linguistics

## Group (7)

- 7A. Teaching and Religious Education
- 7B. Educational Testing, Evaluation and Measurement
- 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
- 7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
- 7H. College and University Teaching of Education

7I. College and University Teaching of Business

7J. Agricultural School Teaching

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7N. Teaching in Medical Schools (including, but not limited to lecturers)

7O. Teaching in Law Schools (including, but not limited to lecturers)

7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Morocco

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical

nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2J. Dental Technology

2K. Optometry

2M. Medical Cybernetics

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2O. Medical Statistics and Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7H. College and University Teaching of Education

7I. College and University Teaching of Business

7J. Agricultural School Teaching

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)

7N. Teaching in Medical Schools (including, but not limited to lecturers)

7P. Career Guidance and Counseling

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Myanmar

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Nepal

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

- 1G. Tourism and Travel  
 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
 1M. Technical or Vocational School Administration  
 1N. Hospital Administration
- Group (2)  
 All fields listed in part I.
- Group (3)  
 All fields listed in part I.
- Group (4)  
 4A. Aerospace Engineering  
 4B. Cartography  
 4C. Chemical Engineering  
 4D. Civil Engineering (including Airport Engineering)  
 4E. Communication Engineering  
 4F. Computer Engineering and Technologies  
 4G. Electrical Engineering  
 4H. Electronic Engineering (including Radio Engineering)  
 4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
 4J. Genetic and Biomedical Engineering  
 4K. Industrial Engineering  
 4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
 4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)  
 4O. Mining and Lumbering Engineering and Technology  
 4P. Navigation and Transportation Engineering  
 4Q. Optical Engineering (including, but not limited to: light and sound technology)  
 4R. Petroleum and Natural Gas Engineering and Technology  
 4S. Printing and Photographic Engineering and Technology  
 4T. Surveying (including Oceanography)
- Group (5)  
 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5E. Genetics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
- 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies
- Group (6)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics
- Group (7)  
 7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
 7E. Vocational and Technical School Teaching  
 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
 7H. College and University Teaching of Education  
 7I. College and University Teaching of Business
- 7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7N. Teaching in Medical Schools (including, but not limited to lecturers)  
 7P. Career Guidance and Counseling
- Group (8)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8F. Merchant Marine  
 8I. Construction-Project Management  
 8K. Skilled Operation of Construction Machines
- Group (9)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management
- Group (10)  
 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Nicaragua
- Group (1)  
 All fields listed in part I.
- Group (2)  
 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation,

Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology

2J. Dental Technology

2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)

2M. Medical Cybernetics

2O. Medical Statistics and

Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4E. Communication Engineering

4F. Computer Engineering and Technologies

4G. Electrical Engineering

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical

Engineering

4K. Industrial Engineering

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

Group (5)

All fields listed in part I.

Group (6)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7C. Primary School Teaching

(including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching

(including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7H. College and University Teaching of Education

7I. College and University Teaching of Business

7J. Agricultural School Teaching

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7N. Teaching in Medical Schools (including, but not limited to lecturers)

7P. Career Guidance and Counseling

7Q. Career Guidance and Counseling

7R. Career Guidance and Counseling

7S. Career Guidance and Counseling

7T. Career Guidance and Counseling

7U. Career Guidance and Counseling

7V. Career Guidance and Counseling

7W. Career Guidance and Counseling

7X. Career Guidance and Counseling

7Y. Career Guidance and Counseling

7Z. Career Guidance and Counseling

7AA. Career Guidance and Counseling

7AB. Career Guidance and Counseling

7AC. Career Guidance and Counseling

7AD. Career Guidance and Counseling

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis

(including, but not limited to

Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9J. Insurance (including Actuaries)

9K. Administration of Financial

Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9O. Farm Management and Administration

9P. Hotel and Motel Management

9Q. Hotel and Motel Management

9R. Hotel and Motel Management

9S. Hotel and Motel Management

9T. Hotel and Motel Management

9U. Hotel and Motel Management

9V. Hotel and Motel Management

9W. Hotel and Motel Management

9X. Hotel and Motel Management

9Y. Hotel and Motel Management

9Z. Hotel and Motel Management

9AA. Hotel and Motel Management

9AB. Hotel and Motel Management

9AC. Hotel and Motel Management

9AD. Hotel and Motel Management

9AE. Hotel and Motel Management

9AF. Hotel and Motel Management

9AG. Hotel and Motel Management

9AH. Hotel and Motel Management

9AI. Hotel and Motel Management

9AJ. Hotel and Motel Management

9AK. Hotel and Motel Management

9AL. Hotel and Motel Management

9AM. Hotel and Motel Management

9AN. Hotel and Motel Management

9AO. Hotel and Motel Management

9AP. Hotel and Motel Management

9AQ. Hotel and Motel Management

9AR. Hotel and Motel Management

9AS. Hotel and Motel Management

9AT. Hotel and Motel Management

9AU. Hotel and Motel Management

9AV. Hotel and Motel Management

9AW. Hotel and Motel Management

9AX. Hotel and Motel Management

9AY. Hotel and Motel Management

9AZ. Hotel and Motel Management

9BA. Hotel and Motel Management

9BB. Hotel and Motel Management

9BC. Hotel and Motel Management

9BD. Hotel and Motel Management

9BE. Hotel and Motel Management

9BF. Hotel and Motel Management

9BG. Hotel and Motel Management

9BH. Hotel and Motel Management

9BI. Hotel and Motel Management

9BJ. Hotel and Motel Management

9BK. Hotel and Motel Management

9BL. Hotel and Motel Management

9BM. Hotel and Motel Management

9BN. Hotel and Motel Management

9BO. Hotel and Motel Management

9BP. Hotel and Motel Management

9BQ. Hotel and Motel Management

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

- 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology  
 (including, but not limited to: physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies
- Group (6)
- 6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics  
 6O. Religion and Theology (including, but not limited to Ministry)
- Group (7)
- 7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
 7E. Vocational and Technical School Teaching  
 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
 7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
 7H. College and University Teaching of Education  
 7I. College and University Teaching of Business  
 7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7N. Teaching in Medical Schools (including, but not limited to lecturers)  
 7O. Teaching in Law Schools (including, but not limited to lecturers)  
 7P. Career Guidance and Counseling
- Group (8)
- 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines
- Group (9)
- 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning
- 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management
- Nigeria
- Group (1)
- All fields listed in part I.
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.
- Group (4)
- All fields listed in part I.
- Group (5)
- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology, and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5P. Fisheries (or other marine products)  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies
- Group (6)
- 6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics

(including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Oman

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4D. Civil Engineering (including Airport Engineering)

4E. Communication Engineering

4F. Computer Engineering and Technologies

4G. Electrical Engineering

4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

Group (6)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7I. College and University Teaching of Business

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)

- 8C. Electrical Communication Technology  
 8D. Radio Operation  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines  
 Group (9)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management  
 Pakistan  
 Group (1)  
 All fields listed in part I.  
 Group (2)  
 2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
 2C. Veterinary Medicine  
 2D. Emergency Medicine  
 2E. Nuclear Medicine  
 2F. Geriatrics  
 2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)  
 2H. Medical Instruments and Technology  
 2I. Dentistry  
 2J. Dental Technology  
 2K. Optometry  
 2M. Medical Cybernetics  
 2O. Medical Statistics and Documentation  
 2P. Cancer Research  
 2Q. Medical Photography  
 2R. Environmental Health  
 Group (3)  
 All fields listed in part I.  
 Group (4)  
 All fields listed in part I.  
 Group (5)  
 All fields listed in part I.  
 Group (6)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics  
 Group (7)  
 7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
 7E. Vocational and Technical School Teaching  
 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
 7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
 7H. College and University Teaching of Education  
 7I. College and University Teaching of Business  
 7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7N. Teaching in Medical Schools (including, but not limited to lecturers)  
 7P. Career Guidance and Counseling  
 Group (8)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8E. Airplane Piloting (including, but not limited to Airline Piloting)  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines  
 Group (9)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management  
 Panama  
 Group (1)  
 All fields listed in part I.  
 Group (2)  
 All fields listed in part I.  
 Group (3)  
 All fields listed in part I.  
 Group (4)  
 All fields listed in part I.  
 Group (5)  
 All fields listed in part I.

- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Papua New Guinea
- Group (1)  
1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1L. College, University and Higher Education Administration
- Group (2)  
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)  
2H. Medical Instruments and Technology  
2I. Dentistry  
2J. Dental Technology  
2M. Medical Cybernetics
- 2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
4A. Aerospace Engineering  
4B. Cartography  
4C. Chemical Engineering  
4D. Civil Engineering (including Airport Engineering)  
4E. Communication Engineering  
4F. Computer Engineering and Technologies  
4G. Electrical Engineering  
4H. Electronic Engineering (including Radio Engineering)  
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
4J. Genetic and Biomedical Engineering  
4K. Industrial Engineering  
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
4P. Navigation and Transportation Engineering  
4Q. Optical Engineering (including, but not limited to: light and sound technology)  
4R. Petroleum and Natural Gas Engineering and Technology  
4S. Printing and Photographic Engineering and Technology  
4T. Surveying (including Oceanography)
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5E. Genetics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5L. Agriculture and Agronomy (including, but not limited To: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)
- 5O. Forestry  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7I. College and University Teaching of Business  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7P. Career Guidance and Counseling
- Group (8)  
8B. Communication Media (including Television and Film)  
8D. Radio Operation  
8E. Airplane Piloting (including, but not limited to Airline Piloting)  
8F. Merchant Marine  
8I. Construction-Project Management  
8J. Drafting
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9L. Financial Planning

9M. Operations Research  
9O. Farm Management and Administration  
9P. Hotel and Motel Management

## Paraguay

## Group (1)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1L. College, University and Higher Education Administration  
1N. Hospital Administration

## Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
2H. Medical Instruments and Technology  
2J. Dental Technology  
2M. Medical Cybernetics  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering  
4B. Cartography  
4C. Chemical Engineering  
4E. Communication Engineering  
4F. Computer Engineering and Technologies  
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
4J. Genetic and Biomedical Engineering  
4K. Industrial Engineering  
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
4O. Mining and Lumbering Engineering and Technology  
4P. Navigation and Transportation Engineering  
4Q. Optical Engineering (including, but not limited to: light and sound technology)  
4R. Petroleum and Natural Gas Engineering and Technology  
4S. Printing and Photographic Engineering and Technology

## Group (5)

5C. Study of Drugs and Allied Sciences  
5E. Genetics  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies

## Group (6)

6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management  
6M. Linguistics  
6O. Religion and Theology (including, but not limited to Ministry)

## Group (7)

7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
7E. Vocational and Technical School Teaching  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
7I. College and University Teaching of Business  
7J. Agricultural School Teaching  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7P. Career Guidance and Counseling

## Group (8)

8B. Communication Media (including Television and Film)  
8F. Merchant Marine  
8I. Construction-Project Management  
8K. Skilled Operation of Construction Machines

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9L. Financial Planning  
9M. Operations Research  
9O. Farm Management and Administration  
9P. Hotel and Motel Management

## Peru

## Group (1)

All fields listed in part I.

- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Philippines
- Group (1)  
All fields listed in part I and the following:  
1P. Special Child Development Administration \*  
1Q. Negotiation Skills \*  
1R. Organizational Development (including, but not limited to: Human Resource Development and Human Resource Management \*)
- Group (2)  
2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)
- 2H. Medical Instruments and Technology  
2I. Dentistry  
2K. Optometry  
2M. Medical Cybernetics  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health  
2T. Genetic and Biomedical Engineering\*
- Group (3)  
All fields listed in part I.
- Group (4)  
4A. Aerospace Engineering  
4B. Cartography  
4C. Chemical Engineering  
4D. Civil Engineering (including Airport Engineering)  
4E. Communication Engineering  
4F. Computer Engineering and Technologies  
4G. Electrical Engineering  
4H. Electrical Engineering (including Radio Engineering)  
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
4K. Industrial Engineering  
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)  
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)  
4O. Mining and Lumbering Engineering and Technology  
4P. Navigation and Transportation Engineering  
4Q. Optical Engineering (including, but not limited to: light and sound technology)  
4R. Petroleum and Natural Gas Engineering and Technology  
4S. Printing and Photographic Engineering and Technology  
4T. Surveying (including Oceanography)  
4U. Agricultural Engineering  
4V. Nuclear Engineering  
4W. Natural Resource Management Engineering (including but not limited to Water Resource Management)  
4X. Environmental Engineering
- 4Y. Metals Research and Fabrication (including, but not limited to: Tool and Die, Pattern Making, Casting and Riser-Casting Design, Investment Casting, Molds and Die Design, Welding Technology and Preventive Maintenance)\*  
4Z. Management of Technology\*
- Group (5)  
All fields listed in part I.
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics  
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)  
6P. Cultural Diversity (including, but not limited to: Women's, Minority Ethnic and Area Studies)  
6U. Language Studies
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7E. Vocational and Technical School Teaching  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
7I. College and University Teaching of Business  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7N. Teaching in Medical Schools (including, but not limited to lecturers)

7O. Teaching in Law Schools (including, but not limited to lecturers)  
7P. Career Guidance and Counseling  
7U. Technical and Vocational Studies in Various Trade Areas (Automotive, Welding, Industrial Electrician, Electronics, Machine Shop and Refrigeration)\*

## Group (8)

8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8E. Airplane Piloting (including, but not limited to Airline Piloting)  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)  
8I. Construction-Project Management  
8K. Skilled Operation of Construction Machines  
8M. Interior Design\*

## Group (9)

All fields listed in part I and the following:

9T. Program Project Management\*  
9U. Social Planning and Policy Analysis\*  
9V. Development Financing\*  
9W. Entrepreneurship Development\*

## Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

\*These skills are incorporated for the Philippines only per special request of their embassy.

## Poland

## Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1J. Primary School Administration  
1K. Secondary School Administration  
1L. College, University and Higher Education Administration  
1M. Technical or Vocational School Administration  
1N. Hospital Administration

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

All fields listed in part I.

## Group (6)

6A. Sociology (except Economics and including Criminology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics

## Group (7)

All fields listed in part I.

## Group (8)

8B. Communication Media (including Television and Film)  
8F. Merchant Marine  
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8J. Drafting  
8K. Skilled Operation of Construction Machines

## Group (9)

9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9L. Financial Planning  
9M. Operations Research  
9O. Farm Management and Administration  
9P. Hotel and Motel Management

## Qatar

## Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1K. Secondary School Administration  
1L. College, University and Higher Education Administration  
1M. Technical or Vocational School Administration  
1N. Hospital Administration

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering  
4B. Cartography  
4C. Chemical Engineering  
4D. Civil Engineering (including Airport Engineering)  
4E. Communication Engineering  
4F. Computer Engineering and Technologies  
4G. Electrical Engineering  
4H. Electronic Engineering (including Radio Engineering)  
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
4J. Genetic and Biomedical Engineering  
4K. Industrial Engineering  
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)  
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)  
4P. Navigation and Transportation Engineering

- 4Q. Optical Engineering (including, but not limited to: light and sound technology)
- 4R. Petroleum and Natural Gas Engineering and Technology
- 4S. Printing and Photographic Engineering and Technology
- Group (5)
- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
- 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
- 5C. Study of Drugs and Allied Sciences
- 5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
- 5E. Genetics
- 5F. Mathematics
- 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
- 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
- 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
- 5J. Astronomy and Space Technology
- 5K. Repair and Maintenance Technology
- 5M. Food Science and Technology
- 5N. Zoology (including Animal Behavior and Physiology)
- 5P. Fisheries (or other marine products)
- 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
- 5R. Hydrology (including, but not limited to Water Pollution)
- 5S. Ecology and Environmental Protection (including Conservation)
- 5T. Desalinization
- 5U. Population Studies
- Group (6)
- 6C. History (including Art History)
- 6D. Philosophy (including Humanities)
- 6E. Anthropology and Archaeology
- 6F. Demography
- 6G. Government and Politics (including, but not limited to International Relations)
- 6H. Economics
- 6I. Literature
- 6J. Instructional Media and Technology
- 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
- 6L. Estate Management
- 6M. Linguistics
- 6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- Group (7)
- 7A. Teaching and Religious Education
- 7B. Educational Testing, Evaluation and Measurement
- 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
- 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
- 7E. Vocational and Technical School Teaching
- 7I. College and University Teaching of Business
- 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
- 7L. Education of Exceptional Children
- 7M. Physical Education and Recreation (including, but not limited to Coaching)
- 7P. Career Guidance and Counseling
- Group (8)
- 8B. Communication Media (including Television and Film)
- 8C. Electrical Communication Technology
- 8D. Radio Operation
- 8F. Merchant Marine
- 8G. Architecture (including Marine Architecture)
- 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
- 8I. Construction-Project Management
- 8J. Drafting
- 8K. Skilled Operation of Construction Machines
- Group (9)
- 9B. International Business and Commerce
- 9C. Industrial Organization
- 9D. Labor and Industrial Relations
- 9E. Economic Development and Planning (including Rural Development)
- 9F. Economic Information Analysis (including, but not limited to Management Studies)
- 9G. Accounting
- 9H. Cybernetic Technology
- 9I. Statistics
- 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
- 9L. Financial Planning
- 9M. Operations Research
- 9O. Farm Management and Administration
- 9P. Hotel and Motel Management
- Group (10)
- 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Romania
- Group (1)
- All fields listed in part I.
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.
- Group (4)
- All fields listed in part I.
- Group (5)
- All fields listed in part I.
- Group (6)
- All fields listed in part I.
- Group (7)
- All fields listed in part I.
- Group (8)
- All fields listed in part I.
- Group (9)
- All fields listed in part I.
- Group (10)
- All fields listed in part I.
- Rwanda
- Group (1)
- 1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
- 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
- 1C. Public Social Services
- 1D. Sanitation
- 1E. Drug Abuse and Narcotics Control
- 1F. International Health
- 1G. Tourism and Travel
- 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
- 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
- 1J. Primary School Administration
- 1K. Secondary School Administration
- 1L. College, University and Higher Education Administration
- 1M. Technical or Vocational School Administration
- 1N. Hospital Administration
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.

## Group (4)

4A. Aerospace Engineering  
 4B. Cartography  
 4C. Chemical Engineering  
 4D. Civil Engineering (including Airport Engineering)  
 4E. Communication Engineering  
 4F. Computer Engineering and Technologies  
 4G. Electrical Engineering  
 4H. Electronic Engineering (including Radio Engineering)  
 4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
 4J. Genetic and Biomedical Engineering  
 4K. Industrial Engineering  
 4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)  
 4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)  
 4O. Mining and Lumbering Engineering and Technology  
 4P. Navigation and Transportation Engineering  
 4Q. Optical Engineering (including, but not limited to: light and sound technology)  
 4R. Petroleum and Natural Gas Engineering and Technology  
 4S. Printing and Photographic Engineering and Technology  
 4T. Surveying (including Oceanography)

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies

## Group (6)

6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics

## Group (7)

7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
 7E. Vocational and Technical School Teaching  
 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
 7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
 7H. College and University Teaching of Education  
 7I. College and University Teaching of Business  
 7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7N. Teaching in Medical Schools (including, but not limited to lecturers)  
 7P. Career Guidance and Counseling

## Group (8)

All fields listed in part I.

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management

## Saudi Arabia

## Group (1)

All fields listed in part I.

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

All fields listed in part I.

## Group (6)

6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)

- 6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences and Photography)  
6L. Estate Management  
6M. Linguistics  
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- Group (7)  
All fields listed in part I.
- Group (8)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8E. Airplane Piloting (including, but not limited to Airline Piloting)  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)  
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8J. Drafting  
8K. Skilled Operation of Construction Machines
- Group (9)  
All fields listed in part I.
- Senegal
- Group (1)  
All fields listed in part I.
- Group (2)  
2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine
- 2F. Geriatrics  
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)  
2H. Medical Instruments and Technology  
2I. Dentistry  
2J. Dental Technology  
2K. Optometry  
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)  
2M. Medical Cybernetics  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5D. Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5P. Fisheries (or other marine products)  
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
- 5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Sierra Leone
- Group (1)  
1C. Public Social Services  
1E. Drug Abuse and Narcotics Control  
1G. Tourism and Travel  
1N. Hospital Administration
- Group (2)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2P. Cancer Research  
2R. Environmental Health
- Group (3)  
3B. Information Science and Systems Analysis
- Group (4)  
4B. Cartography  
4D. Civil Engineering (including Airport Engineering)  
4F. Computer Engineering and Technologies  
4H. Electronic Engineering (including Radio Engineering)  
4J. Genetic and Biomedical Engineering  
4K. Industrial Engineering  
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including metal fabrication)

4O. Mining and Lumbering Engineering and Technology

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

Group (6)

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

Group (7)

7B. Educational Testing, Evaluation and Measurement

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

Group (9)

9O. Farm Management and Administration

Singapore

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2K. Optometry

2M. Medical Cybernetics

2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

2O. Medical Statistics and

Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering

4B. Cartography

4C. Chemical Engineering

4D. Civil Engineering (including Airport Engineering)

4E. Communication Engineering

4F. Computer Engineering and Technologies

4G. Electrical Engineering

4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

4T. Surveying (including Oceanography)

Group (5)

5C. Study of Drugs and Allied Sciences

5D. Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance

Technology

5L. Agriculture and Agronomy

(including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5P. Fisheries (or other marine products)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

Group (6)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

- 6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7E. Vocational and Technical School Teaching  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
7H. College and University Teaching of Education  
7I. College and University Teaching of Business  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7N. Teaching in Medical Schools (including, but not limited to lecturers)  
7O. Teaching in Law Schools (including, but not limited to lecturers)  
7P. Career Guidance and Counseling
- Group (8)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8E. Airplane Piloting (including, but not limited to Airline Piloting)  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)  
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8K. Skilled Operation of Construction Machines
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9J. Insurance (including Actuaries)  
9K. Administration of Financial Institutions including, but not limited to Savings and Loan Organizations and Credit Unions)  
9L. Financial Planning  
9M. Operations Research  
9N. Banking  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Somalia
- Group (1)  
1A. Public Administration (including but not limited To: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
1J. Primary School Administration  
1K. Secondary School Administration  
1L. College, University and Higher Education Administration  
1M. Technical or Vocational School Administration  
1N. Hospital Administration
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
- 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5T. Desalinization  
5U. Population Studies
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics  
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- Group (7)  
All fields listed in part I.

## Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8D. Radio Operation  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management

## Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Sri Lanka (including Maldives)

## Group (1)

1A. Public Administration (including, but not limited to Public Health and Urban Studies/Planning and Urban Transportation)  
 1C. Public Social Services  
 1D. Sanitation  
 1E. Drug Abuse and Narcotics Control  
 1F. International Health  
 1G. Tourism and Travel  
 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1L. College, University and Higher Education Administration

## Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
 2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)  
 2C. Veterinary Medicine  
 2D. Emergency Medicine  
 2E. Nuclear Medicine  
 2F. Geriatrics  
 2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)  
 2M. Medical Cybernetics  
 2O. Medical Statistics and Documentation  
 2P. Cancer Research  
 2Q. Medical Photography  
 2R. Environmental Health  
 2S. Medical Research

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering  
 4B. Cartography  
 4C. Chemical Engineering  
 4D. Civil Engineering (including Airport Engineering)  
 4E. Communication Engineering  
 4F. Computer Engineering and Technologies  
 4G. Electrical Engineering  
 4H. Electronic Engineering (including Radio Engineering)  
 4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
 4J. Genetic and Biomedical Engineering  
 4K. Industrial Engineering  
 4L. Marine and Aeronautical Engineering and Technology (including,

but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, Plastics, Wood, Paper and Metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

4U. Agricultural Engineering

4V. Nuclear Engineering

4W. Natural Resource Management Engineering (including, but not limited to Water Resource Management)

4X. Environmental Engineering

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including Physical Chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5F. Mathematics

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5P. Fisheries (or other marine products)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

5V. Botany

5W. Entomology

## Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including

Humanities)

6E. Anthropology and Archaeology

6F. Demography

- 6G. Government and Politics (including, but not limited to International Relations)
- 6I. Literature
- 6J. Instructional Media and Technology
- 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
- 6L. Estate Management
- 6M. Linguistics
- 6O. Religion and Theology (including, but not limited to Ministry)
- 6P. Cultural Diversity (including, but not limited to Women's, Minority, Ethnic and Area Studies)
- 6Q. Fashion and Textile Design
- 6S. Geography
- 6T. Home Economics
- 6U. Language Studies
- Group (7)
- 7A. Teaching and Religious Education
- 7B. Educational Testing, Evaluation and Measurement
- 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
- 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
- 7I. College and University Teaching of Business
- 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
- 7L. Education of Exceptional Children
- 7M. Physical Education and Recreation (including, but not limited to Coaching)
- 7N. Teaching in Medical Schools (including, but not limited to lecturers)
- 7O. Teaching in Law Schools (including, but not limited to lecturers)
- 7P. Career Guidance and Counseling
- 7R. Educational Technology (Instructional systems Technology)
- 7S. Educational Psychology
- 7T. Curriculum Planning
- Group (8)
- 8B. Communication Media (including Television and Film)
- 8F. Merchant Marine
- 8I. Construction-Project Management
- 8L. Telecommunications
- Group (9)
- 9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
- 9B. International Business and Commerce
- 9C. Industrial Organization
- 9D. Labor and Industrial Relations
- 9E. Economic Development and Planning (including Rural Development)
- 9F. Economic Information Analysis (including, but not limited to Management Studies)
- 9G. Accounting
- 9H. Cybernetic Technology
- 9L. Financial Planning
- 9M. Operations Research
- 9O. Farm Management and Administration
- 9P. Hotel and Motel Management
- 9R. Marketing
- 9S. Finance
- Sudan
- Group (1)
- 1A. Public Administration (including, but not limited to Public Health and Urban Studies/Planning and Urban Transportation)
- 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
- 1C. Public Social Services
- 1D. Sanitation
- 1E. Drug Abuse and Narcotics Control
- 1F. International Health
- 1G. Tourism and Travel
- 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
- 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
- 1J. Primary School Administration
- 1K. Secondary School Administration
- 1L. College, University and Higher Education Administration
- 1M. Technical or Vocational School Administration
- 1N. Hospital Administration
- Group (2)
- All fields listed in part I.
- Group (3)
- All fields listed in part I.
- Group (4)
- 4A. Aerospace Engineering
- 4B. Cartography
- 4C. Chemical Engineering
- 4D. Civil Engineering (including Airport Engineering)
- 4E. Communication Engineering
- 4F. Computer Engineering and Technologies
- 4G. Electrical Engineering
- 4H. Electronic Engineering (including Radio Engineering)
- 4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
- 4J. Genetic and Biomedical Engineering
- 4K. Industrial Engineering
- 4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
- 4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
- 4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
- 4P. Navigation and Transportation Engineering
- 4Q. Optical Engineering (including, but not limited to: light and sound technology)
- 4R. Petroleum and Natural Gas Engineering and Technology
- 4S. Printing and Photographic Engineering and Technology
- 4T. Surveying (including Oceanography)
- Group (5)
- 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
- 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
- 5C. Study of Drugs and Allied Sciences
- 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
- 5E. Genetics
- 5F. Mathematics
- 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
- 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
- 5J. Astronomy and Space Technology
- 5K. Repair and Maintenance Technology
- 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
- 5M. Food Science and Technology
- 5N. Zoology (including Animal Behavior and Physiology)
- 5P. Fisheries (or other marine products)
- 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
- 5R. Hydrology (including, but not limited to Water Pollution)
- 5S. Ecology and Environmental Protection (including Conservation)
- 5T. Desalinization
- 5U. Population Studies

## Group (6)

6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics  
 6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

## Group (7)

7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
 7E. Vocational and Technical School Teaching  
 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
 7I. College and University Teaching of Business  
 7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7N. Teaching in Medical Schools (including, but not limited to lecturers)  
 7P. Career Guidance and Counseling

## Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology

8D. Radio Operation  
 8E. Airplane Piloting (including, but not limited to Airline Piloting)  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9J. Insurance (including Actuaries)  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management

## Swaziland

## Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
 1C. Public Social Services  
 1D. Sanitation  
 1E. Drug Abuse and Narcotics Control  
 1F. International Health  
 1G. Tourism and Travel  
 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
 1J. Primary School Administration  
 1K. Secondary School Administration  
 1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration  
 1N. Hospital Administration

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering  
 4B. Cartography  
 4C. Chemical Engineering  
 4D. Civil Engineering (including Airport Engineering)  
 4E. Communication Engineering  
 4F. Computer Engineering and Technologies  
 4G. Electrical Engineering  
 4H. Electronic Engineering (including Radio Engineering)  
 4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
 4J. Genetic and Biomedical Engineering  
 4K. Industrial Engineering  
 4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
 4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)  
 4O. Mining and Lumbering Engineering and Technology  
 4P. Navigation and Transportation Engineering  
 4Q. Optical Engineering (including, but not limited to: light and sound technology)  
 4R. Petroleum and Natural Gas Engineering and Technology  
 4S. Printing and Photographic Engineering and Technology  
 4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
 5E. Genetics  
 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance

Technology

5L. Agriculture and Agronomy

(including, but not limited to:

veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics,

Engineering and Technology (except Agriculture)

7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7H. College and University Teaching of Education

7I. College and University Teaching of Business

7J. Agricultural School Teaching

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation including, but not limited to Coaching)

7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Tanzania

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited To: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1J. Primary School Administration

1K. Secondary School Administration

1L. College, University and Higher Education Administration

1M. Technical or Vocational School Administration

1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5E. Genetics

5F. Mathematics

5G. Laboratory Technology

(including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance

Technology

5L. Agriculture and Agronomy (including, but not limited to:

- veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5O. Forestry  
 5P. Fisheries (or other marine products)  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5U. Population Studies  
 Group (6)  
 6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences and Photography)  
 6L. Estate Management  
 6M. Linguistics  
 Group (7)  
 7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
 7E. Vocational and Technical School Teaching  
 7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
 7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
 7H. College and University Teaching of Education  
 7I. College and University Teaching of Business  
 7J. Agricultural School Teaching  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7N. Teaching in Medical Schools (including, but not limited to lecturers)  
 7O. Teaching in Law Schools (including, but not limited to lecturers)  
 7P. Career Guidance and Counseling  
 Group (8)  
 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8D. Radio Operation  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines  
 Group (9)  
 9A. Industrial and Business Administration and Management (including, but not limited to programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management  
 Group (10)  
 10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)  
 Thailand  
 Group (1)  
 All fields listed in part I.  
 Group (2)  
 All fields listed in part I.  
 Group (3)  
 All fields listed in part I.  
 Group (4)  
 All fields listed in part I.  
 Group (5)  
 All fields listed in part I.  
 Group (6)  
 All fields listed in part I.  
 Group (7)  
 All fields listed in part I.  
 Group (8)  
 All fields listed in part I.  
 Group (9)  
 All fields listed in part I.  
 Group (10)  
 All fields listed in part I.  
 Togo  
 Group (1)  
 1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
 1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
 1C. Public Social Services  
 1D. Sanitation  
 1E. Drug Abuse and Narcotics Control  
 1F. International Health  
 1G. Tourism and Travel  
 1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
 1I. Parks and Recreation Management (including, but not limited to Wildlife Management)  
 1J. Primary School Administration  
 1K. Secondary School Administration  
 1L. College, University and Higher Education Administration  
 1M. Technical or Vocational School Administration  
 1N. Hospital Administration  
 Group (2)  
 All fields listed in part I.  
 Group (3)  
 All fields listed in part I.  
 Group (4)  
 All fields listed in part I.

## Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5K. Repair and Maintenance Technology

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

## Group (6)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

## Group (7)

7A. Teaching and Religious Education

7B. Educational Testing, Evaluation and Measurement

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)

7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)

7H. College and University Teaching of Education

7I. College and University Teaching of Business

7J. Agricultural School Teaching

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7N. Teaching in Medical Schools (including, but not limited to lecturers)

7P. Career Guidance and Counseling

## Group (8)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9I. Statistics

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

## Tonga

## Group (1)

All fields listed in part I.

## Group (2)

All fields listed in part I.

## Group (3)

All fields listed in part I.

## Group (4)

All fields listed in part I.

## Group (5)

All fields listed in part I.

## Group (6)

All fields listed in part I.

## Group (7)

All fields listed in part I.

## Group (8)

All fields listed in part I.

## Group (9)

All fields listed in part I.

## Group (10)

All fields listed in part I.

## Trinidad and Tobago

## Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1G. Tourism and Travel

1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)

1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1M. Technical or Vocational School Administration

1N. Hospital Administration

## Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology,

Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

2E. Nuclear Medicine

2F. Geriatrics

2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)

2H. Medical Instruments and Technology

2I. Dentistry

2M. Medical Cybernetics

2O. Medical Statistics and

Documentation

2P. Cancer Research

2Q. Medical Photography

2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4B. Cartography

4C. Chemical Engineering

4D. Civil Engineering (including Airport Engineering)

4E. Communication Engineering

4F. Computer Engineering and Technologies

4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)

4O. Mining and Lumbering Engineering and Technology

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

4T. Surveying (including Oceanography)

4U. Agricultural Engineering

4W. Natural Resource Management Engineering (including, but not limited to Water Resource Management)

4X. Environmental Engineering

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)

5C. Study of Drugs and Allied Sciences

5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics

5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5O. Forestry

5P. Fisheries (or other marine products)

5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5U. Population Studies

5V. Botany

Group (6)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6J. Instructional Media and Technology

6L. Estate Management

6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Tunisia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6H. Economics

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

- Turkey
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5P. Fisheries (or other marine products)  
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5T. Desalination  
5U. Population Studies
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including
- 6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
7E. Vocational and Technical School Teaching  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
7H. College and University Teaching of Education  
7I. College and University Teaching of Business  
7J. Agricultural School Teaching  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7N. Teaching in Medical Schools (including, but not limited to lecturers)  
7O. Teaching in Law Schools (including, but not limited to lecturers)  
7P. Career Guidance and Counseling
- Group (8)  
8B. Communication Media (including Television and Film)  
8F. Merchant Marine  
8I. Construction-Project Management  
8K. Skilled Operation of Construction Machines
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to programmers and Project Evaluation, Business, Total Quality Management
- 9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9J. Insurance (including Actuaries)  
9L. Financial Planning  
9M. Operations Research  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Uganda
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- United Arab Emirates
- Group (1)  
1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel  
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)  
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

- 1K. Secondary School Administration  
 1L. College, University and Higher Education Administration  
 1M. Technical or Vocational School Administration  
 1N. Hospital Administration
- Group (2)  
 All fields listed in part I.
- Group (3)  
 All fields listed in part I.
- Group (4)  
 4A. Aerospace Engineering  
 4B. Cartography  
 4C. Chemical Engineering  
 4D. Civil Engineering (including Airport Engineering)  
 4E. Communication Engineering  
 4F. Computer Engineering and Technologies  
 4G. Electrical Engineering  
 4H. Electronic Engineering (including Radio Engineering)  
 4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)  
 4J. Genetic and Biomedical Engineering  
 4K. Industrial Engineering  
 4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)  
 4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)  
 4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)  
 4P. Navigation and Transportation Engineering  
 4Q. Optical Engineering (including, but not limited to: light and sound technology)  
 4R. Petroleum and Natural Gas Engineering and Technology  
 4S. Printing and Photographic Engineering and Technology  
 4T. Surveying (including Oceanography)
- Group (5)  
 5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
 5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
 5C. Study of Drugs and Allied Sciences  
 5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
 5E. Genetics
- 5F. Mathematics  
 5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
 5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
 5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
 5J. Astronomy and Space Technology  
 5K. Repair and Maintenance Technology  
 5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
 5M. Food Science and Technology  
 5N. Zoology (including Animal Behavior and Physiology)  
 5P. Fisheries (or other marine products)  
 5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
 5R. Hydrology (including, but not limited to Water Pollution)  
 5S. Ecology and Environmental Protection (including Conservation)  
 5T. Desalinization  
 5U. Population Studies
- Group (6)  
 6A. Sociology (except Economics and including Criminology)  
 6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
 6C. History (including Art History)  
 6D. Philosophy (including Humanities)  
 6E. Anthropology and Archaeology  
 6F. Demography  
 6G. Government and Politics (including, but not limited to International Relations)  
 6H. Economics  
 6I. Literature  
 6J. Instructional Media and Technology  
 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
 6L. Estate Management  
 6M. Linguistics  
 6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- Group (7)  
 7A. Teaching and Religious Education  
 7B. Educational Testing, Evaluation and Measurement  
 7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
- 7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
 7E. Vocational and Technical School Teaching  
 7I. College and University Teaching of Business  
 7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
 7L. Education of Exceptional Children  
 7M. Physical Education and Recreation (including, but not limited to Coaching)  
 7P. Career Guidance and Counseling
- Group (8)  
 8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)  
 8B. Communication Media (including Television and Film)  
 8C. Electrical Communication Technology  
 8E. Airplane Piloting (including, but not limited to Airline Piloting)  
 8F. Merchant Marine  
 8G. Architecture (including Marine Architecture)  
 8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
 8I. Construction-Project Management  
 8J. Drafting  
 8K. Skilled Operation of Construction Machines
- Group (9)  
 9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
 9B. International Business and Commerce  
 9C. Industrial Organization  
 9D. Labor and Industrial Relations  
 9E. Economic Development and Planning (including Rural Development)  
 9F. Economic Information Analysis (including, but not limited to Management Studies)  
 9G. Accounting  
 9H. Cybernetic Technology  
 9I. Statistics  
 9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
 9L. Financial Planning  
 9M. Operations Research  
 9N. Banking  
 9O. Farm Management and Administration  
 9P. Hotel and Motel Management

## Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Upper Volta (see Burkina Faso)

Uruguay

## Group (1)

All fields listed in part I.

## Group (2)

2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2M. Medical Cybernetics  
2O. Medical Statistics and

Documentation

2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health

## Group (3)

All fields listed in part I.

## Group (4)

4A. Aerospace Engineering  
4B. Cartography  
4C. Chemical Engineering  
4E. Communication Engineering  
4F. Computer Engineering and

Technologies

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)

4J. Genetic and Biomedical Engineering

4K. Industrial Engineering  
4L. Marine and Aeronautical

Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)

4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)

4R. Petroleum and Natural Gas Engineering and Technology

4S. Printing and Photographic Engineering and Technology

## Group (5)

5C. Study of Drugs and Allied Sciences

5E. Genetics

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)

5J. Astronomy and Space Technology

5L. Agriculture and Agronomy (including, but not limited to:

veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)

5M. Food Science and Technology

5N. Zoology (including Animal Behavior and Physiology)

5P. Fisheries (or other marine products)

5R. Hydrology (including, but not limited to Water Pollution)

5S. Ecology and Environmental Protection (including Conservation)

5T. Desalinization

5U. Population Studies

## Group (6)

6C. History (including Art History)

6D. Philosophy (including Humanities)

6E. Anthropology and Archaeology

6F. Demography

6G. Government and Politics (including, but not limited to International Relations)

6I. Literature

6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

## Group (7)

7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement

7I. College and University Teaching of Business

7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)

7L. Education of Exceptional Children

7M. Physical Education and Recreation (including, but not limited to Coaching)

7P. Career Guidance and Counseling

## Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8E. Airplane Piloting (including, but not limited to Airline Piloting)

8F. Merchant Marine

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8K. Skilled Operation of Construction Machines

## Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce

9C. Industrial Organization

9D. Labor and Industrial Relations

9E. Economic Development and Planning (including Rural Development)

9F. Economic Information Analysis (including, but not limited to Management Studies)

9G. Accounting

9H. Cybernetic Technology

9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)

9L. Financial Planning

9M. Operations Research

9N. Banking

9O. Farm Management and Administration

9P. Hotel and Motel Management

Venezuela

## Group (1)

1A. Public Administration (including, but not limited to Public Health and Urban Studies/Planning and Urban Transportation)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)

1C. Public Social Services

1D. Sanitation

1E. Drug Abuse and Narcotics Control

1F. International Health

## Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceuticals, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)

2C. Veterinary Medicine

2D. Emergency Medicine

- 2E. Nuclear Medicine  
2F. Geriatrics  
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)  
2H. Medical Instruments and Technology  
2I. Dentistry  
2J. Dental Technology  
2M. Medical Cybernetics  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
2O. Medical Statistics and Documentation  
2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5P. Fisheries (or other marine products)  
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)
- 5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics
- Group (7)  
7A. Teaching and Religious Education  
7B. Educational Testing, Evaluation and Measurement  
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)  
7D. Secondary School Teaching (including, but Not limited to Remedial Teaching and Teaching of English as a Foreign Language)  
7E. Vocational and Technical School Teaching  
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)  
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)  
7H. College and University Teaching of Education  
7I. College and University Teaching of Business  
7J. Agricultural School Teaching  
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)  
7L. Education of Exceptional Children  
7M. Physical Education and Recreation (including, but not limited to Coaching)  
7N. Teaching in Medical Schools (including, but not limited to lecturers)  
7P. Career Guidance and Counseling
- Group (8)  
8B. Communication Media (including Television and Film)
- 8C. Electrical Communication Technology  
8F. Merchant Marine  
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8J. Drafting  
8K. Skilled Operation of Construction Machines
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9L. Financial Planning  
9M. Operations Research  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Western Samoa
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.

- Yemen
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
All fields listed in part I.
- Group (6)  
All fields listed in part I.
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
All fields listed in part I.
- Group (10)  
All fields listed in part I.
- Zaire
- Group (1)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health  
1G. Tourism and Travel
- Group (2)  
2A. General Practice of Medicine (including Osteopaths who also practice medicine)  
2C. Veterinary Medicine  
2D. Emergency Medicine  
2E. Nuclear Medicine  
2F. Geriatrics  
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)  
2H. Medical Instruments and Technology  
2I. Dentistry  
2J. Dental Technology  
2K. Optometry  
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)  
2M. Medical Cybernetics  
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)  
2O. Medical Statistics and Documentation
- 2P. Cancer Research  
2Q. Medical Photography  
2R. Environmental Health
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5P. Fisheries (or other marine products)  
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology
- 6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)  
6L. Estate Management  
6M. Linguistics  
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
- Group (7)  
All fields listed in part I.
- Group (8)  
All fields listed in part I.
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Development, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
9L. Financial Planning  
9M. Operations Research  
9N. Banking  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Zambia
- Group (1)  
1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)  
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)  
1C. Public Social Services  
1D. Sanitation  
1E. Drug Abuse and Narcotics Control  
1F. International Health
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.

- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5P. Fisheries (or other marine products)  
5Q. Geology (including all branches and specialties, e.g., Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology  
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
- 6L. Estate Management  
6M. Linguistics
- Group (7)  
All fields listed in part I.
- Group (8)  
8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)  
8B. Communication Media (including Television and Film)  
8C. Electrical Communication Technology  
8D. Radio Operation  
8F. Merchant Marine  
8G. Architecture (including Marine Architecture)  
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)  
8I. Construction-Project Management  
8J. Drafting  
8K. Skilled Operation of Construction Machines
- Group (9)  
9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)  
9B. International Business and Commerce  
9C. Industrial Organization  
9D. Labor and Industrial Relations  
9E. Economic Development and Planning (including Rural Development)  
9F. Economic Information Analysis (including, but not limited to Management Studies)  
9G. Accounting  
9H. Cybernetic Technology  
9I. Statistics  
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)  
9L. Financial Planning  
9M. Operations Research  
9N. Banking  
9O. Farm Management and Administration  
9P. Hotel and Motel Management
- Group (10)  
10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
- Zimbabwe
- Group (1)  
All fields listed in part I.
- Group (2)  
All fields listed in part I.
- Group (3)  
All fields listed in part I.
- Group (4)  
All fields listed in part I.
- Group (5)  
5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)  
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)  
5C. Study of Drugs and Allied Sciences  
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)  
5E. Genetics  
5F. Mathematics  
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)  
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)  
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)  
5J. Astronomy and Space Technology  
5K. Repair and Maintenance Technology  
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)  
5M. Food Science and Technology  
5N. Zoology (including Animal Behavior and Physiology)  
5O. Forestry  
5P. Fisheries (or other marine products)  
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)  
5R. Hydrology (including, but not limited to Water Pollution)  
5S. Ecology and Environmental Protection (including Conservation)  
5U. Population Studies
- Group (6)  
6A. Sociology (except Economics and including Criminology)  
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)  
6C. History (including Art History)  
6D. Philosophy (including Humanities)  
6E. Anthropology and Archaeology  
6F. Demography  
6G. Government and Politics (including, but not limited to International Relations)  
6H. Economics  
6I. Literature  
6J. Instructional Media and Technology

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

6L. Estate Management

6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and

including text-book writers, interpreters and translators)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology

8D. Radio Operation

8F. Merchant Marine

8G. Architecture (including Marine Architecture)

8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

8I. Construction-Project Management

8J. Drafting

8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

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Federal Register

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Thursday  
January 16, 1997

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**Part III**

**Department of  
Education**

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**Bilingual Education—Systemwide  
Improvement Grants; Applications  
Invitation, FY 1997; Notice**

**DEPARTMENT OF EDUCATION****[CFDA No.: 84.291R]****Bilingual Education—Systemwide Improvement Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997**

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program.

**Purpose of Program:** This program provides grants to implement districtwide bilingual education programs or special alternative instructional programs to improve, reform, and upgrade relevant programs and operations, within an entire local educational agency (LEA), that serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

**Eligible Applicants:** (1) One or more LEAs; or (2) one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

**Deadline for Transmittal of Applications:** April 4, 1997.

**Deadline for Intergovernmental Review:** June 3, 1997.

**Available Funds:** \$20 million.

**Estimated Range of Awards:** \$350,000–\$650,000.

**Estimated Average Size of Awards:** \$500,000.

**Estimated Number of Awards:** 40.

Note: The Department is not bound by any estimates in this notice.

**Project Period:** 60 months.

**Applicable Regulations**

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

**Description of Program**

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7115 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7425 and 7426)).

Grants under this program may be used during the first 12 months exclusively for activities preparatory to the delivery of services. Grants may be used to improve the education of limited English proficient students and their families by reviewing, restructuring, and upgrading—

(A) Educational goals, curriculum guidelines and content, standards and assessments;

(B) Personnel policies and practices including recruitment, certification, staff development, and assignment;

(C) Student grade-promotion and graduation requirements;

(D) Student assignment policies and practices;

(E) Family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children;

(F) The instructional program for limited English proficient students by identifying, acquiring and upgrading curriculum, instructional materials, educational software and assessment procedures and, if appropriate, applying educational technology;

(G) Tutorials and academic or career counseling for children and youth of limited-English proficiency; and

(H) Such other activities, related to the purposes of this part, as the Secretary may approve.

**Priorities****Absolute Priority**

The priority in the notice of final priority for this program, as published in the Federal Register on October 30, 1995 (60 FR 55246–55247) and repeated below, applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

**Invitational Priority**

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the invitational priority in the next paragraph. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants that consider the Department of Education Professional

Development Principles in planning and designing a Systemwide Improvement Grant project.

Those principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

**Selection Criteria**

(a)(1) The Secretary uses the following provisions in sections 7115 and 7116 of the Act and 34 CFR 75.210 as selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria—(1) *Meeting the purposes of the authorizing statute.* (15 points) The Secretary reviews each application to determine how well the project is designed to implement districtwide bilingual education programs or special alternative instruction programs to improve, reform, and upgrade relevant programs and operations, within an entire local educational agency, that serve a significant number of children and youth of limited English proficiency in local educational agencies with significant concentrations of such children and youth.

(Authority: 20 U.S.C. 7425(a))

(2) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) Data on the number of children and youth of limited-English proficiency in the school district to be served;

(ii) The characteristics of such children and youth, such as language spoken, dropout rates, proficiency in English and the native language, academic standing in relation to the English-proficient peers of those children and youth, and, where applicable, the recency of immigration;

(iii) The needs addressed by the project;

(iv) How the applicant identified those needs;

(v) How those needs will be met by the project; and

(vi) The benefits to be gained by meeting those needs.

(Authority: 20 U.S.C. 7426(g)(1)(A); 34 C.F.R. 75.210(b)(2))

(3) *Plan of operation.* (35 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) How the program is to be implemented and its design—

(A) Relate to the linguistic and academic needs of the children and youth of limited-English proficiency to be served;

(B) Are coordinated with other programs under this Act, the Goals 2000: Educate America Act and other Acts, as appropriate in accordance with section 14306 of the Act;

(C) Involve the parents of the children and youth of limited-English proficiency to be served;

(D) Ensure accountability in achieving high academic standards; and

(E) Promote coordination of services for the children and youth of limited-English proficiency to be served and their families.

(Authority: 20 U.S.C. 7426(g)(1)(B))

(ii) How, if appropriate, the applicant proposes collaborative activities with institutions of higher education, community-based organizations, local or State educational agencies, private schools, nonprofit organizations, or businesses in carrying out the proposed program.

(Authority: 20 U.S.C. 7426(g)(1)(C))

(iii)(A) What current services the applicant provides to children and youth of limited-English proficiency;

(B) What services children and youth of limited-English proficiency will receive under the grant that such children or youth will not otherwise receive;

(C) How funds received will be integrated with all other Federal, State, local, and private resources that may be used to serve children and youth of limited-English proficiency;

(D) Specific achievement and school retention goals for the children and youth to be served by the proposed program and how progress toward achieving such goals will be measured; and

(E) Current family education programs if applicable.

(iv) How the applicant's proposed project will be integrated with the applicant's overall educational program.

(Authority: 20 U.S.C. 7426(g)(2)(B)(i))

(v) How training for personnel participating in or preparing to participate in the program will assist those personnel in meeting State and local certification requirements.

(Authority: 20 U.S.C. 7426(i)(5))

(4) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1))

(5) *Quality of key personnel.* (8 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) How the applicant will employ teachers in the proposed program that, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(ii) How the project will use qualified personnel, including personnel who are proficient in the language or languages used in instruction.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(6) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(34 CFR 75.210(b)(5))

(7) *Evaluation plan.* (13 points) The Secretary reviews each application to determine how well the project's evaluation will meet the following requirements. The evaluation must include—

(i) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited-English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, where applicable, native language) proficiency;

(ii) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(iii) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited-English proficiency.

(Authority: 20 U.S.C. 7433)

(8) *Adequacy of resources.* (4 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) Student evaluation and assistance procedures must be valid, reliable, and fair for limited-English proficient students.

(ii) Limited-English proficient students who are disabled must be identified and served in accordance with the requirements of the Individuals with Disabilities Education Act.

(iii) The project must contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited-English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance is reduced or no longer available.

(iv) The project must provide for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7426(h)(3), (5), and (6))

#### *Intergovernmental Review of Federal Programs*

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply

with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on August 20, 1996 (61 FR 43133 through 43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.291R, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202-0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

**PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:**

(a) If an applicant wants to apply for a grant, the applicant shall —

(1) Mail the original and specified copies of the application on or before the deadline date to:

U.S. Department of Education,  
Application Control Center,  
Attention: (CFDA# 84.291R),  
Washington, D.C. 20202-4725  
or

(2) Hand-deliver the original and specified copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to:

U.S. Department of Education,  
Application Control Center,  
Attention: (CFDA# 84.291R), Room  
#3633, Regional Office Building #3,  
7th and D Streets, SW., Washington,  
D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

#### *Application Instructions and Forms*

The appendix to this application contains the following forms and instructions, plus a statement regarding estimated public reporting burden, various assurances, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, certifications, checklist for applicants, and required documentation:

a. Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

b. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

c. Application Narrative.

d. Estimated Public Reporting Burden.

e. Group Application Certification.

f. Student Data.

g. Project Documentation.

h. Program Assurances.

i. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

j. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013) and instructions.

k. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

(Note: This form is intended for the use of grantees and should not be transmitted to the Department.)

l. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

m. Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *ONE* original signed application and *TWO* copies of the application. The Secretary also requests applicants to send a *THIRD* copy of the application to assist in the Department's review. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

#### **FOR FURTHER INFORMATION CONTACT:**

Cecile Kreins, James Lockhart, or Harry Logel, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202-6510. Telephone: Cecile Kreins (202) 205-5568, James Lockhart (202) 205-5426, Harry Logel (202) 205-5530. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; on the Internet Gopher Server (at [gopher://gcs.ed.gov](http://gopher://gcs.ed.gov)); or on the World Wide Web (at <http://gcs.ed.gov>).

However, the official application notice for a discretionary grant competition is the notice published in the Federal Register. *Note:* Some of the forms in the Appendix to this notice may not be available from these electronic sources.

Program Authority: 20 U.S.C. 7425.

Dated: January 7, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

#### Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid

OMB control number. The valid OMB control number for this information collection is OMB No. 1885-0528, Exp. Date: 4/30/98. The time required to complete this information collection is estimated to average 160 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202-4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Ave., S.W., Washington, D.C. 20202-6510.

#### APPLICATION INSTRUCTIONS

##### *Mandatory Page Limit for the Application Narrative*

The narrative portion of the application must not exceed 75 pages. These pages must be doubled-spaced and printed on one side only. A legible font size and adequate margins should be used. The narrative section must be paginated and should include a one-page abstract. The page limit applies to: (1) the abstract, (2) the proposal narrative, (3) charts, graphs, tables, and graphics, (4) position descriptions (and resumes, if included), and (5) any appendices. The page limit does not apply to: application forms and other forms furnished by the Department, assurances and attachments to those forms, and the table of contents (items 1-13 in the Checklist for Applicants).

##### *Application Narrative*

The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities. The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not send letters of support unless they are critical to the instructional design of the project. Do not send curriculum vitae for key personnel; submit position descriptions instead. **APPLICATIONS WITH A NARRATIVE SECTION THAT EXCEEDS THE PAGE LIMIT WILL NOT BE CONSIDERED FOR FUNDING. THE APPLICATION NARRATIVE MUST BE PAGINATED.**

##### *Table of Contents*

The application should include a table of contents listing the sections in the order required.

##### *Final Application Preparation*

Use the checklist included in this application to verify that your application is complete. Prepare an original copy with an original signature. Prepare three additional copies. Do not bind in notebooks, elaborate bindings, or covers. The application package must be mailed or hand-delivered to the address specified in this notice and postmarked by the deadline date.

##### *Notice to All Applicants*

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

##### *To Whom Does This Provision Apply?*

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

##### *What Does This Provision Require?*

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be

discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

##### *What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?*

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

##### *Estimated Burden Statement*

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the

accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

#### Checklist for Applicants

##### *Systemwide Improvement Grants*

The following forms and other items must be included in the application and organized in the same manner listed below:

- |  |   |   |
|--|---|---|
| <ol style="list-style-type: none"> <li>1. Application for Federal Assistance (SF 424)</li> <li>2. Group Application Certification (if applicable)</li> </ol> | <ol style="list-style-type: none"> <li>3. Budget Information (ED Form No. 524)</li> <li>4. Itemized Budget for each year</li> <li>5. Student Data</li> <li>6. Project Documentation:<br/>Transmittal Letter to SEA<br/>Documentation of Consultation with Nonprofit Private School Officials, if applicable<br/>Box checked in Section C of this form</li> <li>7. Program Assurances</li> <li>8. Notice to All Applicants (OMB No. 1801-0004)</li> <li>9. Assurances—Non-Construction Programs (SF 424B)</li> <li>10. Certifications Regarding Lobbying; Debarment, Suspension and Other</li> </ol> | <p>Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013)</p> <ol style="list-style-type: none"> <li>11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80-0014)</li> <li>12. Disclosure of Lobbying Activities (SF-LLL)</li> <li>13. Table of Contents</li> <li>14. Application Narrative, including Abstract (not to exceed 75 pages)</li> <li>15. One Original and Three Copies of the Application to be transmitted to the Department at the address specified in this notice.</li> </ol> <p><b>BILLING CODE 4000-01-P</b></p> |
|--|---|---|

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

|  |    |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
|--|----|--|------------------------------|--|--|--|--|--|--|--|--|--------------|----|--|--|--|--|--|--|--|--|----------|----|--|--|--|--|--|--|--|--|----------|----|--|--|--|--|--|--|--|--|----------|----|--|--|--|--|--|--|--|--|-------------------|----|--|--|--|--|--|--|--|--|----------|----|--|--|--|--|--|--|--|--|--|--|
| <b>1. TYPE OF SUBMISSION:</b><br><i>Application</i><br><input type="checkbox"/> Construction<br><input checked="" type="checkbox"/> Non-Construction<br><br><i>Preapplication</i><br><input type="checkbox"/> Construction<br><input type="checkbox"/> Non-Construction  |    | <b>2. DATE SUBMITTED</b>   | Applicant Identifier         |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
|  |    | <b>3. DATE RECEIVED BY STATE</b>   | State Application Identifier |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
|  |    | <b>4. DATE RECEIVED BY FEDERAL AGENCY</b>  | Federal Identifier           |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| <b>5. APPLICANT INFORMATION</b>  |    |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| Legal Name:  |    | Organizational Unit:   |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| Address (give city, county, state, and zip code):  |    | Name and telephone number of the person to be contacted on matters involving this application (give area code)   |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| <b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b><br>[ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]   |    | <b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b><br>A. State<br>B. County<br>C. Municipal<br>D. Township<br>E. Interstate<br>F. Intermunicipal<br>G. Special District<br>H. Independent School Dist.<br>I. State Controlled Institution of Higher Learning<br>J. Private University<br>K. Indian Tribe<br>L. Individual<br>M. Profit Organization<br>N. Other (Specify): _____ |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| <b>8. TYPE OF APPLICATION:</b><br><input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision<br>If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/><br>A. Increase Award    B. Decrease Award    C. Increase Duration<br>D. Decrease Duration    Other (specify): _____  |    | <b>9. NAME OF FEDERAL AGENCY:</b><br>U.S. Department of Education  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| <b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> 8 4 0 2 9 1 R<br>TITLE:    Bilingual Education: Systemwide Improvement Grants  |    | <b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>   |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| <b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):</b>   |    |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| <b>13. PROPOSED PROJECT:</b><br>Start Date    Ending Date  |    | <b>14. CONGRESSIONAL DISTRICTS OF:</b><br>a. Applicant    b. Project   |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| <b>15. ESTIMATED FUNDING:</b> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%;"></td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>c. State</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table> |    | a. Federal   | \$                           |  |  |  |  |  |  |  |  | b. Applicant | \$ |  |  |  |  |  |  |  |  | c. State | \$ |  |  |  |  |  |  |  |  | d. Local | \$ |  |  |  |  |  |  |  |  | e. Other | \$ |  |  |  |  |  |  |  |  | f. Program Income | \$ |  |  |  |  |  |  |  |  | g. TOTAL | \$ |  |  |  |  |  |  |  |  | <b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b><br>a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:<br>DATE _____<br>b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372<br><input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW |  |
| a. Federal   | \$ |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| b. Applicant   | \$ |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| c. State   | \$ |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| d. Local   | \$ |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| e. Other   | \$ |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| f. Program Income  | \$ |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| g. TOTAL   | \$ |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| f. Program Income    \$    .00<br>g. TOTAL    \$    .00  |    | <b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b><br><input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| <b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED</b>  |    |  |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| a. Typed Name of Authorized Representative   |    | b. Title   | c. Telephone number          |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |
| d. Signature of Authorized Representative  |    | e. Date Signed   |                              |  |  |  |  |  |  |  |  |              |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |  |  |

Previous Editions Not Usable

Standard Form 324 (REV. 4-88) Prescribed by OMB Circular A-107

Authorized for Local Reproduction

### INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.  |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.  |       |  |

|  <p><b>U.S. DEPARTMENT OF EDUCATION</b></p> <p><b>BUDGET INFORMATION</b></p> <p><b>NON-CONSTRUCTION PROGRAMS</b></p> |                       | <p>OMB Control No. 1875-0102</p> <p>Expiration Date: 9/30/98</p>   |                       |                       |                       |              |
|---|-----------------------|--|-----------------------|-----------------------|-----------------------|--------------|
| <p>Name of Institution/Organization</p>   |                       | <p>Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.</p> |                       |                       |                       |              |
| <p><b>SECTION A - BUDGET SUMMARY</b></p> <p><b>U.S. DEPARTMENT OF EDUCATION FUNDS</b></p>   |                       |  |                       |                       |                       |              |
| Budget Categories   | Project Year 1<br>(a) | Project Year 2<br>(b)  | Project Year 3<br>(c) | Project Year 4<br>(d) | Project Year 5<br>(e) | Total<br>(f) |
| 1. Personnel  |                       |  |                       |                       |                       |              |
| 2. Fringe Benefits  |                       |  |                       |                       |                       |              |
| 3. Travel   |                       |  |                       |                       |                       |              |
| 4. Equipment  |                       |  |                       |                       |                       |              |
| 5. Supplies   |                       |  |                       |                       |                       |              |
| 6. Contractual  |                       |  |                       |                       |                       |              |
| 7. Construction   |                       |  |                       |                       |                       |              |
| 8. Other  |                       |  |                       |                       |                       |              |
| 9. Total Direct Costs<br>(lines 1-8)  |                       |  |                       |                       |                       |              |
| 10. Indirect Costs  |                       |  |                       |                       |                       |              |
| 11. Training Stipends   |                       |  |                       |                       |                       |              |
| 12. Total Costs<br>(lines 9-11)   |                       |  |                       |                       |                       |              |

ED FORM NO. 524

| Name of Institution/Organization     |  | SECTION B - BUDGET SUMMARY<br>NON-FEDERAL FUNDS |                       |                       |                       |                       |              |
|--------------------------------------|--|---|-----------------------|-----------------------|-----------------------|-----------------------|--------------|
| Budget Categories                    |  | Project Year 1<br>(a)                           | Project Year 2<br>(b) | Project Year 3<br>(c) | Project Year 4<br>(d) | Project Year 5<br>(e) | Total<br>(f) |
| 1. Personnel                         |  |   |                       |                       |                       |                       |              |
| 2. Fringe Benefits                   |  |   |                       |                       |                       |                       |              |
| 3. Travel                            |  |   |                       |                       |                       |                       |              |
| 4. Equipment                         |  |   |                       |                       |                       |                       |              |
| 5. Supplies                          |  |   |                       |                       |                       |                       |              |
| 6. Contractual                       |  |   |                       |                       |                       |                       |              |
| 7. Construction                      |  |   |                       |                       |                       |                       |              |
| 8. Other                             |  |   |                       |                       |                       |                       |              |
| 9. Total Direct Costs<br>(lines 1-8) |  |   |                       |                       |                       |                       |              |
| 10. Indirect Costs                   |  |   |                       |                       |                       |                       |              |
| 11. Training Stipends                |  |   |                       |                       |                       |                       |              |
| 12. Total Costs<br>(lines 9-11)      |  |   |                       |                       |                       |                       |              |

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION C - OTHER BUDGET INFORMATION (see instructions)

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

## INSTRUCTIONS FOR ED FORM NO. 524

### General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

### Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

**Lines 1-11, columns (a)-(e):** For each project year for which funding is requested, show the total amount requested for each applicable budget category.

**Lines 1-11, column (f):** Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

**Line 12, columns (a)-(e):** Show the total budget request for each project year for which funding is requested.

**Line 12, column (f):** Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

### Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

**Lines 1-11, columns (a)-(e):** For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

**Lines 1-11, column (f):** Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

**Line 12, columns (a)-(e):** Show the total matching or other contribution for each project year.

**Line 12, column (f):** Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

### Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.





Name of Local Educational Agency \_\_\_\_\_

**STUDENT DATA**  
(continued)

**SECTION C**

**NOTE: This section must be completed by applicants under the following programs:**

- Comprehensive School Grants
- Systemwide Improvement Grants

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. \_\_\_\_\_

3. List the five largest participating language groups and the approximate number of students in each group.

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

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**PROJECT DOCUMENTATION**

**NOTE: Submit the appropriate documents and information as specified below for the following programs:**

- **Comprehensive School Grants**
  - **Systemwide Improvement Grants**
- 

**SECTION A**

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

**§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158.** If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

**Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.** (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

**§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.**

- (a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
- (b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

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**PROJECT DOCUMENTATION**(continued)

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**SECTION B**

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

**Sec. 7116. Applications.** "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

**§75.119 Information needed if private schools participate.** If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3(a)(1))

**§76.652 Consultation with representatives of private school students.**

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

- (1) Which children will receive benefits under the project;
- (2) How the children's needs will be identified;
- (3) What benefits will be provided;
- (4) How the benefits will be provided; and
- (5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

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**PROJECT DOCUMENTATION**

(continued)

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(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

**§76.656 Information in an application for a subgrant.**  
An applicant for a subgrant shall include the following information in its application:

- (a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
- (b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
- (c) The number of students enrolled in private schools who will receive benefits under the program.
- (d) The basis the applicant used to select the students.
- (e) The manner and extent to which the applicant complied with §76.652 (consultation).
- (f) The places and times that the students will receive benefits under the program.
- (g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

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**SECTION C**

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form.
- There are no eligible nonprofit private schools in the proposed service delivery area.

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**PROGRAM ASSURANCES**

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**NOTE: The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:**

- **Comprehensive School Grants**
  - **Systemwide Improvement Grants**
- 

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

| Authorized Representative |             | Applicant Organization |
|---------------------------|-------------|------------------------|
| Signature                 | Title       |                        |
| Typed Name                | Date Signed |                        |

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OMB Approval No. 0348-0040

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)  
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

|   |       |                |
|---|-------|----------------|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |                |
| APPLICANT ORGANIZATION                      |       | DATE SUBMITTED |

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Check  if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE  
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 800 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

|   |                                       |
|---|---------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND / OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                       |
| SIGNATURE   | DATE                                  |

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

|   |                                     |
|---|-------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                     |
| SIGNATURE   | DATE                                |



**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
- ~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~
- ~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~
- ~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~
- ~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~
- ~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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# Federal Register

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Thursday  
January 16, 1997

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## Part IV

# Department of Labor

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Employment and Training Administration

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20 CFR Parts 640 and 650  
Federal-State Unemployment  
Compensation Program; Unemployment  
Insurance Performance System; Proposed  
Rule

**DEPARTMENT OF LABOR****Employment and Training  
Administration****20 CFR Parts 602, 640, and 650**

RIN 1205-AB10

**Federal-State Unemployment  
Compensation Program;  
Unemployment Insurance Performance  
System****AGENCY:** Employment and Training Administration, Labor.**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** The purpose of this notice is to obtain comments prior to proposing a streamlined regulation regarding a new, more unified system for improving Unemployment Insurance (UI) operational performance. The system, called UI Performs, responds to the call of the Vice President's National Performance Review for a more unified approach to improving UI performance. The broad goal of UI Performs is to improve continuously the quality of services to the UI system's ultimate customers (claimants and employers). It does this by giving both Federal and States partners a more unified performance management system, enabling them to manage more effectively and plan more innovatively.

**DATES:** The Department invites written comments on this notice. Comments are to be submitted by March 17, 1997.

**ADDRESSES:** Submit written comments to Mary Ann Wyrsh, Director; Unemployment Insurance Service, Employment and Training Administration (ETA); U.S. Department of Labor; 200 Constitution Avenue, N.W., Room S-4231; Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Burman Skrable, Unemployment Insurance Service, ETA; U.S. Department of Labor; 200 Constitution Avenue, N.W., Room S-4522; Washington, DC 20210. Phone (202) 219-5922 (this is not a toll-free number); fax (202) 219-8506.

**SUPPLEMENTARY INFORMATION:**

## 1. Background

The legislative framework for the Federal-State UI program reserved many decisions to the States, such as specifying most criteria for eligibility and establishing most parameters of the tax structure. However, it gave the Secretary of Labor responsibility for ensuring compliance with minimum Federal guidelines and for assuring

proper and efficient administration of the system. The Secretary's role in carrying out this responsibility has been interpreted to include the assurance of certain minimum levels of operational performance. Over time, the U.S. Department of Labor (DOL) increasingly exercised the Secretary's responsibilities for performance oversight by measuring and assessing program outputs instead of examining processes. It also spelled out some Federal performance requirements in regulations, as indicated below.

Under the impetus of DOL, systems for measuring and improving various facets of UI performance were developed over the years and reflected the conditions of the time. Some highlights of this development include the following:

- Since the 1930s, States have been required to submit financial and activity reports to the Department;
- In the 1960s, States assessed various aspects of their performance using a self-appraisal system developed by DOL;

- In 1971, the Supreme Court issued its decision in *California Human Resources Department v. Java* concerning prompt benefit payments and appeals. This decision led DOL to issue regulations, at 20 CFR Parts 640 and 650, specifying Secretary's Standards (SSs) that benefit payments and appeals decisions be made as quickly as "administratively feasible;"

- Later in the 1970s, the Performance Standards project developed the set of performance measures and numerical criteria now called the Quality Appraisal (QA) system. The QA system contains the measures of timeliness and numerical criteria considered to satisfy the SSs for first payment timeliness and lower-level appeals. It also contained other timeliness, quality and accuracy measures, including the Quality Performance Index (QPI) for rating the quality of nonmonetary determinations. Numerical criteria called Desired Levels of Achievement (DLAs) were set for some of these measures;

- Also in the 1970s, the QA system was tied to the budget process: as a condition for obtaining administrative grants, all States pledged to meet certain performance levels and to develop corrective action plans (CAPs) if they failed;

- In 1981, the workload data upon which administrative budgets were formulated and allocated began to be validated through the Workload Validation program;

- Also in 1981, benefit accuracy was first assessed by field-verifying sampled payments through the Random Audit

(RA) program. Desiring to improve the accuracy of benefit payments from the levels RA showed, the Department expanded RA into Benefits Quality Control (BQC) and required its performance by regulation, at 20 CFR Part 602;

- In the late 1980s, DOL initiated Revenue Quality Control (RQC) to revise the QA tax measures and the Performance Measurement Review to improve the QA benefits timeliness and quality measures.

Thus, by the early 1990s, the performance system of the UI program was characterized by the following: there were two explicit SSs (for benefit payments timeliness, and for lower and higher authority appeals promptness) in regulation; numerical criteria called "DLAs" were set for other measures under the Secretary's authority for oversight of the system; systems for measuring benefit payment accuracy and tax operation (revenue) quality were established by regulation, but these contained no criteria indicating satisfactory performance; and other elements of a performance system, such as reporting and preparation of an annual performance and budget plan, were established under the Secretary's authority. A small fraction of reported data was validated.

## 2. Impetus for Change

A 1993 National Performance Review (NPR) issue paper on BQC summarized a number of concerns about the way UI performance was measured and improved. It called on the Department to "reexamine the present mix of systems for improving the performance of the unemployment insurance program and devise a unified strategy that improves its effectiveness" (Paper DOL21, in NPR, *Creating a Government that Works Better and Costs Less: Department of Labor*, September 1993, at 88).

Although the various UI performance measurement systems and programs functioned well in many regards, experience showed the need for improving them. The numeric criteria in regulations had two major deficiencies. First, they were indicative of what the Department considered to be administratively feasible at the time the regulations were issued. However, over the years some States have improved their performance to the extent that the criteria now appear to be set too low. As an example, during 1980, 34 States met the criterion of making 87 percent of intrastate first payments within the 14/21-day timeliness standard, but only 4 States made as many as 93 percent of payments timely. By 1995, 50 States met

the 87 percent criterion, and 27 States paid at least 93 percent timely.

Second, these fixed criteria could be interpreted to mean that performance above the criteria was neither needed nor expected, which does not encourage continuous improvement. Meanwhile, some States continued to perform at substandard levels. For example, in appraisal year 1995, 11 States failed to meet the criterion of disposing of 60 percent of lower authority appeals within 30 days (down from 22 in 1980). However, 15 States were able to dispose of more than 80 percent within 30 days.

Other performance measures also had problems. A 1989 General Accounting Office (GAO) report notes that some of the QA performance indicators "may be inappropriate and provide misleading indications of service quality, wherein an improvement in the measure could actually be indicating a decline in service quality." They cited as an example the field audit penetration rate. The report also concluded that the QA benefits measures "overemphasize timeliness as opposed to other, more qualitative aspects of program performance." (GAO Report GAO/HRD-89-72BR at 44.) At the same time, some areas are not measured at all. For example, the accuracy of paid claims is measured, but not of decisions to deny, (the samples of nonmonetary determinations rated for quality using the QPI include denials, but the scores are not reported separately). There was no single system linking performance measurements to corrective actions.

### 3. Development of a New Approach: the UI Performs System

Responding to the NPR call to reexamine current performance improvement systems and develop a unified strategy to improve its effectiveness, in 1993, the DOL assembled the Performance Enhancement Workgroup (PEWG). This was a team of Federal UI Service managers and a corresponding team of senior State employment security personnel (designated by the Interstate Conference of Employment Security Agencies) asked to address jointly various concerns regarding the improvement of UI operational performance. The group met fifteen times in two years to develop the outlines of what it would call the UI Performs system. It set itself the broad goal of developing an approach by which the UI system could continuously improve services to the system's ultimate customers (claimants and employers) by encouraging both Federal and State partners to unify their approach to planning and operational

improvement. The PEWG proposed embodying key elements of the UI Performs system in a short, streamlined regulation, reserving detail (e.g., definitions of measures and numerical benchmarks) to implementing issuances such as handbooks so that they could be changed more easily as needed. The system would rest on the following six main building blocks.

#### *Block One: Partnership Principles*

The basic principles are maintaining mutual trust and respect, working as partners with complementary roles, setting high standards, and teamwork. The partners are expected to work closely together in developing measures, setting criteria, and planning for improved performance.

#### *Block Two: Complementary Roles*

Federal law gives the Federal partner primary responsibility for leadership of the UI system as a whole, for providing adequate administrative resources, and for oversight of State operations to ensure that the requirements of Federal law are met. States are responsible for creating their own UI laws in conformity with the requirements of Federal law and conducting basic UI operations in accordance with their laws. This block recognizes the existence and wisdom of the complementary functions in the Federal-State UI partnership.

#### *Block Three: Key Performance Objectives and Measures*

The workgroup conducted an extensive review of UI activities and identified a set of customer service objectives for which the DOL and the States should both be held accountable. They then decided how performance relative to those objectives would be measured. Most of the performance measures, which included those used for Secretary's standards, are already being implemented by States. The group then designated certain of these measures for the eventual setting of national performance criteria. National criteria are intended to reflect the same level of performance in all States, so the measures must have the same meaning in all States. They also had to represent basic performance objectives, and so all relate to Federal conformity and compliance requirements. The workgroup's list of key performance objectives, how they are to be measured, and which measures should have national performance criteria set for them is contained in UIPL 41-95 (August 24, 1995), a copy of which can be obtained from the contact person listed in the summary. The PEWG also

recommended that objectives, measures and criteria be reviewed periodically and adjusted if necessary.

#### *Block Four: A Continuous Improvement (CI) Cycle*

States will use the results of past performance to help set future directions and take actions through the planning process to improve performance continuously. Federal responsibilities include setting national priorities; working with each State in creating its plan and setting its planning targets; approving the plan; assisting with analysis of results; providing technical assistance to States needing or requesting it, based on their past or planned performance; and taking action to ensure States meet national performance criteria.

To ensure CI, a new annual planning process would replace the Performance Budget Plan process. Called the State Quality Service Plan (or SQSP) it would be the primary vehicle through which the State, working closely with Federal staff, assesses its situation and sets priorities for improvement while maintaining performance in other areas. Federal UI performance objectives for the planning cycle would set the stage for this State-specific assessment and priority-setting process.

The proposed cycle envisions a more active Federal role in shepherding and motivating performance improvement. This includes technical assistance, either provided directly or brokered from one State to another. The DOL will establish mechanisms for identifying and acknowledging superior performance. It will also work actively to identify deficient performers. Initially, it will try to get poor performers to improve their customer service through the SQSP process. If this routine mechanism proves insufficient, DOL would take steps which may lead all the way to conformity/compliance actions or other actions under Federal law.

#### *Block Five: A Simplified Regulation*

The system envisions a relatively short, general regulation (outlined below). Details on key measures and national Federal performance criteria based on certain of the measures would be contained in implementing issuances such as handbooks so they can be updated as necessary. State staff would be involved in crafting all changes and all States would be given opportunity to comment. Implementing the measures and performing up to criteria levels would be explicit parts of the States' administrative grant agreements.

### *Block Six: Front-end Activities and Strategies*

To succeed, the UI Performs program requires the development of skills and other capacities at both Federal and State levels. Key capabilities include data and systems analyses and the computer capacity and program knowledge to support them. The DOL will both work to enhance its own capabilities in these areas and identify particular skills in various States which can be drawn upon when needed.

The outlines of this new approach have been presented to the UI system and its stakeholders for comment in Unemployment Insurance Program Letter (UIPL) 41-95 (August 24, 1995), and its underlying basic principles in UIPL 46-94 (September 30, 1994). Copies are available from the contact person listed in the summary above. The DOL is now in the process of "rolling it out" by developing and implementing the various components. The main tasks are: Completing the development of new measurement initiatives, including an approach to validating required reports data; modifying the BQC program and reducing its resource requirements; developing, in consultation with States, measurements to fill performance measurement gaps, including denied claims accuracy; developing in consultation with States benchmarks or performance floors for certain key measures; developing the new annual planning process including mechanisms for the negotiation and approval of State-specific objectives; developing a process for the identification, development and brokering of performance improvement skills; development a system of rewards for recognizing exceptional performance; and developing a regulatory base for the UI Performs system. Full development of the system is expected to stretch into 1999.

#### 4. The UI Performs Regulation

An integral part of the overall design of the UI Performs system is a new regulation. The Department envisions a streamlined regulation that would propose the following:

- a. Replace/incorporate key features of 20 CFR 602, 640, and 650, in a more cohesive and, if possible, shorter form;
- b. Set forth the goals (e.g., continuous improvement, service to ultimate

customers) and requirements (e.g., greatest performance that is administratively feasible, performance of certain activities necessary for proper and efficient administration) of the unified strategy embodied in the UI Performs system;

c. Set forth what the UI Performs system requires States to do, including:

- Prepare an Annual Performance Plan (the SQSP) as the basis for receiving administrative grants;
  - Conduct certain performance measurement activities, identified or developed through a consultative process, and report data to DOL;
  - Validate certain key measures;
  - Operate the UI program (pay benefits, collect taxes) with the highest quality (accuracy, timeliness, completeness, adherence to procedure) that is administratively feasible; and
  - Take effective action to ensure performance standards are met;
- d. Establish Federal performance criteria, developed through a consultative process, for certain measures;

e. Provide that, in determining whether to recommend to the Secretary the commencement of proceedings to determine whether tax credits and/or administrative grants (as appropriate) should be withheld on account of sustained deficient performance, the Department will evaluate all the facts relating to a State's performance in the deficient area; and

f. Require Periodic Review of Measures and Criteria to ascertain whether the measures are useful and the criteria are appropriate and adjust either as needed.

#### Comments Solicited

Reviewers are encouraged to comment on all items in the proposed regulatory design and to pay particular attention to the specific questions below.

1. This regulation would propose, as Federal requirements, the basic core of performance system. The core components would be: (a) Certain performance measurements or measurement systems; (b) validation of certain reported data elements; (c) a performance plan on an annual cycle; and (d) the premise that performance must be of the greatest quality administratively feasible, implemented in practice by a mutually agreed-upon system of nationwide performance criteria for States to meet. Does this

characterization include all appropriate core requirements for the UI Performs system?

2. UIPL 41-95 solicited comments from States and stakeholder groups on proposed UI Performs measures and measures for which national performance criteria would be set. State staff will participate in setting actual performance criteria and the system will be asked to comment on them. The Department offers this Notice as an additional opportunity to comment on what aspects of the UI program should be measured, how these aspects should be measured and what constitutes acceptable performance.

3. Once measures and performance criteria have been agreed upon, the means ensuring adequate performance must be addressed. At present, the Secretary may withhold administrative grants or the Federal Unemployment Tax Act offset credit after notice and an opportunity for a hearing have been provided to the States.

(a) What actions, short of the total termination of tax credits or grants, are appropriate to bring about compliance with performance requirements?

(b) Should there be available to the Secretary less drastic remedies such as a more graduated series of sanctions for sustained poor performance, and if so, what specific sanctions?

(c) How should "sustained poor performance" be defined?

4. Should the Secretary provide rewards for good performance? If so, what specific rewards and under what conditions?

5. Should the regulation provide for the waiver of measurement requirements that are not necessary for the proper and efficient administration of a State's UI program? If so, under what conditions should such waivers be granted?

#### List of Subjects

20 CFR Part 602

Grant programs, Labor.

20 CFR Parts 640 and 650

Unemployment compensation.

Dated: January 10, 1997.

Timothy M. Barnicle,  
Assistant Secretary of Labor.

[FR Doc. 97-1102 Filed 1-15-97; 8:45 am]

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