

Tuesday
March 3, 1998

Federal Register

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Proclamation 7068 of February 26, 1998

The President

Save Your Vision Week, 1998

By the President of the United States of America

A Proclamation

The ability to see is a great treasure; but, as with any precious possession, it is vulnerable to loss—through injury, age, or disease. Men and women whose jobs require them to work with chemicals or machinery are at increased risk of eye injury. Macular degeneration takes a dramatic toll on the vision of people aged 60 and over, causing severe visual impairment and even blindness in its victims. Diseases such as glaucoma, cataract, and diabetic retinopathy can silently steal the vision of their victims without pain or other early symptoms to signal the need for immediate medical attention.

The greatest defense we have in protecting our eyesight is early detection and treatment. While many Americans receive regular physical examinations to ensure their overall fitness, they often ignore the health of their eyes. Yet, by the time many patients realize their eyesight is deteriorating, it is often too late to restore vision already lost. Even though they may not be experiencing vision problems, Americans should make a dilated eye examination part of their preventive health care routine. A dilated eye exam can reveal early signs of eye disease and make it possible to treat the affliction and preserve vision.

Good eye care is not solely for those who know they are at high risk for eye disease—it is for everyone. Certain types of eye disease tend to develop primarily in children, while others manifest themselves most often in working-age adults or older men and women. By taking good care of our eyes, we can take the important steps to maintain our quality of life and ensure the full enjoyment of all that our world has to offer.

To remind Americans of the importance of protecting their eyesight, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to proclaim the first week in March of each year as “Save Your Vision Week.”

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 1 through March 7, 1998, as Save Your Vision Week. I urge all Americans to participate by making eye care and eye safety an important part of their lives and to ensure that dilated eye examinations are included in their regular health maintenance programs. I invite eye care professionals, the media, and all public and private organizations dedicated to preserving eyesight to join in activities that will raise awareness of the measures we can take to protect and sustain our vision.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of February, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William Clinton

[FR Doc. 98-5601

Filed 3-2-98; 8:45 am]

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Rules and Regulations

Federal Register

Vol. 63, No. 41

Tuesday, March 3, 1998

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 880

RIN 3206-AH75

Retirement and Insurance Benefits When an Annuitant Is Missing

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to establish a uniform standard that OPM will use in its administration of retirement and insurance benefits in cases in which an annuitant disappears. These regulations establish procedures to determine the status of the missing annuitant and allow OPM to provide benefits to the missing annuitant's dependents until the missing annuitant's status is resolved.

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606-0299.

SUPPLEMENTARY INFORMATION: On July 2, 1997, we published (at 62 FR 35693) proposed regulations to establish OPM's procedures for making payments of annuity during a period when an annuitant is missing, and until the annuitant is either found or officially determined to have died. The regulations are aimed at providing continuing support to the family of a missing annuitant, while balancing the interest of the Government in protecting the retirement system from unwarranted disbursements. The regulations also provide procedures that OPM will follow to continue the family health insurance coverage of a missing annuitant, to restore retroactively the annuity of a missing annuitant who is found to be alive, and to authorize lump-sum death benefits, survivor

health insurance coverage, and life insurance payments in the case of a missing annuitant's death. OPM received no comments on the proposed rule.

The final regulations include two conforming changes resulting from recent consolidations of insurance regulations. On July 18, 1997, we published (at 62 FR 38433) final regulations that simplified and clarified the Federal Employees Health Benefits (FEHB) Program regulations concerning opportunities to enroll and make changes in enrollment. The reference to section 890.301(p) in § 880.303(a) of the proposed regulations has been changed to section 890.306(r) to conform to the current numbering of the FEHB regulations.

On September 17, 1997, we published final regulations to combine the five parts of Title 5 of the Code of Federal Regulations relating the Federal Employees Group Life Insurance (FEGLI) Program and to simplify the language of the regulations. The reference parts 870 through 873 in section 880.102 of the proposed regulations has been changed to part 870 to conform to the current numbering of the FEGLI regulations.

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 5 CFR Parts 880

Administrative practice and procedure, Government employees, Health insurance, Hostages, Life insurance, Pensions, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM is amending 5 CFR by adding part 880 to read as follows:

PART 880—RETIREMENT AND INSURANCE BENEFITS DURING PERIODS OF UNEXPLAINED ABSENCE

Subpart A—General

Sec.

- 880.101 Purpose and scope.
- 880.102 Regulatory structure.
- 880.103 Definitions.

Subpart B—Procedures

- 880.201 Purpose and scope.
- 880.202 Referral to Associate Director.
- 880.203 Missing annuitant status and suspension of annuity.
- 880.204 Restoration of annuity.
- 880.205 Determinations of death.
- 880.206 Date of death.
- 880.207 Adjustment of accounts after finding of death.

Subpart C—Continuation of Benefits

- 880.301 Purpose.
- 880.302 Payments of CSRS or FERS benefits.
- 880.303 FEHBP coverage.
- 880.304 FEGLI coverage.

Authority: 5 U.S.C. 8347(a), 8461(g), 8716, 8913.

Subpart A—General

§ 880.101 Purpose and scope.

(a) The purpose of this part is to establish a uniform standard that OPM will use in its administration of benefits for CSRS, FERS, FEHBP and FEGLI in cases in which an annuitant becomes a missing annuitant.

(b) This part establishes the procedures that OPM will follow to—

(1) Determine—

(i) Who is a missing annuitant,

(ii) When a missing annuitant has died,

(iii) When benefits will be paid in missing annuitant cases, and

(iv) FEHBP coverage for family members of a missing annuitant; and

(2) Make adjustments to CSRS and FERS benefit payments, FEHBP coverage and premiums, and FEGLI benefit payments and premiums after a determination that a missing annuitant is dead.

(c) This part applies only to situations in which an individual who satisfies the statutory definition of an annuitant under section 8331(9) or section 8401(2) of title 5, United States Code, disappears and has not been determined to be dead by an authorized institution. This part does not apply to—

(1) An employee, regardless of whether the absence is covered by subchapter VII of chapter 55 of title 5, United States Code; or

(2) A separated employee who either—

(i) Does not meet the age and service requirements for an annuity, or

(ii) Has not filed an application for annuity.

§ 880.102 Regulatory structure.

(a) This part contains the following subparts:

(1) Subpart A contains general information about this part and related subjects.

(2) Subpart B establishes the procedures that OPM will follow in missing annuitant cases.

(3) Subpart C establishes the methodologies that OPM will apply in determining continuations of coverage and amounts of payments in missing annuitant cases.

(b) Part 831 of this chapter contains information about benefits under CSRS.

(c) Part 838 of this chapter contains information about benefits available to former spouses under court orders.

(d) Parts 841 through 844 of this chapter contain information about benefits under FERS.

(e) Part 870 of this chapter contains information about benefits under FEGLI.

(f) Part 890 of this chapter contains information about benefits under FEHBP.

(g) Part 1200 of this title contains information about Merit Systems Protection Board review of OPM decisions affecting interests in CSRS or FERS benefits.

(h) Part 1600 of this title contains information about benefits under the Thrift Savings Plan.

§ 880.103 Definitions.

For purposes of this part—

Annuitant means an individual who has separated from the Federal service with, and has retained, title to a CSRS or FERS annuity, has satisfied the age and service requirements for commencement of that annuity, and has filed an application for that annuity;

Associate Director means OPM's Associate Director for Retirement and Insurance or his or her designee;

Authorized institution means a government organization or official legally charged with making determinations of death in the State or country of the missing annuitant's domicile, citizenship, or disappearance;

CSRS means the Civil Service Retirement System established in subchapter III of chapter 83 of title 5, United States Code;

FEGLI means the Federal Employees Group Life Insurance program established in chapter 87 of title 5, United States Code;

FEHBP means the Federal Employees Health Benefits Program established in chapter 89 of title 5, United States Code;

FERS means the basic benefit portion of the Federal Employees Retirement System established in subchapters I, II, IV, V, and VI of chapter 84 of title 5,

United States Code; *FERS* does not include benefits under the Thrift Savings Plan established under subchapters III and VII of chapter 84 of title 5, United States Code;

Missing annuitant means an individual who has acquired the status of missing annuitant under § 880.203(b).

Subpart B—Procedures**§ 880.201 Purpose and scope.**

This subpart establishes the procedures that OPM will use to—

(a) Determine that an individual is a missing annuitant;

(b) Suspend payment of annuity to a missing annuitant;

(c) Notify individuals affected by such a suspension of payments; and

(d) Determine that a missing annuitant has died.

§ 880.202 Referral to Associate Director.

Any OPM office that receives information concerning the possibility that an annuitant might have disappeared will notify the Associate Director.

§ 880.203 Missing annuitant status and suspension of annuity.

(a) Upon receipt of information concerning the possibility that an annuitant has disappeared, the Associate Director will conduct such inquiry as he or she determines to be necessary to determine whether the annuitant is alive and whether the annuitant's whereabouts can be determined.

(b) If during an inquiry under paragraph (a) of this section, or upon subsequent receipt of additional information, the Associate Director finds substantial evidence (as defined in § 1201.56(c)(1) of this title) to believe that an annuitant is either not alive or that the annuitant's whereabouts cannot be determined, the annuitant acquires the status of missing annuitant. The Associate Director will then—

(1) Suspend payments to the missing annuitant; and

(2) Notify individuals who may be able to qualify for payments under § 880.302 that—

(i) OPM has suspended the annuity payments to the missing annuitant;

(ii) Payment may be made under § 880.302, including the amount available for payment, how that amount was determined, and the documentation required (if any) to qualify for such payments; and

(iii) In response to an inquiry from any person seeking CSRS, FERS, FEHBP, or FEGLI benefits, OPM will provide information about

documentation necessary to establish a claim for such benefits.

§ 880.204 Restoration of annuity.

(a) If the missing annuitant's whereabouts are determined, and he or she is alive and—

(1) Competent, OPM will resume payments to the annuitant and pay retroactive annuity for the period in missing status less any payment made to the family during that period; or

(2) Incompetent, OPM will resume payments to a representative payee under section 8345(e) or section 8466(c) of title 5, United States Code, and pay retroactive annuity for the period in missing status less any payment made to the family during that period.

(b) If the missing annuitant's whereabouts cannot be determined, missing annuitant status continues until an authorized institution determines that the missing annuitant is dead. (See § 880.205.)

§ 880.205 Determinations of death.

OPM does not make findings of presumed death. A claimant for CSRS, FERS, or FEGLI death benefits (other than payments under § 880.302) or an individual seeking an adjustment of accounts under § 880.207 must submit a death certificate or other legal certification of death issued by an authorized institution.

§ 880.206 Date of death.

(a) Except as provided in paragraph (b) of this section, for the purpose of benefits administered by OPM, the date of death of a missing annuitant who has been determined to be dead by an authorized institution is the date of disappearance as determined by the Associate Director.

(b) For the purpose of determining whether a claim is untimely under any statute of limitations applicable to CSRS, FERS or FEGLI benefits (section 8345(i)(2), section 8466(b), or section 8705(b) through (d) of title 5, United States Code), the time between the date of disappearance and the date on which the authorized institution issues its decision that the missing annuitant is dead is excluded.

§ 880.207 Adjustment of accounts after finding of death.

After a missing annuitant is determined to be dead under § 880.205, OPM will review the case to determine whether additional benefits are payable or excess insurance premiums have been withheld.

Subpart C—Continuation of Benefits**§ 880.301 Purpose.**

This subpart establishes OPM's policy concerning the availability and amount of CSRS and FERS annuity payments and the continuation of FEHBP and FEGLI coverage and premiums while an annuitant is classified as a missing annuitant.

§ 880.302 Payments of CSRS or FERS benefits.

(a) OPM will pay an amount equal to the survivor annuity that would be payable as CSRS or FERS survivor annuity to an account in a financial institution designated (under electronic funds transfer regulations in part 209 or part 210 of Title 31, Code of Federal Regulations) by an individual who, if the missing annuitant were dead, would be entitled to receive payment of a survivor annuity.

(b) If more than one individual would qualify for survivor annuity payments in the event of the missing annuitant's death, OPM will make separate payments in the same manner as if the missing annuitant were dead.

§ 880.303 FEHBP coverage.

(a) If the missing annuitant had a family enrollment, the enrollment will be transferred to the eligible family members under § 890.303(c) of this chapter. If there is only one eligible family member, the enrollment will be changed to a self-only enrollment under § 890.306(r) of this chapter. The changes will be effective the first day of the pay period following the date of disappearance.

(b) If the missing annuitant was covered by a self only enrollment or if there is no eligible family member remaining, the enrollment terminates at midnight of the last day of the pay period in which he or she disappeared, subject to the temporary extension of coverage for conversion.

(c) If the missing annuitant is found to be alive, the coverage held before the disappearance is reinstated effective with the pay period during which the annuitant is found, unless the annuitant, or the annuitant's representative, requests that the enrollment be restored retroactively to the pay period in which the disappearance occurred.

§ 880.304 FEGLI coverage.

(a) FEGLI premiums will not be collected during periods when an annuitant is a missing annuitant.

(b)(1) If the annuity of a missing annuitant is restored under § 880.204(a), OPM will deduct the amount of FEGLI

premiums attributable to the period when the annuitant was a missing annuitant from any adjustment payment due the annuitant under § 880.204(a).

(2) If a missing annuitant is determined to be dead under § 880.205, FEGLI premiums and benefits will be computed using the date of death established under § 880.206(a).

[FR Doc. 98-5401 Filed 3-2-98; 8:45 am]

BILLING CODE 6325-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 357**

RIN 3064-AB08

Determination of Economically Depressed Regions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: As part of the FDIC's systematic review of its regulations under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), the FDIC is amending its regulations to reflect changes in the marketplace, update and streamline the regulation, improve efficiency, and reduce unnecessary costs. The text of this final rule is substantially similar to that of the proposed rule that was published in the **Federal Register** of August 6, 1996. Previous references to specific sources of data to be used in determining whether a region is economically depressed were removed in order to allow for more flexibility in our analyses. In addition, the general designation of states as the geographical unit over which the FDIC defines "economically depressed regions" has been changed under this amendment. Under this amendment, the FDIC will define the geographic unit that comprises an "economically depressed region" for an institution on a case-by-case basis. Such a determination is required because the geographic area over which institutions conduct business varies across institutions, as well as over time for an individual institution. After an institution's geographic market has been defined the FDIC will next determine whether that market falls within an "economically depressed region". This allows for cases where an institution's geographic market is limited to some portion of a state or crosses two or more state boundaries. The FDIC also will consider relevant information from institutions

regarding their geographic market, as well as information on whether that market is "economically depressed". Elsewhere in this issue of the **Federal Register**, the FDIC also is withdrawing a 1992 proposed amendment to the regulation that was published on December 18, 1992.

The FDIC is required by statute to consider proposals for direct financial assistance by Savings Association Insurance Fund (SAIF) members having offices located in an "economically depressed region" as determined by the FDIC by regulation and meeting certain other specified criteria, before grounds exist for the appointment of a conservator or receiver for the institution. This amendment provides guidance to enable applicants to evaluate their situations before formally applying for assistance. Rather than periodically designating specific "economically depressed regions" in light of current economic conditions, this rule provides the criteria that the FDIC will use to determine which regions are economically depressed.

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT: John P. O'Keefe, Chief, Economic Analysis Section, (202) 898-3945, David Horne, Financial Economist, (202) 898-3981, Division of Research and Statistics; Michael Phillips, Counsel, Legal Division, (202) 898-3581, FDIC, 550 17th Street, N.W., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies in accordance with section 303(a) of the CDRI Act, 12 U.S.C. 4803(a). Section 303(a) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that its regulations at 12 CFR part 357 should be amended to minimize the cost of implementing the regulation, make it more flexible regarding market standards, and give institutions more opportunity to establish that they are located in an "economically depressed region".

In the **Federal Register** of August 6, 1996 (61 FR 40756), the FDIC issued a proposed amendment of part 357 to provide criteria to enable applicants to evaluate their status before formally

applying for assistance under sections 13(c) and 13(k)(5) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c) and 12 U.S.C. 1823(k)(5). Rather than designating specific regions in light of current economic conditions, the proposed rule provided the criteria that it will use to determine which regions are "economically depressed". The FDIC also proposed to withdraw a proposed amendment to part 357 that updated the list of designated states that was published on December 18, 1992 (57 FR 60140), but never adopted. No public comments were received with respect to the 1992 and 1996 proposed rules. Elsewhere in this issue of the **Federal Register**, the FDIC is withdrawing the 1992 proposed rule.

Subject to the statutory prohibition in section 11(a)(4) of the FDI Act (12 U.S.C. 1821(a)(4)), the FDIC has authority under section 13(c) of the FDI Act, 12 U.S.C. 1823(c), to provide financial assistance to prevent the default of an insured depository institution. Under section 13(k)(5) of the FDI Act, 12 U.S.C. 1823(k)(5), the FDIC must consider proposals for eligible SAIF member institutions to receive assistance pursuant to section 13(c) before grounds exist for the appointment of a conservator or receiver for the institution. Section 13(k)(5) establishes nine criteria for such eligibility. One of the criteria is that an institution's offices must be located in an "economically depressed region" (12 U.S.C. 1823(k)(5)(A)(ii)(VI)). In addition, under section 13(k)(5), SAIF-member applicants must separately meet the criteria under section 13(c) and other pertinent sections of the FDI Act to qualify for assistance. In evaluating assistance proposals filed under section 13(c), the statutory prohibition in section 11(a)(4) of the FDI Act, 12 U.S.C. 1821(a)(4), must be complied with. With certain limited exceptions, section 11(a)(4) prohibits the use of funds from the Bank Insurance Fund or the SAIF to benefit shareholders of a failed or failing insured depository institution.

The term "economically depressed region" is defined in section 13(k)(5)(C) to mean "any geographical region which the [FDIC] determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices".

On September 17, 1990, the FDIC promulgated regulations at 12 CFR 357.1 (55 FR 38043), which determined that certain geographical regions were "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. In determining which regions were

"economically depressed", the FDIC considered the following factors: (1) The ratio of poor quality real estate assets to total assets in the portfolios of Bank Insurance Fund (BIF) members; (2) the ratio of poor quality real estate assets to total assets in the portfolios of SAIF members; and (3) unemployment figures. The statewide percentages of impaired real estate assets for BIF and SAIF members and unemployment rates were analyzed with reference to national levels. These factors are subject to periodic review and application by the FDIC in light of changing economic conditions.

As promulgated in 1990, the FDIC's regulations at 12 CFR 357.1 designated eight individual states as "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. They were: Alaska, Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

Two years later, having reexamined real estate and employment conditions based on the most recent information, the FDIC determined that the eight states previously designated as economically depressed regions should no longer receive that designation. The FDIC concluded that the following nine states and the District of Columbia should be classified as economically depressed regions: California, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. In December 1992, the FDIC published this list of states in a proposed rule (see 57 FR 60140, December 18, 1992). The FDIC had considered, as before, the ratio of poor quality real estate assets to total assets in the portfolios of BIF and SAIF members, and the labor market situation. In addition, the FDIC considered both the overall unemployment rate and non-farm employment growth trends. The December 1992 proposed rule was never adopted.

Rather than periodically revisiting the criteria used to identify regions for designation as "economically depressed regions", and listing regions so designated, the FDIC has determined that this amendment of part 357 will provide more coherent guidance to applicants for the evaluation of their situations before formally applying for assistance. This final rule provides the criteria the FDIC will use to determine which regions are "economically depressed" for purposes of section 13(k)(5)(C). References to specific sources of data to be used in the determination of whether a region is economically depressed, which were contained in appendix A of the

proposed amendment, were removed in order to allow for greater flexibility in the FDIC's analysis. In addition, the general designation of states as the geographical unit over which the FDIC defines "economically depressed regions" has been changed under this amendment to part 357. Under this amendment to part 357, the FDIC will define the geographic unit that comprises an "economically depressed region" for an institution on a case-by-case basis. Such a determination is required because the geographic area over which institutions conduct business varies across institutions, as well as over time for an individual institution. After an institution's geographic market has been defined the FDIC will next determine whether that market falls within an "economically depressed region". This allows for cases where an institution's geographic market is limited to some portion of a state or crosses two or more state boundaries. The FDIC will also consider relevant information from institutions regarding their geographic market, as well as information on whether that market is "economically depressed". As a result of the adoption of the rule, the FDIC will no longer need to amend part 357 in order to periodically designate specific regions in light of current economic conditions.

Under the final rule, for the purpose of determining "economically depressed regions", the FDIC will determine whether an institution qualifies as being located in an "economically depressed region" on a case-by-case basis. That determination will be based on four criteria: (1) High unemployment rates; (2) declines in non-farm employment; (3) high levels of problem real estate assets at insured depository institutions; and (4) evidence indicating declining real estate values. The FDIC will also consider relevant information from institutions regarding their geographic market area, as well as information on whether that market is "economically depressed".

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a statement providing the factual basis for such certification in the **Federal Register** along with the final rule.

Pursuant to section 605(b) of the RFA, the FDIC certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule replaces the current list of states that were determined in 1990 to constitute "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act with the criteria that the FDIC will use in reaching such determinations concerning such in the future. The rule involves one of nine criteria in section 13(k)(5) of the FDI Act that must be considered along with various requirements in sections 13(c) and the prohibition in 11(a)(4) of the FDI Act, for purposes of applications from insured depository institutions for financial assistance. The rule will at most effect a very small number of institutions.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; see also 5 CFR part 1320 appendix a.1), the FDIC has reviewed the final rule and has determined that no collections of information pursuant to the Paperwork Reduction Act are contained in this rule. Accordingly, no information has been submitted to the Office of Management and Budget for review.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (the 1996 Act), Pub. L. 104-121, 110 Stat. 857, provides generally for agencies to report rules to Congress and for Congress to review the rules. The reporting requirement is triggered in instances where the agency in question issues a final rule as defined in the Administrative Procedure Act at 5 U.S.C. 551. The agency will file the appropriate reports pursuant to the 1996 Act concerning any final rule.

The Office of Management and Budget has determined that this final rule does not constitute a "major" rule as defined by the 1996 Act.

List of Subjects in 12 CFR Part 357

Bank deposit insurance, Grant programs—housing and community development, Savings associations.

For the reasons set forth in the preamble, the FDIC hereby amends 12 CFR part 357 as set forth below.

PART 357—DETERMINATION OF ECONOMICALLY DEPRESSED REGIONS

1. The authority citation for part 357 is revised to read as follows:

Authority: 12 U.S.C. 1819, 1823(k)(5).

2. Section 357.1 is amended by revising paragraph (b) to read as follows:

§ 357.1 Economically depressed regions.

* * * * *

(b) *Economically depressed regions.*

(1) For the purpose of determining "economically depressed regions", the FDIC will determine whether an institution qualifies as being located in an "economically depressed region" on a case-by-case basis. That determination will be based on four criteria:

- (i) High unemployment rates;
- (ii) Significant declines in non-farm employment;
- (iii) High delinquency rates of real estate assets at insured depository institutions; and
- (iv) Evidence indicating declining real estate values.

(2) In addition, the FDIC will also consider relevant information from institutions regarding their geographic market area, as well as information on whether that market is "economically depressed".

By order of the Board of Directors.

Dated at Washington, D.C., this tenth day of February 1998.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98-4891 Filed 3-2-98; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-78-AD; Amendment 39-10366; AD 98-05-05]

RIN 2120-AA64

Airworthiness Directives; Aeromot-Industria Mecanico Metalurgica Ltda. Models AMT-100 and AMT-200 Powered Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Aeromot-Industria Mecanico Metalurgica Ltda. (Aeromot) Models AMT-100 and AMT-200 powered gliders. This AD requires replacing all main landing gear attaching nuts and bolts with ones of improved design. This AD is the result of mandatory continued airworthiness information (MCAI) issued by the airworthiness authority for Brazil. The

actions specified by this AD are intended to prevent failure of the main landing gear, which could result in loss of control of the glider during landing operations.

DATES: Effective April 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 17, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industrias-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-78-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Curtis Jackson, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6083; facsimile: (770) 703-6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Aeromot Models AMT-100 and AMT-200 powered gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 25, 1997 (62 FR 62725). The NPRM proposed to require replacing all main landing gear attaching bolts and nuts with attaching bolts and nuts of improved design. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Aeromot-Industria Mecanico Metalurgica Ltda. Service Bulletin No. SB-200-32-044, Issue Date: August 18, 1997.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the

public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 18 powered gliders in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per powered glider to accomplish this action, and that the average labor rate is approximately \$60 an hour. Parts are provided by the manufacturer at no cost. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$1,080 for the fleet or \$60 per glider. This figure is based upon the assumption that no affected glider owner/operator has accomplished this action.

Compliance Time

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected glider ranges throughout the fleet. For example, one owner may operate the glider 25 hours TIS in one week, while another operator may operate the glider 25 hours TIS in one year. In order to ensure that all of the owners/operators of the affected gliders have replaced the attaching bolts and nuts on the main landing gear within a reasonable amount of time, a compliance time of 30 days is to be used.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (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) 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 final

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98-05-05 Aeromot-Industria Mecanico Metalurgica Ltda: Amendment 39-10366; Docket No. 97-CE-78-AD.

Applicability: Model AMT-100 powered gliders (serial numbers (S/N) 100.001 through 100.039 and 100.041 through 100.044), and Model AMT-200 powered gliders (S/N 200.040 and 200.045 through 200.080), certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders 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 (c) 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 within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent failure of the main landing gear, which could result in loss of control of the glider during landing operations, accomplish the following:

(a) Replace all main landing gear attaching bolts (part number (P/N) TH 6x30 PL11 or an FAA-approved equivalent part number), nuts (P/N 6 PA-108 or an FAA-approved equivalent part number) with attaching bolts (P/N DIN 931 M6x30 (Pitch 1.0) Class 10.9 or an FAA-approved equivalent part number), and nuts (P/N DIN 982 M6 (Pitch

1.0) or an FAA-approved equivalent part number) in accordance with the Procedures section in Aeromot-Ind. Mecanico-Metalurgica Ltda. Service Bulletin No. SB-200-32-044, Issue Date August 18, 1997.

(b) 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 glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Questions or technical information related to Aeromot-Industria Mecanico Metalurgica Ltda. Service Bulletin No. SB-200-32-044, Issue Date: August 18, 1997, should be directed to Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industrias-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacements required by this AD shall be done in accordance with Aeromot-Ind. Mecanico-Metalurgica Ltda. Service Bulletin No. SB-200-32-044, Issue Date: August 18, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industrias-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian CTA AD 97-09-06, dated August 14, 1997.

(f) This amendment (39-10366) becomes effective on April 17, 1998.

Issued in Kansas City, Missouri, on February 23, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-5199 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97–CE–37–AD; Amendment 39–10365; AD 98–05–04]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corp. Model 8GCBC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 87–18–09, which currently requires inspecting (one-time) the sides of the front and rear wood spars for compression cracks on certain American Champion Aircraft Corp. (ACAC) Model 8GCBC airplanes, and repairing or replacing any wood spar with compression cracks. This AD requires repetitively inspecting the front and rear wood spars for damage, including installing any necessary inspection holes; and repairing or replacing any damaged wood spar. Damage is defined as cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; or loose or missing nails. This AD results from in-flight wing structural failure on one of the affected airplanes that was in compliance with the one-time inspection requirement of AD 87–18–09, plus 4 other ACAC Model 8GCBC accidents and 11 service difficulty reports (SDR's) of compression cracked spars. The actions specified by this AD are intended to detect compression cracks and other damage in the wood spar wing, which, if not corrected, could eventually result in in-flight structural failure of the wing with consequent loss of the airplane.

DATES: Effective April 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the American Champion Aircraft Corp., P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North

Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7697; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:**Events Leading to the Issuance of This AD**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to ACAC Model 8GCBC airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 26, 1997 (62 FR 50527). The NPRM proposed to:

—Supersede AD 87–18–09, Amendment 39–5725, which currently requires inspecting (one-time) the sides of the front and rear wood spars for compression cracks, repairing or replacing any wood spar with compression cracks, and re-inspecting immediately after any incident involving wing damage; and

—Require installing inspection holes on the top and bottom wing surfaces, repetitively inspecting the front and rear wood spars for damage, repairing or replacing any damaged wood spar, and installing surface covers.

Accomplishment of the proposed actions as specified in the NPRM would be as follows:

—Installations: in accordance with ACAC Service Letter 417, dated August 14, 1997;

—Inspections: in accordance with ACAC Service Letter 406, dated March 28, 1994; and

—Spar Repair and Replacement, as applicable: in accordance with Advisory Circular (AC) 43–13–1A, Acceptable Methods, Techniques and Practices; or other data that the FAA has approved for spar repair and replacement.

The NPRM was the result of in-flight wing structural failure on one of the affected airplanes that was in compliance with the one-time inspection requirement of AD 87–18–09, plus 4 other ACAC Model 8GCBC accidents and 11 service difficulty reports (SDR's) of compression cracked spars.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in support of the NPRM, and another comment was received that suggests that the FAA reconsider the NPRM. Due consideration has been given to the comment that suggests that the FAA

reconsider the NPRM. No comments were received on the FAA's determination of the cost impact upon the public.

Comment Disposition

The commenter believes that, based on years of experience and involvement with operating the Model 8GCBC airplane, the NPRM is not justified. The commenter explains that after 60,000 hours time-in-service (TIS) over 9 years (roughly about 7,000 hours TIS annually), 4 of the 6 airplanes in the fleet that the commenter operates were rebuilt to improve aesthetics and to give piece of mind that the airplanes were in good operating condition. Upon refurbishing, including inspections of the wood spars, no compression cracks in the wing spars were found. The commenter went on to state that damage was found as a result of a previous ground incident, but revealed no compression cracking. The commenter feels the FAA should withdraw the AD as currently written.

The FAA does not concur. Based on all data received, the FAA believes that wood spar compression cracks can occur with or without previous wing damage. The data indicates that detection of a compression crack on the sides of the spar is unlikely, unless the crack is in an advanced state of propagation. The FAA does not issue AD's based on individual operator's experiences. The FAA issues AD's after analyzing all safety information that is based on the design of the affected aircraft, such as testing, accident/incident reports, etc. Based on all of this data, the FAA believes that repetitive inspections are necessary and the proposed AD is necessary to assure the continued airworthiness of these airplanes. No changes have been made to the final rule based on this comment.

Revision to the Service Information

Based on information received from the field, ACAC has revised Service Letter 417 to the Revision B level (dated February 10, 1998). This revision retains the pertinent information presented in the original version of the service letter and Revision A to the service letter, and adds optional borescope inspections and fabric patches in place of removable covers. A recommendation to use optional removable inspection covers is included in the service bulletin. The FAA has determined that this revised service letter should be incorporated into the AD.

The FAA's Determination

After careful review of all available information related to the subject

presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the service information described above and minor editorial corrections. The FAA has determined that this addition and these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Difference Between This AD and ACAC Service Letter 406

ACAC Service Letter 406, dated March 28, 1994, specifies the same inspections as are required in this AD. The differences between the service letter and the AD are:

—The service letter specifies the required action within the next 30 days or 10 flight hours and at each 100 hour/annual inspection thereafter. The FAA has determined that a more realistic compliance and enforceable compliance time would be to require the action within 3 calendar months after the effective date of the AD, and thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first; and

—The service letter applies to all ACAC 7 and 8 series airplanes, whereas the AD applies only to ACAC Model 8GCBC airplanes. The FAA is currently considering additional rulemaking action on the airplane models other than the Model 8GCBC airplanes.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time and hours TIS. Although the unsafe condition specified in this AD is a result of airplane operation, the affected airplanes are utilized in different ways.

For example, an operator may utilize his/her airplane 50 hours TIS in a year while utilizing the aircraft in no or very little crop dusting operations, banner and glider tow operations, or rough field or float operations. This airplane operator would obviously experience less of a chance of high crack propagation than the airplane operator that utilizes his/her airplane 300 hours TIS in a year regularly in heavy crop dusting operations, banner and glider tow operations, or rough field or float operations. However, this airplane could have pre-existing and undetected wood spar damage that occurred during previous operations. In this situation, the damage to the wood spar would propagate at a level that depends on the operational exposure of the airplane and severity of the wood spar damage.

To assure that compression cracks do not go undetected on the wood spars of the affected airplanes, the FAA has determined that an initial 3 calendar month compliance time should be used. Repetitive actions will then be accomplished every 12 calendar months or 500 hours TIS, whichever occurs first.

Cost Impact

The FAA estimates that 261 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours (Installations: 7 workhours; Initial Inspection: 1 workhour) per airplane to accomplish the required and optional action, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$170 per airplane, provided that each airplane would only need 6 additional standard inspection hole covers per wing bottom surface (total of 12 new covers per airplane) and 4 upper surface wing covers. If the airplane would require the installation of more inspection covers (i.e., a result of previous non-factory wing recover work), the cost could be slightly higher. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$169,650, or \$650 per airplane.

This cost figure is based on the presumption that no affected airplane owner/operator has accomplished the installations or the initial inspection. The FAA has no knowledge of any owner/operator of the affected airplanes that has already accomplished the installations and initial inspection.

This cost figure also does not account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur over the life of his/her airplane. However, each repetitive inspection will cost substantially less than the initial inspection if accomplishing the optional inspection hole and cover installations. The optional inspection covers allow easy access for the inspection of the wood spars, and the compliance time would enable the owners/operators of the affected airplanes to accomplish the repetitive inspections at regularly scheduled annual inspections.

Regulatory Impact

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

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98-05-04 American Champion Aircraft Corp.: Amendment 39-10365; Docket No. 97-CE-37-AD. Supersedes AD 87-18-09, Amendment 39-5725.

Applicability: Model 8GCBC airplanes, all serial numbers, certificated in any category, that are equipped with wood wing spars.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, repaired, or reconfigured in the area subject to the requirements of this AD. For airplanes that have been modified, altered, repaired, or reconfigured so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect possible compression cracks and other damage in the wood spar wing, which, if not corrected, could eventually result in in-flight structural failure of the wing with consequent loss of the airplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish the following:

(1) Install inspection holes in the top and/or bottom surface of each wing in accordance with American Champion Aircraft Corporation (ACAC) Service Letter 417, Revision B, dated February 10, 1998. No further action is required by this paragraph (paragraph (a)(1) of this AD) if inspection holes are installed in accordance with ACAC Service Letter 417, Revision A, dated October 2, 1997; or ACAC Service Letter 417, dated August 14, 1997.

(2) Inspect (detailed visual) both the front and rear wood wing spars for cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; and loose or missing nails (referred to as damage hereon). Accomplish these inspections in accordance with ACAC Service Letter 406, dated March 28, 1994.

(3) If any spar damage is found, prior to further flight, accomplish the following:

(i) Repair or replace the wood wing spar in accordance with Advisory Circular (AC) 43-13-1A, Acceptable Methods, Techniques and Practices; or other data that is approved by the FAA for wing spar repair or replacement.

(ii) If the wing is recovered, accomplish the installations required by paragraph (a)(1) of this AD, as applicable.

(4) Install inspection hole covers or fabric patches, as required, on the top and bottom surface of the wing in accordance with ACAC Service Letter 417, Revision B, dated February 10, 1998. No further action is required by this paragraph (paragraph (a)(4) of this AD) if inspection hole covers are installed in accordance with ACAC Service Letter 417, Revision A, dated October 2, 1997; or ACAC Service Letter 417, dated August 14, 1997.

(b) Within 12 calendar months or 500 hours time-in-service (TIS) (whichever occurs first) after accomplishing all actions required by paragraph (a), all subparagraphs included, of this AD, and thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first, accomplish the inspection, repair, replacement, and installation required by paragraphs (a)(2), (a)(3), as applicable; including its subparagraphs; and (a)(4) of this AD.

Note 2: The affected airplanes are not certificated for aerobatic maneuvers. AD 87-18-09 required a placard prohibiting aerobatic maneuvers in addition to the existing operational placard. The FAA encourages owners/operators of the affected airplanes to keep this placard installed on their airplanes.

(c) If any of the affected airplanes are involved in an incident or accident involving wing damage after the effective date of this AD, prior to further flight, accomplish the

inspection, repair, replacement, and installation required by paragraphs (a)(2), (a)(3), as applicable; including its subparagraphs; and (a)(4) of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon Avenue, Des Plaines, Illinois 60018.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

(2) Alternative methods of compliance approved in accordance with AD 87-18-09 (superseded by this action) are not considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(f) The installation required by this AD shall be done in accordance with American Champion Aircraft Corp. Service Letter 417, Revision B, dated February 10, 1998; American Champion Aircraft Corp. Service Letter 417, Revision A, dated October 2, 1997; or American Champion Aircraft Corp. Service Letter 417, dated August 14, 1997. The inspections required by this AD shall be done in accordance with American Champion Aircraft Corp. Service Letter 406, dated March 28, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Champion Aircraft Corp., P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment (39-10365) supersedes AD 87-18-09, Amendment 39-5725.

(h) This amendment (39-10365) becomes effective on April 17, 1998.

Issued in Kansas City, Missouri, on February 23, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-5198 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-98-AD; Amendment 39-10367; AD 98-05-06]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC-12 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Model PC-12 airplanes. This AD requires inspecting the elevator for incorrect rivet lengths and installing new rivets if incorrect rivet lengths are found. This AD also requires inspecting the elevator to assure that an excessive gap (more than .004 inches or .1 millimeters (mm)) does not exist in the rivet shanks, and installing a shim between the rib and skin to fill any excessive gap. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to prevent fatigue damage to the elevator, which could result in structural failure and eventual loss of control of the airplane.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-98-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH-6370 Stans, Switzerland; telephone: +41 41-6196 233; facsimile: +41 41-6103 351. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-98-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6932; facsimile: (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus PC-12 airplanes. The FOCA reports that the following problems could have occurred during assembly of the above-referenced airplanes:

—Rivets installed with an incorrect length; and

—An excessive gap (more than .004 inches or .1 mm) exists in the rivet shanks.

These conditions, if not corrected in a timely manner, could result in fatigue damage to the elevator, leading to structural failure and eventual loss of control of the airplane.

Relevant Service Information

Pilatus has issued Service Bulletin No. 55-001, dated November 8, 1996, which specifies procedures for inspecting the elevator for incorrect rivet lengths and installing new rivets if incorrect rivet lengths are found. This service bulletin also includes procedures for inspecting the elevator to assure that a gap that is more than .004 inches or .1 mm does not exist in the rivet shanks, and installing a shim between the rib and skin to fill any excessive gap.

The FOCA classified this service bulletin as mandatory and issued Swiss AD HB 96-535A, dated November 30, 1996, corrected January 28, 1998, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA; reviewed all available information, including the service

information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC-12 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires inspecting the elevator for incorrect rivet lengths and installing new rivets if incorrect rivet lengths are found. This AD also requires inspecting the elevator to assure that an excessive gap (more than .004 inches or .1 millimeters (mm)) does not exist in the rivet shanks, and installing a shim between the rib and skin to fill any excessive gap. Accomplishment of the actions of this AD is required in accordance with the previously referenced service bulletin.

Cost Impact

The FAA estimates that 23 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 12 workhours per airplane to accomplish the required action, and that the average labor rate is approximately \$60 per work hour. Parts will be provided by the manufacturer at no charge to the owners/operators of the affected airplanes. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be \$16,560, or \$720 per airplane.

Credit for up to 12 workhours of labor is available through the Pilatus PC-12 New Aircraft Warranty System. If utilized by all owners/operators of the affected airplanes, the cost impact of this AD would be eliminated.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with section 11.17 of the Federal Aviation Regulations (14 CFR 11.17), unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register**

indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-98-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that 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) 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 final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98-05-06 Pilatus Aircraft Ltd: Amendment 39-10367; Docket No. 97-CE-98-AD.

Applicability: Model PC-12 airplanes, manufacturer's serial numbers (MSN) 101, 105, 106, 107, 109 through 112, 114, 115, 117 through 120, 122 through 125, 129, 131 through 140, 142, and 146; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) 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 in the body of this AD, unless already accomplished.

To prevent fatigue damage to the elevator, which could result in structural failure and eventual loss of control of the airplane, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, inspect the elevator for incorrect rivet lengths in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin No. 55-001, dated November 8, 1996. Prior to further flight, install new rivets if incorrect rivet lengths are found in accordance with the above-referenced service bulletin.

(b) Within the next 200 hours TIS after the effective date of this AD, inspect the elevator to assure that an excessive gap (more than .004 inches or .1 millimeters (mm)) does not exist in the rivet shanks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin No. 55-001, dated November 8, 1996. Prior to further flight, install a shim between the rib and skin to fill any excessive gap in accordance with the above-referenced service bulletin.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No. 55-001, dated November 8, 1996, should be directed to Pilatus Aircraft Ltd., Marketing Support Department, CH-6370 Stans, Switzerland; telephone: +41 41-6196 233; facsimile: +41 41-6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

(f) The inspection and installations required by this AD shall be done in accordance with Pilatus Service Bulletin No. 55-001 dated November 8, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH-6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North

Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swiss AD HB 96-535A, dated November 30, 1996, corrected January 28, 1998.

(g) This amendment (39-10367) becomes effective on May 29, 1998.

Issued in Kansas City, Missouri, on February 23, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-5201 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-SW-62-AD; Amendment 39-10371; AD 98-05-10]

RIN 2120-AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters. This action requires replacing the aluminum elbows that connect the oil cooler lines to the engine accessory case with steel elbows. This amendment is prompted by two reports of cracks that were discovered in aluminum elbows. The actions specified in this AD are intended to prevent failure of either the 45° or 90° aluminum elbows that connect the oil lines from the oil cooler to the engine accessory case, which would cause loss of engine oil, resulting in an engine failure and a subsequent forced landing.

DATES: Effective March 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-62-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712-4137,

telephone (562) 627-5265; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to Robinson Model R44 helicopters, serial numbers (S/N) 0001 through 0330. This action requires removing the aluminum (blue-colored) AN823-8D (45°) or MS20822-8D (90°) elbows that connect the A723 oil cooler lines to the engine accessory case and replacing them with steel MS20823-8 (45°) or MS20822-8 (90°) elbows. This amendment is prompted by two reports of cracks that were discovered in aluminum elbows. Subsequent inspections revealed that the cracks resulted from fatigue. The actions specified in this AD are intended to prevent failure of either the 45° or 90° aluminum elbows that connect the oil lines from the oil cooler to the engine accessory case, which would cause in loss of engine oil, resulting in an engine failure and a subsequent forced landing.

The FAA has reviewed Robinson Helicopter Company R44 Service Bulletin SB-25, dated October 1, 1997, which describes procedures for replacing both aluminum elbows with steel elbows.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R44 helicopters, S/N 0001 through 0330, of the same type design, this AD is being issued to prevent failure of either the 45° or 90° aluminum elbows that connect the oil lines from the oil cooler to the engine accessory case, which would cause loss of engine oil, resulting in an engine failure and a subsequent forced landing. This AD requires, within 50 hours time-in-service, removing the aluminum (blue-colored) AN823-8D (45°) or MS20822-8D (90°) elbows that connect the A723 cooler lines to the engine accessory case and replacing them with steel MS20823-8 (45°) or MS20822-8 (90°) elbows. Due to the critical need for adequate lubrication of the engine and the short compliance time for replacing the aluminum elbows, this rule must be issued immediately to correct an unsafe condition in the affected helicopters.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity

for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-SW-62-AD." The postcard will be date stamped and returned to the commenter.

The FAA estimates that 50 helicopters will be affected by this AD, that it will take approximately 2 work hours to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$30 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$21,000.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive

Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

AD 98-05-10 Robinson Helicopter

Company: Amendment 39-10371.

Docket No. 97-SW-62-AD.

Applicability: Model R44 helicopters, serial numbers 0001 through 0330, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 50 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent failure of either the 45° or 90° aluminum elbows that connect the oil lines from the oil cooler to the engine accessory case, which would cause loss of engine oil,

resulting in an engine failure and a subsequent forced landing, accomplish the following:

(a) Remove any aluminum (blue-colored) AN823-8D (45°) or MS20822-8D (90°) elbows that connect the A723 oil cooler lines to the engine accessory case and replace them with airworthy MS20823-8 (45°) steel elbows or MS20822-8 (90°) steel elbows, as applicable. If the color is difficult to distinguish, use a magnet to determine if the elbow is aluminum or steel. Apply B270-6 thread sealant/lubricant to the replacement elbows' pipe threads. Torque the elbows to 160 in-lbs. plus as much additional torque as is necessary to align for correct position with the oil line.

Note 2: Robinson Helicopter Company R44 Service Bulletin SB-25, dated October 1, 1997, pertains to the subject of this AD and describes procedures for replacing both aluminum elbows with steel elbows.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 18, 1998.

Issued in Fort Worth, Texas, on February 24, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98-5353 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 70

[Docket No. 980209031-8031-01]

RIN 0607-AA18

Cutoff Dates for Recognition of Boundary Changes for Census 2000

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is establishing the cutoff dates for recognition of boundary changes for

Census 2000. The cutoff dates are established for each decennial census of population and were last established for the 1990 census. For the tabulation and dissemination of data from Census 2000, the Bureau of the Census will recognize only those boundaries legally in effect on January 1, 2000, that have been reported officially to the Bureau of the Census no later than March 1, 2000.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Joel L. Morrison, Chief, Geography Division, Bureau of the Census, Washington, DC 20233-7400, telephone (301) 457-1132, or e-mail (j.morrison@geo.census.gov).

SUPPLEMENTARY INFORMATION: The Bureau of the Census is amending 15 CFR Part 70 to establish cutoff dates for recognition of boundary changes for Census 2000. This technical amendment is necessary to change the dates that were established for the 1990 census on July 8, 1988 (51 FR 24653) and are out of date. The name of the census is changed from "1990 census" to "Census 2000", and the reference year is changed from 1990 to 2000 throughout the regulation. The Bureau of the Census will recognize only those boundaries legally in effect on January 1, 2000, that have been reported officially to it no later than March 1, 2000.

The Bureau of the Census finds good cause for dispensing with the notice and comment requirements of the Administrative Procedure Act because notice and comment are unnecessary so far as the public is concerned, since the rule makes merely technical amendments to update the dates from the 1990 census to Census 2000 (5 U.S.C. 553(b)(B)). A delay in the effective date is not required because this rule is not a substantive rule (5 U.S.C. 553(d)). Because a notice of proposed rulemaking and an opportunity for comment are not required for rulemaking under 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. This rule does not contain any collection of information subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). It has been determined that this rule is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 70

Census data.

For the reasons set forth in the preamble, 15 CFR part 70 is amended to read as follows:

PART 70—[AMENDED]

1. The authority for part 70 is revised to read as follows:

Authority: 13 U.S.C. 4 and Department of Commerce Organization Order 35-2A (40 FR 42765).

2. In 15 CFR part 70, remove the words "1990 census" wherever they appear and add, in their place, the words "Census 2000".

3. In addition to the amendments set forth above in 15 CFR part 70, remove the date "1990" wherever it appears and add, in its place, the date "2000".

§ 70.2 [Amended]

4. In § 70.2, remove the sentence "A more complete description appears on pages A1 and A2 of 1980 Census of Population, Volume I, Chapter A" and add, in its place, the sentence "A more complete description appears on pages A-6 and A-11 of 1990 Census of Population, Volume 1, General Population Characteristics, 1990 CP-1-1, Appendix A."

Dated: February 10, 1998.

James F. Holmes,

Acting Director, Bureau of the Census.

[FR Doc. 98-5421 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline, Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Hoffmann-La Roche, Inc. The ANADA provides for use of single ingredient Type A medicated articles containing chlortetracycline and bacitracin methylene disalicylate to make a Type C medicated swine feed.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0209.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110-1199, filed ANADA

200–242 that provides for using Aureomycin® 50, 70, 80, 90, or 100 Type A medicated articles containing chlortetracycline calcium complex (CTC) equivalent to 50, 70, 80, 90, or 100 grams per pound (g/lb) chlortetracycline hydrochloride, and BMD® (bacitracin methylene disalicylate) 25, 30, 40, 50, 60, or 75 equivalent to 25, 30, 40, 50, 60, or 75 g/lb bacitracin activity, to make Type C medicated swine feed. The Type C medicated swine feed contains approximately 400 g/ton (t) chlortetracycline, varying with body weight and feed consumption to provide 10 milligrams/lb CTC of body weight daily, and 10 to 30 g/t bacitracin methylene disalicylate, to be fed for not more than 14 days. It is used in swine feeds for: (1) Treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella choleraesuis*; (2) bacterial pneumonia caused by *Pasteurella multocida*, susceptible to CTC; (3) increased rate of weight gain; and (4) improved feed efficiency.

Hoffmann-La Roche, Inc.'s ANADA 200–242 is approved as a generic copy of Alpharma Inc.'s NADA 141–059. The ANADA is approved as of January 16, 1998, and the regulations are amended in 21 CFR 558.76(d)(1)(iv) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, 21 CFR 558.128 is amended in paragraph (d)(3) by redesignating paragraph (d)(3)(xiv) as paragraph (d)(3)(iii) to place the combination with bacitracin methylene disalicylate in alphabetical order.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

Authority: 21 U.S.C. 360b, 371.

§ 558.76 [Amended]

2. Section 558.76 *Bacitracin methylene disalicylate* is amended in the table in paragraph (d)(1) in entry (iv), in the columns “Limitations” and “Sponsor” by removing “046573” and adding in its place “000004 and 046573”.

§ 558.128 [Amended]

3. Section 558.128 *Chlortetracycline* is amended by redesignating paragraph (d)(3)(xiv) as paragraph (d)(3)(iii).

Dated: February 6, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.
[FR Doc. 98–5344 Filed 3–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2600]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This final rule implements Chapter 16 of the North American Free Trade Agreement (NAFTA), and sections 341 and 342 of the North American Free Trade Agreement Implementation Act, (the Implementation Act), signed December 8, 1993, which address the movement of business persons among the United States, Canada, and Mexico. This rule finalizes the interim regulations published in the **Federal Register** on December 28, 1993 [58 FR 68526] concerning two nonimmigrant visa classifications, treaty traders and investors and intracompany transferees, and promulgates new regulations for a category for professionals under INA section 214(e), as amended by the Implementation Act.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Director, Office of

Legislation, Regulations and Advisory Opinions, Visa Office, (202) 663–1184.

SUPPLEMENTARY INFORMATION: On December 28, 1993, the Department of State published an interim rule at 58 FR 68526. This rule which amended 22 CFR part 41 by amending §§ 41.51 and 41.54 and by adding a new § 41.59 took effect on January 1, 1994. The rule implements Chapter 16 of the North American Free Trade Agreement (NAFTA), entitled “Temporary Entry for Business Persons”, and addresses the movement of business persons among the Parties to the Agreement. Chapter 16 is patterned on the similarly titled Chapter 15 of the United States Canada Free Trade Agreement (CFTA). This chapter relates to four nonimmigrant visa categories in the U.S. Immigration and Nationality Act: temporary visitors for business under INA 101(a)(15)(B); treaty trader and investors under INA 101(a)(15)(E); intracompany transferees under INA 101(a)(15)(L); and NAFTA professionals under INA 214(e) as amended by the Implementation Act.

Comments

The Department received no comments from the public during the comment period. The only modification from the interim rule is a minor wording change in § 41.59(c), definition of temporary entry, to comport with the specific language of NAFTA and with INS’ definition [see 58 FR 69212 Dec. 30, 1993 and 63 FR 1331, Jan. 9, 1998].

Final Rule

This final rule is not expected to have a “significant economic impact” on a substantial number of small entities under the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12988 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR 41

Aliens, Nonimmigrants, Intracompany Transferees, (executives, managers, and specialists), Professionals Under the North American Free Trade Agreement, Treaty Trader or Investor, Visas.

Accordingly, the regulations at 22 CFR 41.51 and 41.54 are adopted as published in the interim rule at 58 FR 68526 and § 41.59 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; 19 U.S.C. 3401 and 3401 Note.

2. Sec. 41.59 is amended by revising paragraph (c) to read as follows:

§ 41.59 Professionals Under the North American Free Trade Agreement.

* * * * *

(c) *Temporary entry.* Temporary entry means an entry into the United States without the intent to establish permanent residence. The alien must satisfy the consular officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart upon completion of the assignment.

* * * * *

Dated: September 9, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98-5241 Filed 3-2-98; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 8764]

RIN 1545-AV91

Source and Grouping Rules for Foreign Sales Corporation Transfer Pricing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to taxpayers who have made an election to be treated as a foreign sales corporation (FSC). The regulations provide rules that clarify the special sourcing rules under section 927(e)(1) and provide a deadline for the election to group transactions. The text of the temporary regulations also serves as the text of the proposed regulations on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective date:* These regulations are effective March 3, 1998.

Applicability: For dates of applicability, see §§ 1.925(a)–1T(c)(8)(i) and 1.927(e)–1T(c).

FOR FURTHER INFORMATION CONTACT: Elizabeth Beck (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 925 and 927 which were added by the Deficit Reduction Act of 1984, applicable for taxable years of foreign sales corporations beginning after December 31, 1984. Temporary regulations were published in the **Federal Register** (52 FR 6468) as a Treasury Decision (TD 8126) on March 3, 1987. Treasury and IRS believe that immediate guidance in the form of these temporary regulations is necessary for the reasons stated below.

Explanation of Provisions

These regulations set a deadline for an election to group transactions for purposes of the foreign sales corporation (FSC) administrative pricing methods and clarify that the foreign source limit for a FSC's related supplier extends to all transactions giving rise to foreign trading gross receipts.

I. Grouping Election Deadline**A. Current Temporary Regulations**

Current § 1.925(a)–1T(c)(8) and § 1.925(b)–1T(b)(3) permit taxpayers annually to group transactions in applying the administrative pricing (including the marginal costing) rules to determine FSC benefits. Current § 1.925(a)–1T(c)(8)(i) requires an election to group to be evidenced on the FSC income tax return for the taxable year. Current § 1.925(a)–1T(e)(4) authorizes taxpayers to file amended returns subsequently (within the statute of limitations period) to redetermine FSC benefits based on a different grouping of transactions than that originally elected. Pursuant to this provision, taxpayers may change their grouping basis, or change from a grouping to a transaction-by-transaction basis. The IRS and the Treasury have become increasingly aware of taxpayers who, through the use of sophisticated computer programs, substantially revise their transaction groupings just prior to the expiration of the statute of limitations and many years after the original returns were filed. These revised groupings typically employ complex estimating techniques. The recent rise in this practice is placing a significant burden on the auditing

process and is creating a potential for abuse.

B. Revised Temporary Regulations

Under § 1.925(a)–1T(c)(8)(i), the election to group must be made on Schedule P of the FSC's timely filed U.S. income tax return (including extensions thereof) for the taxable year. No untimely or amended returns will be allowed to elect to group, to change a grouping basis, or to change from a grouping basis to a transaction-by-transaction basis for such year.

Conforming changes and cross-references are reflected in § 1.925(a)–1T(e)(4) and § 1.925(b)–1T(b)(3).

The regulations apply to taxable years beginning after December 31, 1997. There is also a transition rule providing that the regulations also apply to taxable years beginning before January 1, 1998. For these taxable years, the transition rule allows taxpayers to redetermine their grouping of transactions with respect to such years provided such redetermination is made no later than the due date of the FSC's timely filed U.S. income tax return (including extensions thereof) for its first taxable year beginning after December 31, 1997.

II. Scope of Related Supplier Foreign Source Limit**A. Current Temporary Regulations and TRA 97**

Section 927(e)(1) provides that “[u]nder regulations, the income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section 994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction.” Transactions giving rise to foreign trading gross receipts include qualifying sales, leases, licenses and services. Current § 1.927(e)–1T restates the section 927(e)(1) rule as applicable on “the sale of export property.” While the statute is not limited to export sale transactions in that it applies to any transaction giving rise to foreign trading gross receipts of a FSC, the current regulation might be interpreted to apply the special foreign sourcing limit only to sales of export property.

Section 1171 of the Taxpayer Relief Act of 1997 (TRA 97) amended section 927(a)(2)(B) (without any inference intended regarding prior law) to provide that computer software licensed for reproduction abroad is included within

the definition of export property for purposes of the FSC provisions. The amendment applies to gross receipts from computer software licenses attributable to periods after December 31, 1997, in tax years ending after such date.

In light of TRA 97, it is important to clarify the scope of the related supplier's foreign source limit under the regulations. This clarification needs to be implemented immediately in order to provide clear guidance to taxpayers, including those utilizing the TRA 97 amendment to section 927(a)(2)(B).

B. Revised Temporary Regulations

Under § 1.927(e)-1T(a)(1), the related supplier's foreign source limit applies to any transaction, including but not limited to any sale, lease, license or service, giving rise to foreign trading gross receipts of a FSC. No inference is intended regarding the scope of application of the prior regulation.

Conforming changes are reflected in § 1.927(e)-1T(a)(2) and (3). Special rules are added in § 1.927(e)-1T(a)(3)(ii) to clarify how the corresponding DISC transfer pricing rules are to be applied for purposes of the foreign source limit. Three examples set forth in § 1.927(e)-1T(b) illustrate how the limit is applied under different transfer pricing methods and for different types of transactions.

The regulations apply to taxable years beginning after December 31, 1997.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does 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, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these regulations is Elizabeth Beck of the Office of the Associate Chief Counsel (International). Other personnel from the IRS and Treasury Department also participated in the development of these regulations.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirement.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entries for sections 1.925(a)-1T and 1.925(b)-1T to read as follows:

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

Section 1.925(a)-1T is also issued under 26 U.S.C. 925(b)(1) and (2) and 927(d)(2)(B).

Section 1.925(b)-1T is also issued under 26 U.S.C. 925(b)(1) and (2) and 927(d)(2)(B) * * *

Par. 2. Section 1.925(a)-1T is amended by:

1. Removing the last sentence of paragraph (c)(8)(i) and adding five sentences in its place.

2. Paragraph (e)(4) is amended by:

a. Removing the language "or grouping of transactions" from the fourth sentence.

b. Adding a sentence to the end of the paragraph.

The additions read as follows:

§ 1.925(a)-1T Temporary Regulations; Transfer pricing rules for FSCs.

* * * * *

(c) * * *

(8) * * *

(i) * * * The election to group transactions shall be evidenced on Schedule P of the FSC's timely filed U.S. income tax return (including extensions thereof) for the taxable year. No untimely or amended returns will be allowed to elect to group, to change a grouping basis, or to change from a grouping basis to a transaction-by-transaction basis. The rules of the previous two sentences of this paragraph (c)(8)(i) are applicable to taxable years beginning after December 31, 1997. For any taxable year beginning before January 1, 1998, for which a redetermination is otherwise permissible under paragraph (e)(4) of this section as in effect for taxable years beginning before January 1, 1998, a redetermination of grouping of transactions cannot be made later than the due date of the FSC's timely filed U.S. income tax return (including extensions thereof) for the FSC's first taxable year beginning after December 31, 1997. The language "or grouping of transactions" is removed from the fourth sentence of paragraph (e)(4) of this section, applicable to taxable years beginning after December 31, 1997.

* * * * *

(e) * * *

(4) * * * For the election to group transactions for purposes of applying the administrative pricing methods, see paragraph (c)(8)(i) of this section.

* * * * *

Par. 3. In § 1.925(b)-1T, paragraph (b)(3)(i) is amended by adding at the end of the paragraph the following sentence:

§ 1.925(b)-1T Temporary regulations; marginal costing rules.

* * * * *

(b) * * *

(3) * * * (i) * * * For the election to group transactions for purposes of applying the administrative pricing methods, see § 1.925(a)-1T(c)(8)(i).

* * * * *

Par. 4. Section 1.927(e)-1T is revised to read as follows:

§ 1.927(e)-1T Temporary regulations; special sourcing rule.

(a) *Source rules for related persons—*
(1) *In general.* The income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section 994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction. This section applies to any transaction, including but not limited to any sale, lease, license or service, giving rise to foreign trading gross receipts of a FSC. This special sourcing rule also applies if the FSC is acting as a commission agent for the related supplier with respect to the transaction described above which gives rise to foreign trading gross receipts and the transfer pricing rules of section 925 are used to determine the commission payable to the FSC. No limitation results under this section with respect to a transaction to which the section 482 pricing rule under section 925(a)(3) applies.

(2) *Grouping of transactions.* If, for purposes of determining the FSC's profits under the administrative pricing rules of sections 925(a)(1) and (2), grouping of transactions under § 1.925(a)-1T(c)(8) was elected, the same grouping shall be used for making the determinations under this special sourcing rule.

(3) *Corresponding DISC pricing rules—*(i) *In general.* For purposes of this section—

(A) The DISC gross receipts pricing rule of section 994(a)(1) corresponds to the gross receipts pricing rule of section 925(a)(1);

(B) The DISC combined taxable income pricing rule of section 994(a)(2) corresponds to the combined taxable income pricing rule of section 925(a)(2); and

(C) The DISC section 482 pricing rule of section 994(a)(3) corresponds to the section 482 pricing rule of section 925(a)(3).

(ii) *Special rules.* For purposes of this section—

(A) The DISC pricing rules of section 994(a)(1) and (2) shall be determined without regard to export promotion expenses;

(B) Qualified export receipts under section 994(a)(1) and (2) shall be deemed to be an amount equal to the foreign trading gross receipts arising from the transaction; and

(C) Combined taxable income for purposes of section 994(a)(2) shall be deemed to be an amount equal to the combined taxable income for purposes of section 925(a)(2) arising from the transaction.

(b) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. (i) R and F are calendar year taxpayers. R, a domestic manufacturing company, owns all the stock of F, which is a FSC acting as a commission agent for R. For the taxable year, R and F used the combined taxable income pricing rule of section 925(a)(2). For the taxable year, the combined taxable income of R and F is \$100 from the sale of export property, as defined in section 927(a), manufactured by R using production assets located in the United States. Title to the export property passed outside of the United States.

(ii) Under section 925(a)(2), 23 percent of the \$100 combined taxable income of R and F, that is \$23, is allocated to F and the remaining \$77 is allocated to R. Absent the special sourcing rule, under section 863(b) the \$77 income allocated to R would be sourced \$38.50 U.S. source and \$38.50 foreign source. Under the special sourcing rule, the amount of foreign source income earned by a related supplier of a FSC shall not exceed the amount that would result if the corresponding DISC pricing rule applied. The DISC combined taxable income pricing rule of section 994(a)(2) corresponds to the combined taxable income pricing rule of section 925(a)(2). Under section 994(a)(2), \$50 of the combined taxable income (\$100 x .50) would be allocated to the DISC and the remaining \$50 would be allocated to the related supplier. Under section 863(b), the \$50 income allocated to the DISC's related supplier would be sourced \$25 U.S. source and \$25 foreign source. Accordingly, under the special sourcing rule, the foreign source income of R shall not exceed \$25.

Example 2. (i) Assume the same facts as in *Example 1* except that the combined taxable

income arises from the licensing of the copyright rights in computer software for use outside of the United States and that R developed the computer software in the United States.

(ii) Under section 925(a)(2), 23 percent of the \$100 combined taxable income of R and F, that is \$23, is allocated to F and the remaining \$77 is allocated to R. Absent the special sourcing rule, under section 862(a)(4) the \$77 income allocated to R would be sourced \$77 foreign source in its entirety. Under the special sourcing rule, the amount of foreign source income earned by a related supplier of a FSC shall not exceed the amount that would result if the corresponding DISC pricing rule applied. The DISC combined taxable income pricing rule of section 994(a)(2) corresponds to the combined taxable income pricing rule of section 925(a)(2). Under section 994(a)(2), \$50 of the combined taxable income (\$100 x .50) would be allocated to the DISC and the remaining \$50 would be allocated to the related supplier. Under section 862(a)(4), the \$50 income allocated to the DISC's related supplier would be sourced \$50 foreign source in its entirety. Accordingly, under the special sourcing rule, the foreign source income of R shall not exceed \$50.

Example 3. (i) Assume the same facts as in *Example 1* except that R and F used the gross receipts pricing rule of section 925(a)(1). In addition, for the taxable year foreign trading gross receipts derived from the sale of the export property are \$2,000.

(ii) Under section 925(a)(1), 1.83 percent of the \$2,000 foreign trading gross receipts, that is \$36.60, is allocated to F and the \$63.40 remaining combined taxable income (\$100—\$36.60) is allocated to R. Absent the special sourcing rule, under section 863(b) the \$63.40 income allocated to R would be sourced \$31.70 U.S. source and \$31.70 foreign source. Under the special sourcing rule, the amount of foreign source income earned by a related supplier of a FSC shall not exceed the amount that would result if the corresponding DISC pricing rule applied. The DISC gross receipts pricing rule of section 994(a)(1) corresponds to the gross receipts pricing rule of section 925(a)(1). Under section 994(a)(1), \$80 (\$2,000 x .04) would be allocated to the DISC and the \$20 remaining combined taxable income would be allocated to the related supplier. Under section 863(b), the \$20 income allocated to the DISC's related supplier would be sourced \$10 U.S. source and \$10 foreign source. Accordingly, under the special sourcing rule, the foreign source income of R shall not exceed \$10.

(c) *Effective Date.* The rules of this section are applicable to taxable years beginning after December 31, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: February 20, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98-5128 Filed 3-2-98; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029-AB93

Abandoned Mine Land Reclamation Fund Reauthorization Implementation

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is removing its regulation at 30 CFR 870.17. The regulation concerns the scope of audits conducted in connection with OSM's abandoned mine land reclamation program.

EFFECTIVE DATE: The removal of the audit regulation at 30 CFR 870.17 is effective on April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Krawchuk, Division of Compliance Management, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220. Telephone 412-921-2676, E-mail: jkrawchuk@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Final Rule and Comments
- III. Procedural Matters

I. Background

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. Included in this law was the Abandoned Mine Reclamation Act of 1990 (AMRA) which amended the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* On May 31, 1994, OSM published final regulations in the **Federal Register** (59 FR 28136) implementing the provisions of AMRA. The final regulations included a revision of 30 CFR 870.17 which specifies who may conduct audits and whose records may be examined. The revision, utilizing the authority in sections 201(c), 402(d)(2) and 413(a) of SMCRA, expanded the scope of section 870.17 to cover the records of all persons involved in a coal transaction, including permittees, operators, brokers, purchasers, and persons operating preparation plants and tipples, and any recipient of royalty payments from the coal mining operation.

In July 1994, the National Coal Association and the American Mining Congress, predecessor organizations of

the National Mining Association (NMA), filed suit challenging the regulations promulgated by OSM, specifically the scope of 30 CFR 870.17. On July 23, 1996, in *National Mining Ass'n v. U.S. Department of the Interior*, No. 94-1642 (D.D.C.), the United States District Court for the District of Columbia ruled in favor of OSM. The NMA appealed the district court's decision to the United States Court of Appeals for the District of Columbia. After the parties engaged in court-ordered mediation, the Department of Justice, upon OSM's request, filed a motion to hold the case in abeyance pending new rulemaking to resolve the issues in dispute and the U.S. Court of Appeals granted the motion.

On June 3, 1997 (62 FR 30232), OSM published in the **Federal Register** a notice that it was suspending 30 CFR 870.17. During the period of suspension, OSM continued to conduct audits of operators of surface coal mining operations, as necessary, under the provisions of section 402(d)(2) or SMCRA, and 30 CFR 870.16.

After further examination of the matter, OSM published a proposal in the **Federal Register** on September 10, 1997 (62 FR 47617) to remove section 870.17. The proposal was open for public comment until November 10, 1997.

II. Discussion of Final Rule

In this final rule OSM is removing section 870.17. In the above previously referenced litigation, the NMA raised concerns over the scope of this regulation. The District Court upheld OSM's final rule and granted summary judgment in favor of defendants. While the District Court acknowledged that "§ 1232(d)(2) does not provide authority for audits or inspections of those not directly regulated under SMCRA," it nevertheless upheld OSM's rule on the ground that the agency has authority under SMCRA's general rulemaking provisions to authorize "broader audits and record inspections" than those covered by § 1232(d)(2).

The NMA claimed that the court erred and appealed. The NMA stated that both OSM and the District Court are required to give effect to Congress' clearly expressed intent to limit the Secretary's audit authority to the persons already "subject to" Title IV—i.e., coal mine operators. The NMA alleged further that SMCRA's general rulemaking provisions do not give OSM authority to assert audit jurisdiction broader in scope than that expressly provided for in the Act.

The NMA also alleged that OSM's interpretation contravenes the Fourth Amendment of the Constitution by

subjecting persons other than surface coal mining operators to warrantless searches of "all books, papers, and other documents."

Although OSM does not agree with all the arguments made by the NMA, it does recognize the serious nature of the issues raised. OSM also understands that the general audit authority is still specified in section 402(c) of SMCRA, and that it has broad administrative authority granted under section 201(c) of SMCRA. Accordingly, OSM does not believe that the withdrawal will hinder its audit or collection efforts.

Congress specifically directed the agency to "conduct such audits of coal production and the payment of fees under [Title IV] as may be necessary to ensure full compliance with the provisions of this title." 30 U.S.C. 1232(d)(2). The agency will carry out this legislative mandate, as it is set out in section 402(d)(2) of SMCRA.

Comments Received

Two parties commented on the proposed rule, agreeing with the proposal for removal. However, both parties raised some concerns.

First, they pointed out that the preamble to the proposed rule in section III was somewhat confusing, stating that OSM was "not proposing to move section 870.17." This was a typographical error by the **Federal Register**, which published a correction notice on Tuesday, November 18, 1997 (62 FR 61585). The line should have read that OSM is "now proposing to remove section 870.17." Although other segments of the original publication made it clear that we were proposing a removal, we regret that this error was made.

Second, the commenters were concerned about a passage stating that Congress specifically directed OSM to conduct such audits of coal production and the payments of AML fees as may be necessary to ensure full compliance with the provisions of Title IV. The commenters stated that OSM should clarify its intent through this rule to limit audits to only operators of coal mining operations. As we have stated above, OSM will conduct its audits in conformance with the provisions of section 402(d)(2) of SMCRA. That section provides for the Secretary to conduct audits of any surface coal mining and reclamation operation, including without limitation, tipplines and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of fees under this title. While OSM's audit authority may be limited to those persons subject to the provisions

of SMCRA, OSM intends to continue to seek voluntary information from a variety of sources so that it may meet its mandatory responsibility to ensure full and complete payment of the fees. The Secretary is also provided administrative subpoena authority in section 201(c) of SMCRA. OSM intends to utilize this authority if the need arises to obtain information for determining compliance, but will restrict audits to those entities covered in the law.

III. Procedural Matters

Effect on State Programs

The withdrawal of this rule will have no effect on State or tribal AML programs. Collection of the AML reclamation fee is a purely Federal responsibility.

Paperwork Reduction Act

This rule withdrawal does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12866

This final rule is not considered significant under the criteria of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Department of the Interior, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, certifies that this rule withdrawal does not have a significant economic effect on a substantial number of small entities for the same reason that the promulgation of the rule in 1994 did not have such an impact. The particular provision being withdrawn governs the scope of audits conducted by OSM and will have no economic impact on small entities.

Executive Order 12988 on Civil Justice Reform

The Department of the Interior has determined that this rule withdrawal meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act

The removal action will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

National Environmental Policy Act

This rule withdrawal has been reviewed by OSM, and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with

the Departmental Manual 516 DM 2, Appendix 1.10.

Author: The principal author of this rule withdrawal is Jim Krawchyk, Office of Surface Mining, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220.

List of Subjects in 30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: February 18, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary for Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 870 is being amended as set forth below.

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

§ 870.17 [Removed]

2. Section 870.17 is removed.

[FR Doc. 98-5391 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS-017-FOR]

Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Kansas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kansas proposed revisions to and additions of regulations pertaining to communications, petitions to initiate rulemaking, notice of citizen suits, preparation and submission of reports by the permittee, definitions, permit applications, administrative hearing procedures, civil penalties, permit

review, permit revision, permit renewals, permit transfers, assignments, and sales, permit conditions, permit suspension or revocation, termination of jurisdiction, exemption for coal extraction incident to government-financed highway or other construction, exemption for coal extraction incidental to the extraction of other minerals, coal exploration, bonding procedures, performance standards, revegetation, interim performance standards, underground mining, small operator assistance program, lands unsuitable for surface mining, training, certification, and responsibilities of blasters and operators, employee financial interests, inspection and enforcement, eligible lands and water, reclamation project evaluation, consent to entry, liens, appraisals, contractor responsibility, exclusion of certain noncoal reclamation sites, and abandoned mine land reclamation plan reports. The amendment is intended to revise the Kansas program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Russell W. Frum, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kansas Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Kansas Program

The Secretary of the Interior conditionally approved the Kansas regulatory program on January 21, 1981, and the Kansas abandoned mine land reclamation plan on February 1, 1982. General background information on the Kansas regulatory program and the Kansas abandoned mine land reclamation plan, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 5892) and the February 1, 1982, **Federal Register** (47 FR 4513), respectively. Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.10, 916.12, 916.15, 916.16, 916.20, and 916.25.

II. Submission of the Proposed Amendment

By letter dated May 7, 1997 (Administrative Record No. KS-615), Kansas submitted a proposed amendment to its program pursuant to

SMCRA. Kansas submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the June 4, 1997, **Federal Register** (62 FR 30535) and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on July 7, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to K.A.R. 47-2-53, definition for regulatory authority; K.A.R. 47-2-75(6)(A), definition for director; K.A.R. 47-3-42(a)(49)(B) and (a)(49)(E), procedures for challenging ownership or control links shown in AVS; K.A.R. 47-3-42(a)(50)(E), standards for challenging ownership or control links and the status of violations; K.A.R. 47-5-5a(c)(4)(D), review of waiver determination; K.A.R. 47-5-5a(c)(6)(C)(i) and (c)(6)(E), summary disposition; K.A.R. 47-6-4(c), permit transfers, assignments, and sales; K.A.R. 47-6-8(b), termination of jurisdiction; K.A.R. 47-6-9(b)(3), exemption for coal extraction incident to government-financed highway or other construction; K.A.R. 47-6-10(b)(4), exemption for coal extraction incidental to the extraction of other minerals; K.A.R. 47-7-2(b)(6) and (b)(8), coal exploration; K.A.R. 47-8-9(a)(1) and (b)(8), bonding procedures; K.A.R. 47-9-1(c), performance standards—surface mining activities; K.A.R. 47-9-1(c)(17) and (e)(17), use of explosives: general requirements; K.A.R. 47-9-1(c)(35), backfilling and grading: time and distance requirements; K.A.R. 47-9-1(j)(9), substitution of Kansas terms for Federal terms in 30 CFR Parts 816 and 817; K.A.R. 47-16-1, eligible lands and water; K.A.R. 47-16-6(d), liens; K.A.R. 47-16-9(a), contractor responsibility; K.A.R. 47-16-10(b)(1), exclusion of certain noncoal reclamation sites; and K.A.R. 47-16-11 (a)(2)(A) and (b)(2)(A), reports. OSM notified Kansas of the concerns by letter dated October 8, 1997 (Administrative Record No. KS-615.5). By letter dated November 14, 1997 (Administrative Record No. KS-615.6), Kansas responded to OSM's concerns by submitting explanatory information and revisions to its proposed program amendment. Kansas proposed additional revisions and additions to K.A.R. 47-2-53, definition for regulatory authority; K.A.R. 47-2-75a(6)(A), definition for director; K.A.R. 47-3-42(a)(49)(A), (a)(49)(D) and (a)(49)(G), procedures for challenging ownership or control links shown in

AVS; K.A.R. 47-3-42(a)(50)(E), standards for challenging ownership or control links and the status of violations; K.A.R. 47-5-5a(c)(4)(D), review of waiver determination; K.A.R. 47-5-5a (c)(6)(C)(i) and (E), summary disposition; K.A.R. 47-6-4(c), permit transfers, assignments, and sales; K.A.R. 47-6-8(b), termination of jurisdiction; K.A.R. 47-6-9(b)(3), exemption for coal extraction incident to government-financed highway or other construction; K.A.R. 47-7-2(b)(6) and (b)(8), coal exploration; K.A.R. 47-8-9(a)(1) and (b)(8), bonding procedures; K.A.R. 47-9-1(c), performance standards—surface mining activities; K.A.R. 47-9-1(c)(17) and (e)(17), use of explosives: general requirements; K.A.R. 47-9-1(c)(35), backfilling and grading: time and distance requirements; K.A.R. 47-9-1(j)(9), substitution of Kansas terms for Federal terms in 30 CFR parts 816 and 817; K.A.R. 47-16-1, eligible lands and water; K.A.R. 47-16-6(d), liens; K.A.R. 47-16-9(a), contractor responsibility; K.A.R. 47-16-10(b)(1), exclusion of certain noncoal reclamation sites; and K.A.R. 47-16-11, reports.

In addition, via the facsimile machine on December 31, 1997 (Administrative Record No. KS-615.7), OSM notified Kansas of additional concerns regarding its November 14, 1997, response. These concerns involved typographical errors at K.A.R. 47-3-41(a)(49)(G), procedures for challenging ownership or control links shown in AVS; K.A.R. 47-9-1(c)(35)(a), backfilling and grading: time and distance requirements, and K.A.R. 47-16-11(a), reports. Kansas responded to the concerns by correcting typographical errors in a letter dated December 31, 1997 (Administrative Records No. KS-615.8).

Based upon the additional explanatory information and revisions to the proposed program amendment submitted by Kansas, OSM reopened the public comment period in the January 20, 1998, **Federal Register** (63 FR 2916). The public comment period closed on February 4, 1998.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Kansas Regulatory Program

A. Regulations Proposed for Deletion or Revocation

1. *K.A.R. 47-1-1, Title*. Kansas proposed to revoke this section that states these rules shall be known as rules of practice and procedures of the

surface mining section of the Kansas department of health and environment. The Director is approving the revocation of this section because it will not render the Kansas regulations less effective than the Federal regulations.

2. *K.A.R.: 47-1-4, Sessions*. Kansas proposed to revoke this section regarding special meetings scheduled by the surface mining section chief with the approval of the Secretary of the Kansas department of health and environment. The Director is approving the revocation of this section because there is no counterpart Federal regulation and the revocation will not render the Kansas regulations less effective than the Federal regulations.

3. *K.R. 47-1-10, General Notice Requirement*. Kansas proposed to revoke this section regarding notice of scheduled surface mining section meetings. The Director is approving the revocation of this section because there is no counterpart Federal regulation and the revocation will not render the Kansas regulations less effective than the Federal regulations.

4. *K.A.R. 47-2-14, Definition of Complete and Accurate Application*. Kansas proposed to delete its definition of "complete and accurate application." The Director previously approved this deletion (See 58 FR 32847, June 14, 1993).

5. *K.A.R. 47-3-42(a)(15), Land Use Information*. Kansas proposed to delete its adoption by reference of 30 CFR 779.22, land use information. The Director is approving this deletion because OSM deleted 30 CFR 779.22 from the Federal regulations in its entirety (See 59 FR 27932, May 27, 1994).

6. *K.A.R. 47-4-14a(b)(2), Definition of Person*. Kansas proposed to delete its definition of "person." The Director is approving the deletion of this definition because Kansas proposed to adopt by reference the Federal definition of "person" at 30 CFR 700.5. This proposed adoption by reference can be found at K.A.R. 47-2-75(a).

7. *K.A.R. 47-4-14a(d)(4)(G) and (d)(5)(B)(i), Formal Hearings—Prehearing Conference*. Kansas proposed to delete the above paragraphs regarding prehearing conferences. These regulations would allow a prehearing conference to be converted, without further notice, into a conference hearing or a summary proceeding for disposition of the matter or conversion of the proceeding to another type. The Director previously approved the deletion of these provisions (See 58 FR 32847, June 14, 1993).

8. *K.A.R. 47-4-14a(d)(17)(C), Formal Hearings—Orders*. Kansas proposed to

delete the above paragraph regarding formal hearings. This regulation would allow Kansas to take immediate action to protect the public interest in accordance with K.A.R. 47-4-14a(f), Emergency Proceedings. The Director previously approved the deletion of this provision (See 58 FR 32847, June 14, 1993).

9. *K.A.R. 47-4-14a(e), Conference Hearings*. Kansas proposed to delete the above paragraph regarding conference hearings. This regulation would allow Kansas to hold these hearings if their use does not violate any provision of law and where there is a matter in which there is no disputed issue of material fact or there is a disputed issue of material fact and the parties agree to a hearing. The Director previously approved the deletion of this provision (See 58 FR 32847, June 14, 1993).

10. *K.A.R. 47-4-14a(f), Emergency Proceedings*. Kansas proposed to delete the above paragraph regarding emergency proceedings. This regulation would allow Kansas to have these proceedings in a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or as otherwise provided by law. The Director previously approved the deletion of this provision (See 58 FR 32847, June 14, 1993).

11. *K.A.R. 47-4-14a(g), Summary Proceedings*. Kansas proposed to delete the above paragraph regarding summary proceedings. This regulation would allow Kansas to have these proceedings if their use does not violate any provision of law and the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties. The Director previously approved the deletion of this provision (See 58 FR 32847, June 14, 1993).

12. *K.A.R. 47-13-4, Training and Certification of Blasters*. Kansas proposed to delete paragraphs (b)(2) and (b)(3) of this section. The Director previously approved these deletions (See 59 FR 28769, June 3, 1994).

B. Regulations With Editorial Changes

Kansas proposed nonsubstantive wording changes, paragraph notation changes, citation corrections, and other editorial changes in the following sections of the K.A.R.: 47-1-3, communication; 47-1-8, petitions to initiate rulemaking; 47-1-9, notice of citizen suits; 47-1-11, permittee preparation and submission of reports; 47-2-21, definition of employee; 47-2-53, definition of regulatory authority or state regulatory authority; 47-2-53a,

definition of regulatory program; 47-2-58, definition of significant, imminent environmental harm to land, air or water resources; 47-2-64, definition of state act; 47-2-67, definition of surety bond; 47-2-74, definition of public road; 47-2-75, definitions; 47-3-1, application for mining permit; 47-3-2, application for mining permit; 47-3-3a, application for mining permit—maps; 47-3-42, application for mining permit; 47-4-14a, administrative hearing procedure; 47-4-15, administrative hearings—discovery; 47-4-16, interim orders for temporary relief; 47-4-17, administrative hearings—award of costs and expenses; 47-5-5a, civil penalties; 47-5-16, final assessment and payment of civil penalty; 47-6-1, permit review; 47-6-2, permit revision; 47-6-3, permit renewals; 47-6-4, permit transfers, assignments, and sales; 47-6-6, permit conditions; 47-6-7, permit suspension or revocation; 47-6-8, termination of jurisdiction; 47-6-9, exemption for coal extraction incident to government-financed highway or other construction; 47-6-10, exemption for coal extraction incidental to the extraction of other minerals; 47-7-2, coal exploration; 47-8-9, bonding procedures; 47-8-11, use of forfeited bond funds; 47-9-1, performance standards; 47-9-2, revegetation; 47-9-4, interim performance standards; 47-10-1, underground mining; 47-11-8, small operator assistance program; 47-12-4, lands unsuitable for surface mining; 47-13-4, training and certification of blasters; 47-13-5, responsibilities of operators and blasters-in-charge; 47-13-6, training; 47-14-7, employee financial interests; 47-15-1a, inspection and enforcement; 47-15-3, lack of information—inability to comply; 47-15-4, injunctive relief; 47-15-7, state inspections; 47-15-8, citizen's requests for state inspections; 47-15-15, service of notices of violations and cessation orders; and 47-15-17, maintenance of permit areas.

Because Kansas' proposed revisions to these previously approved regulations are nonsubstantive in nature, the Director finds that the proposed revisions do not render Kansas' regulations less effective than the Federal regulations. Any substantive revisions included in the above regulations are summarized below.

C. State Adoption of Federal Regulations by Reference

1. *K.A.R. 47-2-75, Definitions.* a. Kansas proposed to revise its adoption by reference of applicable Federal definitions contained in 30 CFR 700.5, 701.5, 705.5, 773.5, and 846.5 from as they existed on July 1, 1990, to as they

existed on July 1, 1995. The Director is approving this adoption by reference.

b. In its adoption by reference of the Federal definitions at 30 CFR 700.5, Kansas proposed at K.A.R. 47-2-75(a)(6) to apply its own definition of "director" to additional sections of the Federal regulations that it adopted by reference. At these sections, the term "director" means the Director, Office of Surface Mining Reclamation and Enforcement. The additional sections of the Federal regulations for which this term is applicable are 30 CFR 705.4(a), 705.11 (c) and (d), 705.13, 705.15, 705.19(a), 705.21, and 785.13. The Director is approving this amendment because the term "director" as used in these sections does indeed refer to the Director, Office of Surface Mining Reclamation and Enforcement and will not render the State regulations less effective than the Federal regulations.

c. At K.A.R. 47-2-75(e) in its adoption by reference of definitions at 30 CFR 846.5, Kansas proposed that the reference to "Section 703 of the act" at paragraph (e)(6) be replaced by "K.S.A. 1995 Supp. 75-2973." The Director is approving this revision because the State statute reference is the counterpart to the Federal statute at section 703 of SMCRA.

2. *K.A.R. 47-3-2, Application for Mining Permit.* At paragraph (b), Kansas proposed to revise its adoption by reference of applicable Federal regulations concerning permit applications at 30 CFR 777.11, 777.13, 777.14, and 777.15 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference.

3. *K.A.R. 47-3-42, Application for Mining Permit.* a. At K.A.R. 47-3-42(a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Parts 773, 778, 779, 780, and 785 concerning applications for mining permits from as they existed on July 1, 1990, to as they existed on July 1, 1995. In this adoption by reference, Kansas proposed to add new paragraphs K.A.R. 47-3-42(a)(47), verification of ownership or control application information; K.A.R. 47-3-42(a)(48), review of ownership or control violation information; K.A.R. 47-3-42(a)(49), procedures for challenging ownership or control links shown in AVS; and K.A.R. 47-3-42(a)(50), standards for challenging ownership or control links and the status of violations. Kansas also proposed to redesignate old paragraphs K.A.R. 47-3-42(a)(47) and (a)(48) as new paragraphs K.A.R. 47-3-42(a)(51) and (a)(52). The Director is approving this adoption by reference, the addition

of the new paragraphs, and the redesignation of the old paragraphs.

b. In its adoption by reference of 30 CFR 780.4 at K.A.R. 47-3-42(a)(17), Kansas proposed to replace the phrase "this part" with the Kansas regulations "K.A.R. 47-3-42(a)(17) to (35), inclusive." The Director is approving the replacement language because it is the State counterpart to the Federal regulations at 30 CFR Part 780 and will not render the State regulations less effective than the Federal regulations.

c. At K.A.R. 47-3-42(a)(43), Kansas proposed to add a clarifying statement to its adoption by reference of 30 CFR 773.15. The statement reads as follows:

Only in paragraph 30 CFR 773.15(b) shall the term "act" mean "surface mining control and reclamation act of 1977 (Pub. L. 95-87)" and amendments thereto. All other references to the term "act" in 30 CFR 773.15 shall be replaced with "state act."

The Director is approving the above added statement because it will not render the State regulations less effective than the Federal regulations.

d. At K.A.R. 47-3-42(a)(45), Kansas proposed to add a clarifying statement to its adoption by reference of 30 CFR 773.20. The statement reads as follows:

except in subsection (c)(2) "43 CFR 4.1370 through 4.1377, where OSM is the regulatory authority, or under the State program equivalent, where a state is the regulatory authority" shall be replaced by "K.A.R. 47-4-14a";

The Director is approving this added statement because K.A.R. 47-4-14a contains the State counterpart regulations to 43 CFR 4.1370 through 4.1377 and will not render the State regulations less effective than the Federal regulations.

e. In its adoption by reference of 30 CFR 773.24 at K.A.R. 47-3-42(a)(49), Kansas proposed to delete 30 CFR 773.24(a)(2) from its adoption by reference, replace "paragraphs (a)(1) or (a)(2)" in 30 CFR 773.24(b) with "paragraphs (a)(1) or (a)(3)," and replace Federal terms, references, and citations in 30 CFR 773.24 with the appropriate State terms and citations. Kansas also proposed to provide the State address where an individual may submit information on a challenge of the status of a State violation. The Director is approving these amendments.

f. At K.A.R. 47-3-42(a)(50), Kansas proposed to adopt by reference 30 CFR 773.25 as it existed on July 1, 1995, with exceptions that replace Federal terms and citations with the appropriate State terms and citations. In addition, Kansas proposed to replace 30 CFR 773.25(b) with K.A.R. 47-3-42(a)(50)(B) which authorizes the secretary of the Kansas

Department of Health and Environment or his designee to make decisions concerning ownership and control relationships with regards to Kansas coal mining applications, issued permits, and coal mining violations. The Director is approving these amendments.

4. K.A.R. 47-5-5a, *Civil Penalties*. a. At K.A.R. 47-5-5a(a), Kansas proposed to revise its adoption by reference of applicable Federal regulations concerning civil penalties at 30 CFR 845.11, 845.12, 845.13, 845.14, 845.15, 845.16, 845.17, 845.18, 845.19, and Part 846 from as they existed on July 1, 1990, to as they existed on July 1, 1995. Kansas also proposed in its adoption by reference to replace certain Federal terms and citations with the appropriate State terms and citations at paragraph (b). The Director is approving this adoption by reference.

b. At K.A.R. 47-5-5a(a)(10) that adopts by reference 30 CFR part 846, Kansas proposed to delete the phrase, "a Federal lands program," and to change the phrase, "Federal enforcement of a state program pursuant to section 521 of the act" to "enforcement of a state program pursuant to K.S.A. 49-405 of the state act." Kansas also proposed to adopt by reference 30 CFR 870.15(e)(1) through (e)(5), (f), and (g) as they relate to 30 CFR 845.18(d) with the exception of the sentence in paragraph (f) that specifies that "this penalty is in addition to the interest described in paragraph (c) of this section." The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

c. At K.A.R. 47-5-5a(b)(13) through (20), Kansas proposed to add more State terms and citations that will replace specified Federal terms and citations wherever they appear in the text of the Federal regulations concerning civil penalties that were adopted by reference under K.A.R. 47-5-5a. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

d. At K.A.R. 47-5-5a(c)(5), Kansas proposed to revise this paragraph to read as follows:

In civil penalty proceedings, the department shall have the burden of going forward to establish a prima facie case as to the fact of the violation, the amount of the civil penalty, and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

e. Kansas proposed to revise K.A.R. 47-5-5a(c)(7)(C), concerning the initial

order of the presiding officer. This revision would require the presiding officer to order the department to refund the appropriate amount to the person who made the payment. The department must remit the amount within 30 days of receipt of the order from the presiding officer that finds no violation or that reduces the penalty paid. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

f. Kansas proposed to revise K.A.R. 47-5-5a(c)(7)(D) by requiring that if the presiding officer increases the amount of the civil penalty above that of the proposed assessment, the presiding officer is to order payment of the appropriate amount within 15 days after an order increasing the civil penalty is mailed. The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

5. K.A.R. 47-6-3, *Permit Renewals*. At paragraph (a) Kansas proposed to revise its adoption by reference of 30 CFR 774.15 concerning permit renewals from as it existed on July 1, 1990, to as it existed on July 1, 1995. The Director is approving this amendment.

6. K.A.R. 47-6-4, *Permit Transfers, Assignments, and Sales*. At paragraph (b), Kansas proposed to revise its adoption by reference of 30 CFR 774.17 concerning permit transfers, assignments, or sales from as it existed on July 1, 1990, to as it existed on July 1, 1995. The Director is approving this amendment.

7. K.A.R. 47-6-6, *Permit Conditions*. At paragraph (a), Kansas proposed to revise its adoption by reference of 30 CFR 773.17 concerning permit conditions from as it existed on July 1, 1990, to as it existed on July 1, 1995. The Director is approving this amendment.

8. K.A.R. 47-6-8, *Termination of Jurisdiction*. At paragraph (a), Kansas proposed to revise its adoption by reference of 30 CFR 700.11, deleting subsections (a)(1) and (b), from as it existed on July 1, 1990, to as it existed on July 1, 1995. The deletion of subsections (a)(1) and (b) in Kansas' adoption by reference of 30 CFR 700.11 is previously approved language. The Director is approving this amendment.

9. K.A.R. 47-6-9, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*. At paragraph (a), Kansas proposed to revise its adoption by reference of 30 CFR 707.4, 707.5, 707.11, and 707.12 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

10. K.A.R. 47-6-10, *Exemption for Coal Extraction Incident to the Extraction of Other Minerals*. At paragraph (a), Kansas proposed to revise its adoption by reference of 30 CFR 702.1, 702.5, 702.10, 702.11, 702.12, 702.13, 702.14, 702.15, 702.16, 702.17, and 702.18 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

11. K.A.R. 47-7-2, *Coal Exploration*. At paragraph (a), Kansas proposed to revise its adoption by reference of 30 CFR 772.11, 772.12, 772.13, 772.14, and 772.15 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

12. K.A.R. 47-8-9, *Bonding Procedures*. At paragraph (a), Kansas proposed to revise its adoption by reference of 30 CFR 800.4 [deleting subsection (d)], 800.5 [deleting subsection (c)], 800.11 [deleting subsection (e)], 800.12 [deleting subsection (c)], 800.13, 800.14, 800.15, 800.16, 800.17, 800.20, 800.21, 800.30, 800.40, 800.50, and 800.60 [deleting subsection (d)] from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

13. K.A.R. 47-9-1, *Performance Standards*. a. At K.A.R. 47-9-1(a), Kansas proposed to revise its adoption by reference of 30 CFR 810.2, 810.4 [deleting subsection (a)], and 810.11 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference. At paragraph (a)(3), Kansas proposed to add an exception to the adoption of 30 CFR 810.11 which would replace "parts 815 through 828" with the State counterpart in K.A.R. 47-9-1. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994). Kansas also proposed to add paragraph (a)(5) which would replace the phrases "every state program" and "the applicable regulatory program" with "the regulatory program." The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

b. At K.A.R. 47-9-1(b), Kansas proposed to revise its adoption by reference at 30 CFR 815.13 and 815.15 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

c. At K.A.R. 47-9-1(c), Kansas proposed to revise its adoption by reference of 30 CFR Part 816 (excluding 30 CFR 816.10, 816.72, 816.73, and 816.107) from as it existed on July 1, 1990, to as it existed on July 1, 1995.

The Director is approving this adoption by reference.

i. At K.A.R. 47-9-1(c)(35), Kansas proposed to replace 30 CFR 816.101, backfilling and grading: time and distance requirements, in its adoption by reference of portions of 30 CFR part 816, with the following language:

(a) Except as provided in paragraph (b) of this section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

(1) Contour mining. Within 60 days or 1,500 linear feet following coal removal;

(2) Area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the active pit being worked, the spoil from the active pit constituting the first ridge; or

(3) Other surfacing mining methods. In accordance with the schedule established by the department.

(b) The department may extend the time allowed for rough backfilling and grading for the entire permit area or for a specific portion of the permit area if the permittee demonstrates in accordance with K.A.R. 47-3-42(a)(24), adopting by reference 30 CFR 780.18(b)(3) that additional time is necessary;

OSM's time and distance requirements at 30 CFR 816.101 were suspended indefinitely effective on August 31, 1992 (See 57 FR 33874, July 31, 1992). Therefore, States may adopt backfilling and grading time and distance standards which result in contemporaneous mining and reclamation as required by 30 CFR 816.100. The Director finds that Kansas' proposed provisions at K.A.R. 47-9-1(c)(35) are no less effective than the Federal requirements for contemporaneous reclamation at 30 CFR 816.100 and is approving this amendment.

ii. Kansas proposed to revise K.A.R. 47-9-1(c)(36), backfilling and grading: general requirements, by deleting subsections (k)(3) (i) and (ii) in its adoption by reference of 30 CFR 816.102. Kansas also proposed to delete the following statement:

The first paragraph of subsection (a) of 30 CFR 816.102 shall be replaced by the following: Absent an approved schedule, backfilling and grading will be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. Disturbed areas shall be backfilled and graded to comply with the following:

In addition, Kansas proposed to renumber existing paragraphs (c)(36) through (c)(50) as paragraphs (c)(37) through (c)(51), respectively. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

iii. At redesignated K.A.R. 47-9-1(c)(43), revegetation: standards for

success, Kansas proposed to delete previously approved language in paragraph (c)(2) that was added to its adoption by reference of 30 CFR 816.116 and editorial note "3." The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

iv. Kansas proposed to add requirements at K.A.R. 47-9-1(c)(43) in its adoption by reference of 30 CFR 816.116(a) and (c)(4). At 30 CFR 816.116(a), Kansas proposed to add paragraph (a)(3) regarding the submission of data being used for bond release. At 30 CFR 816.116(c)(4), Kansas proposed to add paragraph (i) concerning normal husbandry practices used to repair gullies. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994). However, in the previous approval, paragraph (a)(3) was formerly paragraph (a)(2)(i).

v. At K.A.R. 47-9-1(c)(46) in its adoption by reference of 30 CFR 816.133, postmining land use, Kansas proposed to delete subsection (d). The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

d. At K.A.R. 47-9-1(d)(3), Kansas proposed to add a paragraph that 30 CFR 816.107, backfilling and grading: steep slopes, was deleted from its adoption by reference of 30 CFR Part 816. The Director is approving this added language because Kansas does not have steep slope mining.

e. At K.A.R. 47-9-1(e), Kansas proposed to revise its adoption by reference at 30 CFR Part 817 from as it existed on July 1, 1990, to as it existed on July 1, 1995. The Director is approving this adoption by reference.

i. In its adoption by reference of 30 CFR 817.61 at K.A.R. 47-9-1(e)(17), Kansas proposed to delete everything from 30 CFR 817.61(c)(1) except the statement, "all blasting operations shall be conducted under the direction of a certified blaster." The Director previously approved this deletion (See 59 FR 28769, June 3, 1994).

ii. Kansas proposed to add an additional requirement at K.A.R. 47-9-1(e)(39) in its adoption by reference of 30 CFR 817.116(a). At K.A.R. 47-9-1(e)(39), Kansas proposed to add new subparagraph (a)(3), regarding the submission of data being used for bond release, at the end of the adopted Federal regulations at 30 CFR 817.116(a). While the Federal regulations do not provide similar detailed requirements regarding submission of data used for bond release, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the

discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are no less stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director is approving this proposed revision at K.A.R. 47-9-1(e)(39).

iii. In its adoption by reference of 30 CFR 817.133, postmining land use, at K.A.R. 49-9-1(e)(44), Kansas proposed to delete subsection (d). The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

f. At K.A.R. 47-9-1(f), Kansas proposed to revise its adoption by reference of 30 CFR Part 819, excluding 30 CFR 819.1, from as it existed on July 1, 1990, to as it existed on July 1, 1995. The Director is approving this adoption by reference.

g. At K.A.R. 47-9-1(g), Kansas proposed to revise its adoption by reference of 30 CFR 823.4, 823.11 [deleting subsection (a)], 823.12, 823.14, and 823.15 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference with the deletion of 30 CFR 823.11(a). The deleted Federal regulation excludes coal preparation plants, support facilities, and roads of underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land from being subject to prime farmland performance standards. Because Kansas did not incorporate the adoption by reference of 30 CFR 823.11(a) into its regulation, the above underground facilities are now subject to Kansas' prime farmland performance standards.

h. At K.A.R. 47-9-1(h), Kansas proposed to revise its adoption by reference of 30 CFR 827.11, 827.12, and 827.13 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference.

i. At K.A.R. 47-9-1(i), Kansas proposed to revise its adoption by reference of 30 CFR 828.11 and 828.12 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference.

j. At K.A.R. 47-9-1(j), Kansas proposed to revise its list of terms that replace terms in the Federal regulations

adopted by reference under K.A.R. 47-9-1. At paragraph (j)(8), any reference to "Part 816" is replaced by "K.A.R. 47-9-1(c)." At paragraph (j)(9), any reference to "Part 817" is replaced by "K.A.R. 47-9-1(e)." The Director is approving this revision because the replacement terms are the State counterpart regulations to the replaced Federal regulations.

14. K.A.R. 47-9-4, *Interim*

Performance Standards. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Parts 710, 715, and 716 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

15. K.A.R. 47-10-1, *Underground Mining.* At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR parts 783 and 784 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment. Kansas further proposed to list the actual Federal regulation sections adopted rather than listing the sections that it chose not to include in its adoption by reference of 30 CFR parts 783 and 784. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

16. K.A.R. 47-11-8, *Small Operator Assistance Program.* At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR part 795 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

17. K.A.R. 47-12-4, *Lands Unsuitable for Surface Mining.*

a. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR parts 761, 762, and 764 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

b. Kansas proposed to revise paragraph (a)(6), which adopts 30 CFR 762.12 by reference, by specifying that the term "secretary" shall mean the "secretary of the United States Department of the Interior." The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

18. K.A.R. 47-13-4, *Training and Certification of Blasters.* a. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR part 850 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

b. Kansas proposed to remove existing paragraphs (b)(2) and (b)(3) and to redesignate existing paragraphs (b)(4) and (b)(5) as paragraphs (b)(2) and (b)(3), respectively. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994). Kansas also proposed to redesignate paragraph (b)(6) as paragraph (c). The Director is approving this amendment.

19. K.A.R. 47-14-7, *Employee Financial Interests.* At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Part 705 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

20. K.A.R. 47-15-1a, *Inspection and Enforcement.* a. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Parts 840, 842, and 843 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

b. At paragraph (b), Kansas proposed to revise its list of terms that replaces terms in the Federal regulations adopted by reference under K.A.R. 47-15-1a by adding paragraphs (b)(20) and (b)(21). Paragraph (b)(20) specifies that the term "Director" shall be replaced by "secretary." Paragraph (b)(21) specifies that the reference to "30 CFR 843.15(e)" shall be replaced by "An informal public hearing shall be conducted in accordance with K.A.R. 47-4-14a." The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

D. Revisions to Kansas' Regulations That Are Substantively the Same as the Corresponding Provisions of the Federal Regulations

1. K.A.R. 47-4-14a(c), *Administrative Hearing Procedures—Rules of Procedure.* a. At paragraph (c)(1), Kansas proposed to require that hearing locations be designated by the presiding officer, giving consideration to the convenience of the parties, their representatives and witnesses, except as otherwise provided by the state act. The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

b. At paragraphs (c)(7) and (c)(7)(B), Kansas proposed that persons "may" petition for leave to intervene in a proceeding as opposed to persons "shall" petition for leave to intervene in a proceeding. Kansas also proposed that the presiding officer make a decision to grant intervention based on factors listed at K.A.R. 47-4-14a(c)(7)(B)(i)-(iv) if subsections (7)(A)(i) or (7)(A)(ii) are

not applicable. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

c. Kansas proposed to revise paragraph (c)(8) to read as follows:

Voluntary dismissal. Any party who initiated a proceeding may withdraw it by moving to dismiss. The presiding officer grant such motion.

The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

d. At paragraph (c)(11), Kansas proposed to provide that any person that fails to file a responsive pleading by the required time "may" be deemed to have waived his right to a hearing. Kansas also proposed to add that unless all parties who are entitled to a hearing waive such rights or are deemed to have waived such rights, a hearing shall be held. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

E. Revisions to Kansas' Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. K.A.R. 47-4-14a, *Administrative Hearing Procedures.* a. At K.A.R. 47-4-14a(c)(2), Kansas proposed to change the information regarding where to file administrative hearing documents. All documents are to be filed with the administrative appeals section of the Kansas Department of Health and Environment, Suite 400D, 109 SW 9th, Topeka, Kansas 66612-1215. The Director is approving this change because it only updates the information as to where to file administrative hearing documents and will not render the Kansas program less effective than the Federal regulations.

b. At K.A.R. 47-4-14a(c)(4), Kansas proposed to change the recipient of the notices of appeals or petitions for reviews from the "office of legal services" to the "administrative appeals section." The Director is approving this change because it only updates the information concerning who the recipient of these documents is and will not render the Kansas program less effective than the Federal regulations.

c. At K.A.R. 47-4-14a(d)(2)(C), Kansas proposed to change the word "shall" to the word "may," regarding the right of any party to petition for the disqualification of a presiding officer. The Director previously approved this wording change (See 58 FR 32847, June 14, 1993).

d. At K.A.R. 47-4-14a(d)(2)(D), Kansas proposed to add a new provision concerning disqualification of a presiding officer that reads as follows:

In the event that the presiding officer fails to grant a petition for disqualification, the petitioning party may file an affidavit of personal bias or disqualification with substantiating facts, and the matter of disqualification shall be determined by the secretary.

The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

e. At K.A.R. 47-4-14a(d)(3), Kansas proposed to revise this paragraph to state that the presiding officer designated to conduct the hearing "may" conduct a prehearing conference. The Director previously approved this wording change (See 58 FR 32847, June 14, 1993).

f. At K.A.R. 47-4-14a(d)(3)(A), Kansas proposed to correct the incorrect reference citation. The Director previously approved this correction (See 58 FR 32847, June 14, 1993).

2. K.A.R. 47-6-2, *Permit Revision*. At paragraph (c), Kansas proposed to add a provision that applications for permit revisions only need to be accompanied by a map "when it is required." The Director is approving this provision because it is not inconsistent with the Federal regulations and will not render the Kansas regulations less effective than the Federal regulations.

3. K.A.R. 47-6-7, *Permit Suspension or Revocation*. a. At paragraph (e), Kansas proposed that the procedure set forth in K.A.R. 47-4-14a(d) shall be followed regarding a proceeding to suspend or revoke a permit "except as provided for in this regulation." At paragraph (h)(2), Kansas proposed that the procedure set forth in K.A.R. 47-4-14a(d)(14) is to be followed regarding appeals pertaining to suspended or revoked permits "except as provided for in this regulation." The Director is approving these amendments because they will not render the State regulations less effective than the Federal regulations.

b. Kansas proposed to revise paragraph (h)(1) by requiring a party to file a notice of appeal of an initial order in a suspension or revocation proceeding with the secretary within 15 days after receipt of the order. This revision is no less effective than the

Federal regulation at 43 CFR 4.1377 which allows a party to petition for discretionary review of initial decisions.

4. K.A.R. 47-5-5a, *Civil Penalties*. At paragraph (b)(17), Kansas proposed to update the address where individuals file a petition for review of a proposed individual civil penalty assessment. The new address is "Administrative Appeals Coordinator, Administrative Appeals Section, Office of the Secretary, Kansas Department of Health and Environment, Mills Building, Suite 400D, 109 SW 9th Street, Topeka, Kansas 66612-1215." The Director is approving this amendment.

F. Revisions to Kansas' Regulations With No Corresponding Federal Regulations

1. K.A.R. 47-4-14a, *Administrative Hearing Procedure*. a. At paragraph (d) regarding formal hearings, Kansas proposed to remove the phrase "except as otherwise provided by subsections (e), (f), and (g)." The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

b. Kansas proposed to revise paragraph (d)(6)(E)(iii) and to add paragraph (d)(6)(E)(iv). At paragraph (d)(6)(E)(iii), Kansas proposed that notice of administrative hearings under this subsection may include all types of information provided in sections (d)(6)(A) through (D) or may consist of a brief statement indicating the subject matter, parties, time, place where the hearing will be held, locations where the general public may meet for hearings which are conducted electronically, nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer. At paragraph (d)(6)(E)(iv), Kansas proposed a provision that requires notice of a formal hearing to be posted at the surface mining section office and, where practicable, be published in a newspaper of general circulation in the area of the mine at least seven days prior to the hearing. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

c. At K.A.R. 47-4-14a(d)(15), Kansas proposed to allow the presiding officer or secretary or secretary's designee to take action on a petition for stay either before or after the effective date of an initial or final order. The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

2. K.A.R. 47-4-15, *Administrative Hearings; Discovery*.

Kansas proposed to add an introductory statement regarding discovery in administrative hearings: "Discovery shall be permitted to the extent allowed by the presiding officer or as agreed to by the parties." The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

Kansas Abandoned Mine Land Reclamation Plan

A. Regulations With Editorial Changes

Kansas proposed minor wording changes, paragraph notation changes, citation corrections and other editorial changes in the following sections of the K.A.R.: 47-16-1, eligible lands and water; 47-16-2, reclamation project evaluation; 47-16-3, consent to entry; 47-16-4, entry for study or exploration; 47-16-5, entry for consent to reclaim; 47-16-6, liens; 47-16-7, appraisals; and 47-16-8, satisfaction of liens.

Because Kansas' proposed revisions to these previously approved regulations are nonsubstantive in nature, the Director finds that the proposed revisions do not render Kansas' regulations less effective than the Federal regulations. Substantive revisions included in these regulations are summarized below.

B. Revisions to Kansas' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State regulations and the Federal regulations are nonsubstantive.

Topic	State regulation	Federal counterpart regulation
General Reclamation Requirements-Contractor Responsibility	K.A.R. 47-16-9	30 CFR 874.16.
Noncoal Reclamation-Exclusion of Certain Noncoal Reclamation Sites	K.A.R. 47-16-10	30 CFR 875.16 and 875.20.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Kansas' proposed regulations are no less effective than the Federal regulations and is approving them.

C. Revisions to Kansas' Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

1. K.A.R. 47-16-5, Entry and Consent to Reclaim. Kansas proposed to revise paragraph (b)(1) to read as follows:

(1) Before entry a written finding shall be made by the Secretary with reasons supporting the following conclusions: (A) An emergency exists constituting a danger to the public health, safety, or general welfare; and (B) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

The Director is approving this amendment because Kansas proposed to replace at K.A.R. 47-16-5(b)(1) the reference to section 410 of SMCRA that defines when an emergency exists with the actual language of section 410 of SMCRA that defines when an emergency exists.

2. K.A.R. 47-16-11, *Reports*. Kansas proposed a new section which specifies that for each grant, cooperative agreement or both, Kansas shall semiannually or annually (whichever the case may be) submit to OSM any reporting as required by OSM. The Director is approving this amendment because it is no less effective than the Federal regulations at 30 CFR 886.23 and the requirements of the Federal Assistance Manual.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Kansas program (Administrative Record No. KS-615.1). OSM received one comment from the U.S. Fish and Wildlife Service stating that it had no comments to offer on the proposed state regulations (Administrative Record No. KS-615.2).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed

program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kansas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. KS-615.1). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. KS-615.1). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Kansas on May 7, 1997, and as revised on November 14 and December 31, 1997.

The Director approves the regulations as proposed by Kansas with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 916, codifying decisions concerning the Kansas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed

by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on

local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 23, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 916 is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 916.15 Approval of Kansas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
May 7, 1997	March 3, 1998	K.A.R. 47-1-1, 3, 4, 8, 9, 10, 11; 47-2-14, 21, 53, 53a, 58, 64, 67, 74, 75; 47-3-1, 2, 3a, 42; 47-4-14a, 47-4-15; 47-4-16; 47-4-17; 47-5-5a; 47-5-16; 47-6-1, 2, 3, 4, 6, 7, 8, 9, 10; 47-7-2; 47-8-9, 11; 47-9-1, 2, 4; 47-10-1; 47-11-8; 47-12-4; 47-13-4, 5, 6; 47-14-7; 47-15-1a; 47-15-3, 4, 7, 8, 15, 17.

3. Section 916.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 916.25 Approval of Kansas abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
May 7, 1997	March 3, 1998	K.A.R. 47-16-1 through 47-16-11.

[FR Doc. 98-5392 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-036-FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Texas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to statutes pertaining to eligibility of land and water, small operator assistance, definitions, exemptions, applicability to governmental units, coal exploration

operations, prohibition on surface coal mining in certain areas, filing of a schedule of notices of violation, effect of past or present violation, improvidently issued permits, performance standards, and cessation orders. The amendment is intended to revise the Texas program to be consistent with SMCRA.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa Oklahoma 74135-6548, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Texas Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR

12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TX-643), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to amend the Texas Surface Coal Mining and Reclamation Act (TSCMRA) to reflect changes resulting from the passage of Senate Bills (SB) 636 and 898 by the 75th Texas Legislature.

OSM announced receipt of the proposed amendment in the December 29, 1997, **Federal Register** (62 FR 67596), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on January 28, 1998. Because no one requested a public hearing or meeting, none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to the Texas Abandoned Mine Land Program (SB636)

At section TSCMRA § 134.142, Texas proposed to remove its existing criteria at paragraphs (1) through (3) for determining if land and water are eligible for reclamation or abatement under its abandoned mine land reclamation program and add the following new criteria:

Land and water are eligible for reclamation or abatement expenditures under this subchapter if the land and water are eligible for reclamation or abatement expenditures under the federal act.

The criteria Texas proposed to remove from its statutes are substantially the same as those at section 404 of SMCRA. Removing these existing criteria and adding criteria that bases eligibility of land and water for reclamation or abatement expenditures on criteria delineated in SMCRA is not inconsistent with SMCRA, and does not render the Texas statutes less stringent than SMCRA. Therefore, the Director is approving Texas' proposed changes at section 134.142.

B. Revisions to Texas' Regulatory Program

1. TSCMRA § 134.004 Definitions (SB 898)

Texas proposed to add the following definition for the term "applicant" at § 134.004(3) and to renumber the existing definitions to reflect this addition:

Applicant means a person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities under this chapter.

The definition for "applicant" at section 701(16) of SMCRA does not include the term "legal entity." However, Texas' proposal to include the term "legal entity" in its definition of "applicant" is not inconsistent with SMCRA and does not render the Texas statutes less stringent than SMCRA.

2. TSCMRA § 134.005 Exemptions (SB 898)

Texas proposed to remove § 134.005(a)(2), which is the exemption for extraction of coal for commercial purposes if the surface mining operation affects two acres or less, and to renumber existing paragraph (3) as (2) to reflect this deletion.

On May 7, 1987, section 528(2) of SMCRA was amended to remove the exemption on surface coal mining operations affecting two acres or less ([101 STAT. 300] SMCRA Title II—Two-Acre Exemption, Section 201 Repeal of Exemption (a)(2)). Because any State law or regulation allowing a two-acre exemption was rendered ineffective, the Director approved Texas' proposal to recodify § 134.005(a)(2), in the January 30, 1997, **Federal Register** (62 FR 4453), with the recommendation that Texas should remove the exemption from its statutes to prevent confusion and as a housekeeping measure. Therefore, the Director finds that Texas' proposal to remove § 134.005(a)(2) from its statutes does not render the Texas statutes less stringent than SMCRA.

3. TSCMRA § 134.008 Applicability to Governmental Units (SB 898)

Texas proposed to add the following provision at section 134.008:

An agency, unit, or instrumentality of federal, state, or local government, including a publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to this chapter shall comply with this chapter.

Texas' proposed provision is substantially the same as section 524 of SMCRA. Therefore, the Director finds Texas' proposal is no less stringent than the counterpart SMCRA provision.

4. TSCMRA § 134.014 Coal Exploration Operations (SB 898)

Texas proposed to add the following new provision at 134.014(b), and redesignate existing (b) to (c):

A person who conducts coal exploration operations that substantially disturb the natural land surface in violation of this section or a rule adopted under this section is subject to §§ 134.174 through 134.181.

Texas' proposed new provision (b) is substantially the same as section 512(c) of SMCRA. Therefore, the Director finds that proposed § 134.014(b) is no less stringent than the counterpart SMCRA provision.

5. TSCMRA § 134.022 Prohibitions on Surface Coal Mining in Certain Areas (SB 898)

Texas proposed to recodify Article 5920–11, Section 33(e), Vernon's Texas Civil Statutes (Vernon's), to § 134.022(c) and to revise the language of the provision by changing the date relating to valid existing rights from May 9, 1979, to August 3, 1977.

In the January 30, 1997, **Federal Register** (62 FR 4451), Texas' proposal to extend the date relating to valid existing rights to May 9, 1979, and to recodify Article 5920–11, Section 33(e) (Vernon's) to § 134.022(c), was disapproved, and the Director required Texas to remove the unapproved provision from its recodified statutes and to restore its previously approved statute language. The proposal now under consideration establishes August 3, 1977, as the date relating to valid existing rights. This is the same date as that established by section 522(a)(6) SMCRA. Therefore, the Director finds Texas' proposal is no less stringent than the counterpart SMCRA provision, and she is approving it.

6. TSCMRA § 134.056 Small Mine Exemption (SB 636)

At § 134.056(2), Texas proposed to increase the amount of probable total annual production allowed for surface coal mining operators under its small operator assistance program from 100,000 to 300,000 tons.

Section 507(c)(1) of SMCRA also establishes 300,000 tons of probable total annual production as the coal production figure for operators to qualify for small operator assistance. Therefore, Texas' proposal is no less stringent than the requirements of SMCRA.

7. TSCMRA § 134.068 Schedule of Notices of Violation (SB 898)

Texas proposed to replace Article 5920–11, Section 21(c) (Vernon's), with new § 134.068 which reads as follows:

(a) The applicant shall file with the application a schedule listing any notices of violations of this chapter, the federal Act, a federal regulation or federal or state program adopted under the federal Act, or another law, rule, or regulation of the United States, this state, or a department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a surface coal mining operation during the three years before the application date.

(b) The schedule must indicate the final resolution of any notice of violation.

Texas' proposed language at new 134.068 is substantially the same and no less stringent than the language at

section 510(c) of SMCRA pertaining to permit applicant filing of a schedule of notices of violation. Therefore, the Director is approving replacement of Article 5920-11, Section 21(c) with new section 134.068.

8. TSCMRA § 134.069 Effect of Past or Present Violation (SB 898)

a. *TSCMRA § 134.069(a)*. Texas proposed to amend § 134.069(a) by removing paragraph (2), which allows the commission to issue a permit to an applicant who has an unabated violation if the applicant is contesting the violation.

The provisions relating to applicant filing of a schedule listing notices of violation at section 510(c) of SMCRA do not include a provision that would allow issuance of a permit if the applicant is contesting a violation. Therefore, Texas' proposal is no less stringent than the requirements of SMCRA.

b. *TSCMRA § 134.069(b)*. Texas proposes to amend § 134.069(b) by adding language that references Chapter 134 and other laws in § 134.068 in relation to a demonstrated pattern of willful violations. The other laws referenced in § 134.068 include the federal Act, a federal regulation or federal or state program adopted under the federal Act, or another law, rule, or regulation of the United States, this state, or a department or agency in the United States pertaining to air or water environmental protection.

The federal counterpart provisions to § 134.069(b) at section 510(c) of SMCRA also include references to the Act and other laws, rules, and regulations of the United States or any other department or agency in the United States. Therefore, Texas' proposal is not inconsistent with SMCRA and would not render the Texas statutes less stringent than SMCRA.

9. TSCMRA § 134.084 Suspension or Rescission of Improvidently Issued Permit (SB 898)

a. *TSCMRA § 134.084(a) and (b)*. Article 5920-11, Section 21a (Vernon's), authorizes the Commission to adopt and enforce rules relating to suspension or rescission of improvidently issued permits that are consistent with and no less effective than Federal regulations adopted under SMCRA. Texas proposed to replace Article 5920-11, Section 21a, with language that is substantively the same at new § 134.084(a) and (b). SMCRA section 201(c)(1), states that permits shall be suspended, revoked, or withheld for failure to comply with any of the provisions of SMCRA or any rules and regulations adopted pursuant

thereto. Therefore, the Director finds Texas' proposal is not inconsistent with SMCRA and does not render the Texas statutes less stringent than SMCRA.

b. *TSCMRA § 134.084(c) and (d)*. Article 5920-11, Section 6(b) (Vernon's) provides for Texas to issue a notice of permit suspension or rescission of an improvidently issued permit without first conducting a formal adjudicative proceeding under the Texas Administrative Procedure Act (Chapter 2001, Government Code), while still allowing the permittee to file an appeal for administrative review of Texas' decision to suspend or rescind a permit. Texas proposed to replace Article 5920-11, Section 6(b) with language that is substantively the same at 134.084(c) and (d).

The general authority for suspension or revocation (rescission) of permits is found at section 201(c)(1) of SMCRA. The Federal regulation provisions at 30 CFR 773.21(a) provide for an automatic permit suspension and rescission process and 30 CFR 773.20(c)(2) requires regulatory authorities to give permittees the opportunity to request administrative review of a notice of suspension or rescission of an improvidently issued permit. Therefore, the Director finds Texas' proposal to replace Article 5920-11, Section 6(b) with language that is substantively the same at new § 134.084(c) and (d) is not inconsistent with SMCRA or the Federal regulations and is approving it.

10. TSCMRA § 134.092 Performance Standards (SB 898)

At section 134.092(a)(2), Texas proposed to add the language, "all highwalls, spoil piles, and" after the word "with" in the phrase "to restore the approximate original contour of the land with depressions eliminated."

Texas' proposed language is similar to the provisions at section 515(b)(3) of SMCRA concerning restoration of approximate original contour. Therefore, Texas' proposal is not inconsistent with SMCRA and does not render the Texas statutes less stringent than SMCRA.

11. TSCMRA § 134.163 Terms of Cessation Order

At § 134.163(1), Texas proposed to add the language, "condition, practice, or" after the word "the" in the phrase "determines the violation has been abated."

Texas' existing provisions at section 134.163 were approved by the Director in the January 30, 1997, **Federal Register** (62 FR 4451), with the Director's understanding that Texas may amend section 134.163 to refer to "the

condition, practice, or violation" in order to more closely track the language of SMCRA at section 521(a)(2) and the Texas implementing regulation at TCMR 843.680(c). The language Texas proposed is that which the Director understood might be proposed to make the Texas statutes more closely track SMCRA and Texas' implementing regulation at TCMR 843.680(c). Therefore, Texas proposal is not inconsistent with SMCRA and it does not render the Texas statutes less stringent than SMCRA.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX-643.03).

By letter dated December 24, 1997 (Administrative Record No. TX-643.05), the U.S. Army Corps of Engineers commented that it found the changes to be satisfactory.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. TX-643.01). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. 643.02).

Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on December 1, 1997.

The Director approves the statutes as proposed by Texas with the provision that they be fully promulgated in identical form to the statutes submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by

a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
December 1, 1997	March 3, 1998	TSCMRA 134.004(3); 134.005(a)(2); 134.008; 134.014(b); 134.022(c); 134.056(2); 134.068; 134.069(a)(2) and (b); 134.084(a) through (d); 134.092(a)(2); 134.163(1). Vernon's Texas Civil Statutes Article 5920–11, Sections 6(b), 21(c), 33(e) and 21a.

3. Section 943.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

* * *	* * *	* * *
Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
December 1, 1997	March 3, 1998	TSCMRA 134.142.

[FR Doc. 98-5390 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Parts 500, 505 and 515****Foreign Assets Control Regulations; Regulations Prohibiting Transactions Involving the Shipment of Certain Merchandise Between Foreign Countries; Cuban Assets Control Regulations; Civil Penalty Administrative Hearings****AGENCY:** Office of Foreign Assets Control, Treasury.**ACTION:** Final rule.

SUMMARY: The Treasury Department amends the Foreign Assets Control Regulations and the Cuban Assets Control Regulations to add procedures for the conduct of administrative hearings in civil penalty cases and for settlement of civil penalty cases in lieu of administrative hearings. A conforming amendment is made to the Transaction Control Regulations. The final rule is issued after consideration of public comments received on the proposed rule published in the February 14, 1997 **Federal Register**.

EFFECTIVE DATE: This final rule is effective April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott, Chief, Civil Penalties Program (tel.: 202/622-6140), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:**Electronic and Facsimile Availability**

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512-1387 and type "/GO FAC," or call 202/512-1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem, dial 703/321-3339, and select the appropriate self-expanding file in TEL. For Internet

access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = <http://www.fedworld.gov>; FTP = <ftp.fedworld.gov> (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: <http://www.ustreas.gov/treasury/services/fac/fac.html>, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

The Foreign Assets Control Regulations, 31 CFR part 500, and the Cuban Assets Control Regulations, 31 CFR part 515 (jointly, the "Regulations"), are amended to provide for detailed procedures governing administrative hearings, as provided in section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001-6010 — the "CDA"). A conforming amendment is made to § 505.50 of the Regulations Prohibiting Transactions Involving the Shipment of Certain Merchandise Between Foreign Countries, 31 CFR part 505, which incorporates by reference the penalty provisions of part 500. Because the CDA amends section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16) to permit the imposition of civil monetary penalties and civil forfeiture with opportunity for hearing and discovery, subpart G of the Regulations is revised to establish the procedures governing administrative hearings.

This final rule addresses the comments received during the public comment period and establishes the Office of Foreign Assets Control's ("OFAC") civil penalties administrative hearing process.

Response to Public Comments

On February 14, 1997, OFAC requested public comments on proposed rules (31 CFR Parts 500, 505 and 515). OFAC received two letters commenting on the proposed hearing procedures. The commenters were Lonnie Ann Pera, Esq., of Zuckert, Scoutt & Rasenberger, L.L.P., and D.E. Wilson, Jr., Esq., of Lane & Mittendorf LLP. A number of procedural and substantive changes have been made to improve clarity and to reflect concerns raised in the comments submitted.

In response to the suggestion of one commenter, the sections have been renumbered to create new headings to facilitate use of the regulations. In the discussion below, the new headings are

used with the previous heading listed in parentheses. The comments below apply equally to part 500 and 515, but, because the sections are identical, reference is made only to part 500.

Section 550.701(b)*Criminal Penalty Increase:*

One commenter suggested that more information about increased criminal fines for violations of the Trading with the Enemy Act pursuant to 18 U.S.C. 3571 be included. Further information is provided.

Section 500.702*Calendar Days:*

Both commenters raised a number of procedural points requesting clarification of filing and service requirements. Many of their suggestions have been incorporated into the final rule. Filing deadlines are now specifically counted in terms of calendar days, unless otherwise noted.

Notice in the Prepenalty Notice of Waiver of Discovery:

One commenter believed that the prepenalty notice should specifically inform the respondent that a request for discovery must be included in the response or the right to discovery is waived. This additional notice to the respondent is now included in § 500.702(b)(2)(iii). The second commenter stated that the waiver of respondent's rights to discovery and hearing where the respondent has filed in an untimely manner was "draconian." OFAC disagrees. Prepenalty notices and OFAC regulations clearly set out deadline requirements which respondents must satisfy.

Service:

One commenter stated that § 500.702(c)(3) should require the individual serving the prepenalty notice to sign and to indicate on the certificate the date on which the prepenalty notice was served. The paragraph has been amended to require that the certificate include both the server's signature and the date of service.

Section 500.703*Notice of Address Change:*

Each respondent is required to provide a name and address for service. One commenter asked that OFAC define the term "interested parties" found in section 703(b)(1)(iii), which contains the requirement for accurate address information. The commenter requested that the possible sanctions for failure to comply with this provision be specifically set forth in the regulations. OFAC has changed the term "interested

parties" to "parties" to clarify who must be notified of address changes. The imposition of sanctions for failure to comply with this requirement is committed to the discretion of the Administrative Law Judge. Consistent with the Administrative Procedure Act, 5 U.S.C. ch. 5 and 7 (the "APA"), the Administrative Law Judge has the authority to conduct the hearing including the authority to "regulate the course of the hearing and the conduct of the parties and their counsel." § 500.706(b)(5).

One commenter believed that if a respondent is represented by counsel, OFAC need only know the current name, address and telephone number of respondent's counsel and that notice only need be sent to the parties' counsel. OFAC agrees it is sufficient for a party represented by counsel to have the counsel provide the appropriate name, address, and facsimile machine and telephone numbers. This provision has been amended accordingly.

Informal Settlement:

One commenter stated it was not clear whether OFAC would or could toll the 30 calendar day response period during settlement discussions and requested clarification regarding the required mechanism for tolling the response period under § 500.703(b)(3). OFAC believes that the provision is clear. There is no automatic tolling of the 30-day response period during settlement discussions. A respondent engaged in settlement discussions for 29 calendar days may not break off discussions on day 29 and then receive 29 additional calendar days to file a response to the prepenalty notice. In this example, the respondent would have only one remaining calendar day left in which to file a response absent a clear agreement with OFAC to the contrary. Where OFAC has responded affirmatively in writing that the 30 calendar day response period has been tolled for ongoing settlement discussions, the respondent will be informed in writing of the new deadline for responding.

Section 500.705

Admissibility of Information into the Record:

One commenter expressed concern over the admissibility of evidence into the record. OFAC has amended the language to emphasize that information will be admissible into the record to the extent that the Administrative Law Judge deems it admissible pursuant to § 500.715.

Signature of a Requesting Party:

One commenter objected to OFAC's double signature requirement on a

request for hearing. Under the proposed regulations, § 500.705(c) required both respondent's signature and respondent's counsel's signature on the request for hearing. OFAC agrees this is unnecessary and has amended this requirement to allow signature either by respondent or, if represented, by respondent's counsel.

Section 500.706

Notice of Appearance:

Both commenters sought clarification concerning the requirement for notice of appearance and representation before the Administrative Law Judge. The provision has been amended to reflect OFAC's intent that parties or their counsel provide written notice to the Administrative Law Judge that they are either a party or counsel to a party in the proceeding before the judge. The notice of appearance must be provided to the Administrative Law Judge. No particular format is required for the notice of appearance.

Section 500.709 (proposed § 500.706)

Motions, Interlocutory Appeals, Notice of Change of Address:

Both commenters supported the use of facsimile transmissions and private expedited mail services to facilitate respondents' efforts in meeting filing deadlines. One commenter questioned how the Administrative Law Judge would be able to serve the parties with a decision by certified mail and leave the parties sufficient time to respond with an interlocutory appeal. Citing delivery problems with certified mail in particular areas of the country, the commenter stated that the parties may not learn of the decision until just before, or possibly even after, the expiration of the 10-day period for appealing the decision. OFAC has amended these provisions. Parties or the Administrative Law Judge may serve or file copies of signed and dated documents by facsimile transmission, courier, or other expedited means, provided that the original, signed document is also sent concurrently by registered or certified mail, return receipt requested. The date stated in the date-stamped registered or certified mail postal receipt constitutes the filing or service date.

Section 500.707 (proposed § 500.706(g))

Interlocutory Appeal:

One commenter asked for more precise instructions in filing an interlocutory appeal. The commenter also asked for a model form. The Administrative Law Judge has the authority to provide particularized instructions of this nature.

500.706(e)

Ex Parte Communications:

One commenter noted that the terms referring to "party," "party's counsel," "respondent," and "any other individual" were used but not interchangeably. OFAC agrees with the commenter and the paragraph has been amended to achieve more consistent usage of these terms.

Section 500.710(e) (proposed § 500.706(k)(5))

Exemptions from Discovery:

One commenter suggested that OFAC was treating as undiscoverable Executive orders dealing with the treatment of national security information even where the President has decided that certain of such orders are not classified. This is not OFAC's position. This section provides for withholding information requested in discovery where a privilege is asserted. One available privilege applies to classified information. Unclassified documents would not qualify for this privilege.

The other commenter felt that a respondent would be compelled to submit interrogatories before OFAC had time to set a hearing date. The commenter suggested that the filing deadlines were already strict and asserted that requiring respondent to serve interrogatories in advance of scheduling a hearing date would prove "unduly burdensome" for the respondent. OFAC does not agree. A respondent has 30 calendar days in which to respond to an OFAC prepenalty notice and request a hearing and discovery. Once the response is served upon OFAC, an Administrative Law Judge will be assigned the case. The Administrative Law Judge will set the hearing date, not OFAC. When the procedural schedule is not prescribed under the regulations, the Administrative Law Judge has the authority to establish the schedule. The Administrative Law Judge may, for example, convene a pre-hearing conference to respond to scheduling burdens being experienced by the parties.

Section 500.711 (proposed § 500.706(l)(5))

Summary Disposition:

One commenter suggested that a respondent might not receive the Administrative Law Judge's recommended decision for summary dismissal in sufficient time to file an interlocutory appeal. The commenter also requested that the regulations clarify whether the appeal is due within

20 days after the date of the Administrative Law Judge's decision or after the date respondent receives the recommended decision.

OFAC agrees with the commenter's concerns and the need for greater clarity on this point. Service by the Administrative Law Judge upon the parties of recommended decisions and other orders might be delayed by the use of U.S. certified mail, and this may impose hardships upon the parties. This and other provisions have been amended to provide for delivery of the Administrative Law Judge's signed and dated recommended decisions and other orders by facsimile transmission, courier, or other expedited means, concurrent with service by U.S. certified mail. Section 500.711(e)(proposed § 500.706(l)(5)) has been changed to clarify that an appeal from the Administrative Law Judge's recommended decision for summary disposition is due within 20 days of the date of the judge's decision.

Section 500.713 (proposed § 500.706(o))

Public Hearing:

One commenter suggested that the term "notice" required clarification. OFAC has amended the language to include a specific reference to the "notice of hearing from the Administrative Law Judge." § 500.713(a). Thus, within 20 calendar days of the Administrative Law Judge's notice of hearing, any party may file a motion with the judge requesting a closed hearing.

Section 500.715(g) (proposed § 500.706(q)(7))

Costs of Depositions:

One commenter requested that OFAC specify exactly which costs of a deposition the requesting party must pay. OFAC believes that the regulations are clear. All costs of depositions shall be borne by the party requesting the deposition. Should a party requesting a deposition object to fees or travel expenses sought by the deponent, the requesting party may seek a ruling by the Administrative Law Judge. Pursuant to § 500.706(b)(4) and (12), the Administrative Law Judge has the authority to cause depositions to be taken and to set fees and expenses for witnesses, including expert witnesses.

One commenter asked that the term "unavailable" be defined for purposes of § 500.715(g). The commenter suggested that the respondent must know whether a deposition is appropriate if a person cannot attend the hearing because of a conflict, or whether the witness must meet the

"unavailability" requirements of the Federal Rules of Evidence before the respondent may take a deposition. While the Federal Rules of Evidence do not generally apply to this administrative hearing process, the Administrative Law Judge does have the authority to take and cause depositions to be taken. In the event a question or controversy arises as to the "unavailability" of a witness, the parties may seek a ruling by the Administrative Law Judge.

Section 500.716(g) (proposed § 500.706(u))

Final Decision:

Proposed § 500.706(u) provided for the final decision of the Secretary or the Secretary's designee to be based on a review of the proposed decision and the entire record of the proceeding. A commenter questioned whether OFAC intended that the final decision be based upon the parties' proposed decisions or on the Administrative Law Judge's recommended decision. OFAC has amended § 500.716(g) to read "based on a review of the Administrative Law Judge's recommended decision and the entire record of the proceeding."

Regulatory Flexibility Act

It has been determined that this final rule is not a "significant regulatory action" as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the final rule will not have a significant economic impact on a substantial number of small entities, so that no regulatory flexibility analysis is required. The factual basis for this certification is as follows: Since civil penalty procedures under the Regulations were adopted (June 29, 1993, for part 515; April 8, 1994, for part 500), all recipients of a prepenalty notice under the Regulations have been provided the opportunity to request an administrative hearing, with prehearing discovery, prior to imposition of a penalty. §§ 500.702(b) & 515.702(b). As of December 12, 1997, the cumulative number of hearing requests pending was 41. Of these, only 5 involved respondents that are small business entities with fewer than 500 employees. A respondent's decision to use the administrative hearing process is strictly voluntary, and any final agency action imposing a civil penalty, with or without an administrative hearing, remains appealable pursuant to section 702 of the APA.

The collection of information in the final rule arises in the conduct of

administrative actions or investigations by OFAC against specific individuals or entities and is, pursuant to 44 U.S.C. 3518(c)(1)(B)(ii), not subject to the requirements of the Paperwork Reduction Act.

List of Subjects

31 CFR Part 500

Administrative practice and procedure, Banks, banking, Blocking of assets, Cambodia, Currency, Estates, Exports, Finance, Foreign claims, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels, Vietnam.

31 CFR Part 505

Administrative practice and procedure, Arms and munitions, Banks, banking, Communist countries, Exports, Finance, Foreign trade, Nuclear materials, Penalties, Reporting and recordkeeping requirements.

31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Finance, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, Penalties, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR parts 500, 505 and 515 are amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 is revised to read as follows:

Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Subpart G is revised to read as follows:

Subpart G—Penalties

Secs.

500.701 Penalties.

500.702 Prepenalty notice; contents; respondent's rights; service.

500.703 Response to prepenalty notice; requests for hearing and prehearing discovery; waiver; informal settlement.

500.704 Penalty imposition or withdrawal absent a hearing request.
 500.705 Time and opportunity to request a hearing.
 500.706 Hearing.
 500.707 Interlocutory appeal.
 500.708 Settlement during hearing proceedings.
 500.709 Motions.
 500.710 Discovery.
 500.711 Summary disposition.
 500.712 Prehearing conferences and submissions.
 500.713 Public hearings.
 500.714 Conduct of hearings.
 500.715 Evidence.
 500.716 Proposed decisions; recommended decision of Administrative Law Judge; final decision.
 500.717 Judicial review.
 500.718 Referral to United States Department of Justice; administrative collection measures.

Subpart G—Penalties

§ 500.701 Penalties.

(a) Attention is directed to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16 — “TWEA”), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), which provides that:

(1) Persons who willfully violate any provision of TWEA or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than \$1,000,000 or, if an individual, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both; and an officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of TWEA may upon conviction be forfeited to the United States.

(3) The Secretary of the Treasury may impose a civil penalty of not more than \$55,000 per violation on any person who violates any license, order, or regulation issued under TWEA.

(4) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to TWEA shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in TWEA are subject to increase pursuant to 18 U.S.C. 3571 which, when read in conjunction with section 16 of TWEA, provides that persons convicted of violating TWEA may be fined up to the greater of either \$250,000 for individuals and \$1,000,000 for organizations or twice the pecuniary gain or loss from the violation.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

§ 500.702 Prepenalty notice; contents; respondent's rights; service.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he or she shall issue to the person concerned a notice of his or her intent to impose a monetary penalty and/or forfeiture. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents—(1) Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty and/or forfeiture.

(2) *Respondent's rights—(i) Right to respond.* The prepenalty notice shall also inform the respondent of respondent's right to respond in writing to the notice within 30 calendar days of the mailing or other service of the notice pursuant to paragraph (c) of this section, as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

(ii) *Right to request a hearing.* The prepenalty notice shall also inform the respondent that, in the response provided for in paragraph (b)(2)(i) of

this section, the respondent may also request a hearing conducted pursuant to 5 U.S.C. 554–557 to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information that the respondent believes should be included in the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture. A failure to request a hearing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing.

(iii) *Right to request discovery prior to hearing.* The prepenalty notice shall also inform the respondent of the right to discovery prior to a requested hearing. Discovery must be requested in writing in the response provided for in paragraph (b)(2)(i) of this section, jointly with respondent's request for a hearing. A failure to file a request for discovery within 30 calendar days of service of the prepenalty notice constitutes a waiver of prehearing discovery.

(c) *Service.* The prepenalty notice, or any amendment or supplement thereto, shall be served upon the respondent. Service shall be presumed completed:

(1) Upon mailing a copy by registered or certified mail, return receipt requested, addressed to the respondent at the respondent's last known address; or

(2) Upon the mailing date stated in a date-stamped postal receipt presented by the Office of Foreign Assets Control with respect to any respondent who has refused, avoided, or in any way attempted to decline delivery, tender, or acceptance of the registered or certified letter or has refused to recover a registered or certified letter served; or

(3) Upon personal service by leaving a copy with the respondent or an officer, a managing or general agent, or any other agent authorized by appointment or by law to accept or receive service for the respondent and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the prepenalty notice was left; or

(4) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (c)(1) through (3) of this section inappropriate

or ineffective for service upon the nonresident respondent.

§ 500.703 Response to prepenalty notice; requests for hearing and prehearing discovery; waiver; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 calendar days from the date of mailing or other service of the prepenalty notice pursuant to § 500.702(c) to respond thereto. The response, signed and dated, may be sent by facsimile transmission to the Office of Foreign Assets Control, at 202/622-1657, or by courier or other expedited means at any time during the 30-day response period if an original copy is sent concurrently via the U.S. Postal Service, registered or certified mail, return receipt requested. The date shown on the date-stamped registered or certified mail postal receipt will constitute the filing date of the response.

(b) *Form and contents of response—*
(1) *In general.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's defenses.

(i) The response must admit or deny specifically each separate allegation of violation made in the prepenalty notice. If the respondent is without knowledge as to an allegation, the response shall so state, and such statement shall operate as a denial. Failure to deny, controvert, or object to any allegation will be deemed an admission of that allegation.

(ii) The response must also set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense or partial defense not specifically set forth in the response shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(iii) The response must also accurately state, for each respondent, the respondent's full name and address for future service, together with current telephone and, if applicable, facsimile machine numbers and area code. If respondent is represented by counsel, counsel's full name and address, together with telephone and facsimile numbers and area code, may be provided in lieu of service information for the respondent. The respondent or respondent's counsel of record is responsible for providing timely written notice to the parties of any subsequent changes in the information provided.

(2) *Request for hearing and prehearing discovery; waiver.* Any

request for an administrative hearing and prehearing discovery must be made, if at all, in the written response made pursuant to this section and within the 30 calendar day period specified in § 500.705(a). A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery. A response asserting that respondent reserves the right to request a hearing or prehearing discovery beyond the 30 calendar day period is ineffectual.

(3) *Informal settlement; response deadline.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30 calendar day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control. A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery.

§ 500.704 Penalty imposition or withdrawal absent a hearing request.

(a) *No violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty or civil forfeiture pursuant to this subpart will be imposed.

(b) *Violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice

and any relevant facts, the Director determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition by the Office of Foreign Assets Control of the civil monetary penalty and/or civil forfeiture and/or other available disposition with respect to that respondent.

(1) The penalty/forfeiture notice shall inform the respondent that payment of the assessed penalty must be made within 30 calendar days of the mailing of the penalty notice.

(2) The penalty/forfeiture notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 500.705 Time and opportunity to request a hearing.

(a) *Deadline for hearing request.* Within 30 calendar days of the date of mailing or other service of the prepenalty notice pursuant to § 500.702(c), the respondent may file a written request for an agency hearing conducted pursuant to this section, to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information for inclusion, if found admissible pursuant to § 500.715(a), into the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture.

(b) *Content of written response.* If an agency hearing is requested by the respondent or by the respondent's counsel, the written hearing request must be accompanied by a written response to the prepenalty notice containing the information required by § 500.703(b)(1)(i) through (iii). An untimely hearing request or written response to the prepenalty notice constitutes a waiver of a hearing.

(c) *Signature of filings.* All hearing requests, motions, responses, interrogatories, requests for deposition transcripts, requests for protective orders, and all other filings relating to requests for and responses to discovery or pertaining to the hearing process, must be signed by each requesting party or, if represented, by each party's counsel.

(d) *Computation of time—*(1) *Final date on weekend or holiday.* Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which

the Office of Foreign Assets Control is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(2) *Closing time.* The time for filing any document expires at 5:00 p.m. local Washington, DC time on the last day when such filing may be made.

§ 500.706 Hearing.

(a) *Notice of hearing.* (1) Any respondent requesting a hearing shall receive notice of the time and place of the hearing at the service address provided pursuant to § 500.703(b)(1)(iii). Requests to change the time and place of a hearing may be submitted to the Administrative Law Judge, who may modify the original notice or subsequently set hearing dates. All requests for a change in the time or place of a hearing must be received in the Administrative Law Judge's chambers and served upon the parties no later than 15 working days before the scheduled hearing date.

(2) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554–557, pursuant to section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001–6010) and section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16).

(b) *Powers.* The Administrative Law Judge shall have all powers necessary to conduct the hearing, consistent with 5 U.S.C. 554–557, including the following powers:

(1) To administer oaths and affirmations;

(2) To require production of records or any information relative to any act or transaction subject to this part, including the imposition of sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(3) To receive relevant and material evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this part;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling or prehearing conferences as deemed necessary;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Secretary or the Secretary's designee shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in

a final determination of the merits of the proceeding;

(8) To prepare and present to the Secretary or to the Secretary's designee a recommended decision as provided in §§ 500.711(d) and 500.716(e);

(9) To recuse himself on motion made by a party or on the Administrative Law Judge's own motion;

(10) To establish time, place, and manner limitations on the attendance of the public and the media for any public hearing;

(11) To perform all necessary or appropriate measures to discharge the duties of an Administrative Law Judge; and

(12) To set fees and expenses for witnesses, including expert witnesses.

(c) *Appearance and practice in a civil penalty hearing—(1) Appearance before an Administrative Law Judge by counsel.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, or territory of the United States, or the District of Columbia may represent respondents upon written notice to the Administrative Law Judge in a civil penalty hearing.

(2) *Appearance before an Administrative Law Judge by a nonlawyer.* A respondent may appear on his own behalf; a duly authorized member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any corporation may represent that corporation upon written notice to the Administrative Law Judge in a civil penalty hearing.

(3) *Office of Foreign Assets Control representation.* The Office of Foreign Assets Control shall be represented by the Office of General Counsel of the United States Department of the Treasury.

(d) *Conflicts of interest.—(1) Conflict of interest in representation.* No individual shall appear as counsel for a party in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person, or by counsel's own interests.

(2) *Corrective Measures.* The Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(e) *Ex parte communications—(1) Definition.* The term *ex parte communication* means any material oral

or written communication not on the public record concerning the merits of an adjudicatory proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these regulations that takes place between:

(i) A party to the proceeding, a party's counsel, or any other individual; and

(ii) The Administrative Law Judge handling that proceeding, or the Secretary, or the Secretary's designee.

(2) *Exceptions.* (i) A request to learn the status of the proceeding does not constitute an *ex parte* communication; and

(ii) Settlement inquiries and discussions do not constitute *ex parte* communications.

(3) *Prohibition on ex parte communications.* From the time a respondent requests a hearing until the date that the Secretary or the Secretary's designee issues a final decision, no party, interested person, or counsel therefor shall knowingly make or cause to be made an *ex parte* communication. The Administrative Law Judge, the Secretary, and the Secretary's designee shall not knowingly make or cause to be made to a party, or to any interested person or counsel therefor, any *ex parte* communication.

(4) *Procedure upon occurrence of ex parte communication.* If an *ex parte* communication is received by the Administrative Law Judge, the Administrative Law Judge shall cause all such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within 10 calendar days of the receipt of service of the notice or of receipt of a memorandum of the *ex parte* communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (e)(5) of this section, appropriate under the circumstances, or may file an interlocutory appeal with the Secretary or the Secretary's designee.

(5) *Sanctions.* Any party to the proceeding, a party's counsel, or any other individual, who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Administrative Law Judge for good cause shown, or that may be imposed upon interlocutory appeal taken to the Secretary or the Secretary's designee, including, but not limited to, exclusion from the hearing and an adverse ruling

on the issue which is the subject of the prohibited communication.

(f) *Time limits.* Except as provided elsewhere in this subpart, the Administrative Law Judge shall establish all time limits for filings with regard to hearings conducted pursuant to this subpart, except for decisions on interlocutory appeals filed with the Secretary or the Secretary's designee.

(g) *Failure to appear.* The unexcused failure of a respondent to appear in person at a hearing or to have duly authorized counsel appear in respondent's place constitutes a waiver of the respondent's right to a hearing and is deemed an admission of the violation alleged. Without further proceedings or notice to the respondent, the Administrative Law Judge shall enter a finding that the right to a hearing was waived, and the case shall be determined pursuant to § 500.704.

§ 500.707 Interlocutory appeal.

(a) *Interlocutory appeals.* When exceptions, requests for extensions, or motions, including motions for summary disposition, are denied by the Administrative Law Judge, interlocutory appeals may be taken to the Secretary or to the Secretary's designee for a decision.

(b) *Filing deadline.* Interlocutory appeals must be filed no later than 15 calendar days after the matter being appealed has been decided in writing by the Administrative Law Judge. Parties may request that the Administrative Law Judge transmit the written decision to the parties by facsimile transmission, courier, or other expedited means in addition to service of the decision via the U.S. Postal Service by registered or certified mail, return receipt requested. Such requests must be supported by a written statement of need for expedited delivery. Timely filing of the interlocutory appeal shall be determined by the date stated on the date-stamped registered or certified mail postal receipt.

(c) *Manner of filing.* Interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission to 202/622-1188, courier, or other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked "Attention: OFAC Interlocutory Appeal." Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent

concurrently by registered or certified mail, return receipt requested.

§ 500.708 Settlement during hearing proceedings.

Any party may, at any time during the hearing, unilaterally submit written offers or proposals for settlement of a proceeding to the Secretary or the Secretary's designee, at the address listed in § 500.707(c). Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a hearing. No settlement offer or proposal, nor any subsequent negotiation or resolution, is admissible as evidence in any hearing before this tribunal.

§ 500.709 Motions.

(a) *Written motions.* Except as otherwise specifically provided herein, an application or request for an order or ruling must be made by written motion, in typed format.

(1) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(2) No oral argument may be held on written motions unless directed by the Administrative Law Judge. Written memoranda, briefs, affidavits, and other relevant material and documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the Administrative Law Judge directs that such motion be made in writing.

(c) *Filing of motions—(1) In general.* Motions by respondents must be filed with the Administrative Law Judge and served upon the Office of the Chief Counsel, Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked "Urgent: Annex—Room 3133," unless otherwise directed by the Administrative Law Judge. Motions by the Office of Foreign Assets Control must be filed with the Administrative Law Judge and with each respondent or respondent's counsel. Motions may also be concurrently sent by facsimile transmission, courier, or other expedited means.

(2) *Interlocutory appeals.* Motions related to interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission to 202/622-1188, by courier, or by other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500

Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked "Attention: OFAC Interlocutory Appeal." Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent concurrently by registered or certified mail, return receipt requested.

(d) *Responses.* (1) Any party may file a written response to a motion within 20 calendar days of the date of its mailing, by registered or certified mail pursuant to this subpart. If directed by the Administrative Law Judge, the time period in which to respond may be shortened or extended. The Administrative Law Judge may allow each party to file a response before finally ruling upon any oral or written motion. The Administrative Law Judge may allow a rejoinder to responses for good cause shown. If a rejoinder is permitted, it must be filed within 15 calendar days of the date the response was filed and served upon all parties.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

§ 500.710 Discovery.

(a) *In general.* The availability of information and documents through discovery is subject to the agency's assertion of privileges available to OFAC and/or to the Treasury and to the application of all exemptions afforded the agency pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a) to all facets of discovery, including interrogatories, depositions that seek the release of trade secrets, proprietary materials, third-party confidential and/or commercially sensitive materials, placement of information, documents and/or materials under seal and/or protective order, and interlocutory appeals to the Secretary or the Secretary's designee from any decision of the Administrative Law Judge.

(b) *Types of discovery.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees

must take place in Washington, DC, at the U.S. Treasury Department or at the location where the Federal employee to be deposed performs his duties, whichever the Federal employee's supervisor or the Office of the Chief Counsel, Foreign Assets Control shall deem appropriate. All depositions of Federal employees shall be held at a mutually agreed upon date and time, and for a mutually agreed upon length of time.

(c) *Interrogatories*. Respondent's interrogatories must be served upon the Office of the Chief Counsel, Foreign Assets Control within 20 calendar days of respondent's written request for a hearing. The Office of Foreign Assets Control's interrogatories must be served within 30 calendar days of the receipt of service of respondent's interrogatories or within 30 calendar days of the receipt of respondent's written request for a hearing if no interrogatories are filed by respondent by that time. Parties have 30 calendar days to respond to interrogatories from the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer.

(d) *Scope*. Parties may obtain discovery regarding any matter not privileged which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The Administrative Law Judge may make any order which justice requires to ensure that requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including the issuance of an order to show cause why a particular discovery request is justified upon the motion of the objecting party.

(e) *Privileged matter*. Privileged documents are not discoverable. Privileges include, inter alia, the attorney-client privilege, attorney work-product privilege, any government's or government agency's deliberative-process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security

information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(f) *Updating discovery*. Whenever a party receives new or additional information or documentation, all information produced, and all information required to be provided pursuant to the discovery and hearing process, must automatically be updated. The Administrative Law Judge may impose sanctions for failure to update, including prohibiting opposition to claims or defenses raised, striking pleadings or staying proceedings, dismissing the action or any part thereof, rendering a judgment by default, and holding a party in contempt.

(g) *Time limits*. All discovery, including all responses to discovery requests, shall be completed no later than 20 calendar days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the Administrative Law Judge finds on the record that good cause exists for waiving the requirements of this paragraph (g).

§ 500.711 Summary disposition.

(a) *In general*. The Administrative Law Judge shall recommend that the Secretary or the Secretary's designee issue a final order granting a motion for summary disposition if the facts of the record show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses*.

(1) Any party who believes that there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 calendar days after service of such a motion, or within such time period as allowed by the Administrative Law Judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The

motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion*. At the request of any party or on his or her own motion, the Administrative Law Judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion*. Following receipt of a motion for summary disposition and all responses thereto, the Administrative Law Judge shall determine whether the moving party is entitled to summary disposition. If the Administrative Law Judge determines that summary disposition is warranted, he or she shall submit a recommended decision to that effect to the Secretary. If the Administrative Law Judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

(e) *Interlocutory appeal*. Following receipt of the Administrative Law Judge's recommended decision relating to summary disposition, each party has the right to an interlocutory appeal to the Secretary or the Secretary's designee. The interlocutory appeal must be filed within 20 calendar days immediately following the Administrative Law Judge's recommended decision.

(f) *Partial summary disposition*. If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, the Administrative Law Judge shall defer submission of a recommended decision as to those claims. A hearing on the remaining issues must be ordered and those claims for which the Administrative Law Judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 500.712 Prehearing conferences and submissions.

(a) *Prehearing conferences*. The Administrative Law Judge may, on his or her own motion, or at the request of any party for good cause shown, direct counsel for the parties to meet with him or her (in person, by telephone, or by teleconference) at a prehearing

conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes; and

(7) Such other matters as may aid in the orderly disposition of the proceeding.

(b) *Prehearing orders.* At, or within a reasonable time following the conclusion of, any prehearing conference, the Administrative Law Judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

(c) *Prehearing submissions.* Within 40 calendar days of the receipt of respondent's request for a hearing or at a time set by the Administrative Law Judge, the Office of Foreign Assets Control shall serve on the respondent and upon the Administrative Law Judge, the following:

(1) Stipulations of fact, if any;

(2) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(3) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(d) *Deadline for respondent's and the other parties' submissions.* Unless for good cause shown the Administrative Law Judge permits an extension of time to file, the respondent and the other parties shall have 20 calendar days from the date of the submission by the Office of Foreign Assets Control of the items set forth in paragraph (c) of this section, and/or of any other party's service of items set forth in this paragraph (d), to serve upon the Administrative Law Judge and all parties, the following:

(1) Its response to stipulations of fact, if any;

(2) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(3) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(e) *Effect of failure to comply.* No witness may testify and no exhibits may

be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraphs (c) and (d) of this section, except for good cause shown.

§ 500.713 Public hearings.

(a) *In general.* All hearings shall be open to the public, unless the Administrative Law Judge, at his or her discretion, determines at any time prior to or during the hearing, that holding an open hearing would be contrary to the public interest. Within 20 calendar days of service of the notice of hearing from the Administrative Law Judge, any party may file with the Administrative Law Judge a request for a closed hearing, and any party may file a pleading in reply to such a request. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or closed.

(b) *Filing document under seal.* (1) The Office of Foreign Assets Control may file any document or any part of a document under seal if disclosure of the document would be inconsistent with the protection of the public interest or if justice requires protection of any person, including a source or a party, from annoyance, threat, oppression, or undue burden or expense, or the disclosure of the information would be, or might reasonably lead to a disclosure, contrary to Executive Order 12958 or other Executive orders concerning disclosure of information, U.S. Treasury Department regulations, the Privacy Act, or the Freedom of Information Act.

(2) The Administrative Law Judge shall also safeguard the security and integrity of any documents under seal and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing portions of the hearing to the public. Release of any information under seal, in any form or manner, is subject to the same sanctions and the exercise of the same authorities as are provided with respect to ex parte communications under paragraph (e)(5) of this section.

(3) Should the Administrative Law Judge deny placement of any documents under seal or under protective order, any party, and any person whose documents or materials are at issue, may file an interlocutory appeal to the Secretary or the Secretary's designee. In such cases the Administrative Law Judge must not release or expose any of the records or documents in question to the public or to any other parties for a period of 20 calendar days from the date of the Administrative Law Judge's ruling, in order to permit a petitioner the opportunity either to withdraw the

records and documents or to file an interlocutory appeal with the Secretary or the Secretary's designee requesting an order that the records be placed under seal.

(4) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the respective parties, except when it may be necessary to retain a record until the judicial process is completed.

(5) Written notice of all requests for release of protected documents or materials shall be given to the parties registered with the Administrative Law Judge at least 20 calendar days prior to any permitted release and prior to any access not specifically authorized under the protective order. A copy of all requests for information, including the name, address, and telephone number of the requester, shall be provided to the petitioner. Each request for access to protected material must also provide the names, addresses, and telephone numbers of all persons represented by the requester, including those on whose behalf the requester seeks access to protected information. The Administrative Law Judge shall impose sanctions provided under § 500.706(e)(4) and (e)(5) for failure to provide this information.

§ 500.714 Conduct of hearings.

(a) *In general—(1) Overview.* Hearings shall be conducted to provide a fair and expeditious presentation of the relevant disputed issues and facts. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the relevant facts.

(2) *Order of hearing.* The Office of Foreign Assets Control shall present its case—in-chief first, unless otherwise ordered in advance by the Administrative Law Judge or otherwise expressly specified by law or regulation. The Office of Foreign Assets Control shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement.

(3) *Stipulations.* Unless the Administrative Law Judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which has been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* A record of the hearing shall be made by manual or electronic

means, including through the use of audio recorded diskettes or audio-visual cassettes, and transcribed unless the Administrative Law Judge rules otherwise. The transcript shall be made available to any party upon payment of the cost thereof. The Administrative Law Judge shall have authority to order the record corrected, either upon a motion to correct, upon a motion to stipulate by the parties for good cause shown, or following notice to the parties upon the Administrative Law Judge's own motion. The Administrative Law Judge shall serve notice upon all parties, at the addresses provided by the parties pursuant to § 500.703(b)(1)(iii), that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed with the Administrative Law Judge.

§ 500.715 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, evidence that is relevant and material is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence may be excluded if it is misleading or its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence need not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant and material, and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court.

(2) All matters officially noticed by the Administrative Law Judge shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Duplicate copies.* A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(d) *Objections to admissibility of evidence.* Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record. Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Rejected exhibits.* The Administrative Law Judge shall retain rejected exhibits, adequately marked for identification, in the event of an interlocutory appeal.

(f) *Stipulations.* The parties may stipulate as to any relevant matters of fact or to the authenticity of any relevant documents. Such stipulations may be received into evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(g) *Depositions of unavailable witnesses.* If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition within the United States to which all parties to the proceeding have received timely notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits. All costs of depositions shall be borne by the party requesting the deposition.

§ 500.716 Proposed decisions; recommended decision of Administrative Law Judge; final decision.

(a) *Proposed decisions.* Any party may file with the Administrative Law Judge a proposed decision within 30 calendar days after the parties have received notice that the transcript has been filed with the Administrative Law Judge, unless otherwise ordered by the Administrative Law Judge.

(b) *Reliance on relevant authorities.* The proposed decision must be supported by citation to relevant authorities and by transcript page references to any relevant portions of the record. At the same time the proposed decision is filed, a post-hearing brief may be filed in support. The post-hearing brief shall be filed either as part of the same document or in a separate document.

(c) *Reply briefs.* Reply briefs may be filed within 15 calendar days after the date on which the parties' proposed decision is due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed a proposed decision or a post-hearing brief may not file a reply brief.

(d) *Simultaneous filing required.* Absent a showing of good cause for the use of another procedure, the Administrative Law Judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

(e) *Recommended decision and filing of record.* Within 45 calendar days after expiration of the time allowed for filing reply briefs, the Administrative Law Judge shall file with and certify to the

Secretary or the Secretary's designee the record of the proceeding and the decision. The record must include the Administrative Law Judge's recommended decision, including a determination either that there was no violation by the person named in the prepenalty notice, or that there was a violation by the person named in the prepenalty notice, and the recommended monetary penalty and/or civil forfeiture and/or other disposition available to the Office of Foreign Assets Control. In addition to the proposed decision, the record must include all prehearing and hearing transcripts, exhibits, and rulings, and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The Administrative Law Judge shall have the recommended decision served upon each party.

(f) *Exceptions to the recommended decision.* When the Administrative Law Judge has issued his recommended decision, the Administrative Law Judge or his representative shall contact each party by telephone at the telephone number provided by each party pursuant to § 500.703(b)(1)(iii). Within 3 calendar days of telephoning the parties, the recommended decision shall be mailed by the Administrative Law Judge to the parties. A party may file written exceptions to the recommended decision with the Secretary or the Secretary's designee within 30 calendar days of the date the telephone call is placed by the Administrative Law Judge or his representative. A supporting brief may be filed at the time the exceptions are filed.

(g) *Final decision.* The final decision of the Secretary or the Secretary's designee shall be based on a review of the Administrative Law Judge's recommended decision and the entire record of the proceeding. The final written decision shall be provided to all parties.

§ 500.717 Judicial review.

Any person may seek judicial review as provided under 5 U.S.C. 702 for a penalty and/or forfeiture imposed pursuant to this part.

§ 500.718 Referral to United States Department of Justice; administrative collection measures.

In the event that the respondent does not pay the penalty imposed pursuant to this part within 30 calendar days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the

penalty in a civil suit in a Federal district court.

PART 505—REGULATIONS PROHIBITING TRANSACTIONS INVOLVING THE SHIPMENT OF CERTAIN MERCHANDISE BETWEEN FOREIGN COUNTRIES

1. The authority citation for part 505 is revised to read as follows:

Authority: 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Section 505.50 is revised to read as follows:

§ 505.50 Penalties.

For provisions relating to penalties, see subpart G of part 500 of this chapter.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 31 U.S.C. 321(b); 22 U.S.C. 2370(a), 6001–6010, 6021–6091; 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

2. Subpart G is revised to read as follows:

Subpart G—Penalties

Secs.

- 515.701 Penalties.
- 515.702 Prepenalty notice; contents; respondent's rights; service.
- 515.703 Response to prepenalty notice; requests for hearing and prehearing discovery; waiver; informal settlement.
- 515.704 Penalty imposition or withdrawal absent a hearing request.
- 515.705 Time and opportunity to request a hearing.
- 515.706 Hearing.
- 515.707 Interlocutory appeal.
- 515.708 Settlement during hearing proceedings.
- 515.709 Motions.
- 515.710 Discovery.
- 515.711 Summary disposition.
- 515.712 Prehearing conferences and submissions.
- 515.713 Public hearings.
- 515.714 Conduct of hearings.
- 515.715 Evidence.
- 515.716 Proposed decisions; recommended decision of Administrative Law Judge; final decision.
- 515.717 Judicial review.
- 515.718 Referral to United States Department of Justice; administrative collection measures.

Subpart G—Penalties

§ 515.701 Penalties.

(a) Attention is directed to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16 — “TWEA”), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), which provides that:

(1) Persons who willfully violate any provision of TWEA or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than \$1,000,000 or, if an individual, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both; and an officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of TWEA may upon conviction be forfeited to the United States.

(3) The Secretary of the Treasury may impose a civil penalty of not more than \$55,000 per violation on any person who violates any license, order, or regulation issued under TWEA.

(4) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to TWEA shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in TWEA are subject to increase pursuant to 18 U.S.C. 3571 which, when read in conjunction with section 16 of TWEA, provides that persons convicted of violating TWEA may be fined up to the greater of either \$250,000 for individuals and \$1,000,000 for organizations or twice the pecuniary gain or loss from the violation.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false,

fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

§ 515.702 Prepenalty notice; contents; respondent's rights; service.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he or she shall issue to the person concerned a notice of his or her intent to impose a monetary penalty and/or forfeiture. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents—(1) Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty and/or forfeiture.

(2) *Respondent's rights—(i) Right to respond.* The prepenalty notice shall also inform the respondent of respondent's right to respond in writing to the notice within 30 calendar days of the mailing or other service of the notice pursuant to paragraph (c) of this section, as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

(ii) *Right to request a hearing.* The prepenalty notice shall also inform the respondent that, in the response provided for in paragraph (b)(2)(i) of this section, the respondent may also request a hearing conducted pursuant to 5 U.S.C. 554–557 to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information that the respondent believes should be included in the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture. A failure to request a hearing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing.

(iii) *Right to request discovery prior to hearing.* The prepenalty notice shall also inform the respondent of the right to discovery prior to a requested hearing. Discovery must be requested in writing in the response provided for in paragraph (b)(2)(i) of this section, jointly

with respondent's request for a hearing. A failure to file a request for discovery within 30 calendar days of service of the prepenalty notice constitutes a waiver of prehearing discovery.

(c) *Service.* The prepenalty notice, or any amendment or supplement thereto, shall be served upon the respondent. Service shall be presumed completed:

(1) Upon mailing a copy by registered or certified mail, return receipt requested, addressed to the respondent at the respondent's last known address; or

(2) Upon the mailing date stated in a date-stamped postal receipt presented by the Office of Foreign Assets Control with respect to any respondent who has refused, avoided, or in any way attempted to decline delivery, tender, or acceptance of the registered or certified letter or has refused to recover a registered or certified letter served; or

(3) Upon personal service by leaving a copy with the respondent or an officer, a managing or general agent, or any other agent authorized by appointment or by law to accept or receive service for the respondent and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the prepenalty notice was left; or

(4) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (c)(1) through (3) of this section inappropriate or ineffective for service upon the nonresident respondent.

§ 515.703 Response to prepenalty notice; requests for hearing and prehearing discovery; waiver; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 calendar days from the date of mailing or other service of the prepenalty notice pursuant to § 515.702(c) to respond thereto. The response, signed and dated, may be sent by facsimile transmission to the Office of Foreign Assets Control, at 202/622-1657, or by courier or other expedited means at any time during the 30-day response period if an original copy is sent concurrently via the U.S. Postal Service, registered or certified mail, return receipt requested. The date shown on the date-stamped registered

or certified mail postal receipt will constitute the filing date of the response.

(b) *Form and contents of response—*

(1) *In general.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's defenses.

(i) The response must admit or deny specifically each separate allegation of violation made in the prepenalty notice. If the respondent is without knowledge as to an allegation, the response shall so state, and such statement shall operate as a denial. Failure to deny, controvert, or object to any allegation will be deemed an admission of that allegation.

(ii) The response must also set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense or partial defense not specifically set forth in the response shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(iii) The response must also accurately state, for each respondent, the respondent's full name and address for future service, together with current telephone and, if applicable, facsimile machine numbers and area code. If respondent is represented by counsel, counsel's full name and address, together with telephone and facsimile numbers and area code, may be provided in lieu of service information for the respondent. The respondent or respondent's counsel of record is responsible for providing timely written notice to the parties of any subsequent changes in the information provided.

(2) *Request for hearing and prehearing discovery; waiver.* Any request for an administrative hearing and prehearing discovery must be made, if at all, in the written response made pursuant to this section and within the 30 calendar day period specified in § 515.705(a). A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery. A response asserting that respondent reserves the right to request a hearing or prehearing discovery beyond the 30 calendar day period is ineffectual.

(3) *Informal settlement; response deadline.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of

Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30 calendar day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control. A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery.

§ 515.704 Penalty imposition or withdrawal absent a hearing request.

(a) *No violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty or civil forfeiture pursuant to this subpart will be imposed.

(b) *Violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition by the Office of Foreign Assets Control of the civil monetary penalty and/or civil forfeiture and/or other available disposition with respect to that respondent.

(1) The penalty/forfeiture notice shall inform the respondent that payment of the assessed penalty must be made within 30 calendar days of the mailing of the penalty notice.

(2) The penalty/forfeiture notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number

for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 515.705 Time and opportunity to request a hearing.

(a) *Deadline for hearing request.*

Within 30 calendar days of the date of mailing or other service of the prepenalty notice pursuant to § 515.702(c), the respondent may file a written request for an agency hearing conducted pursuant to this section, to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information for inclusion, if found admissible pursuant to § 515.715(a), into the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture.

(b) *Content of written response.* If an agency hearing is requested by the respondent or by the respondent's counsel, the written hearing request must be accompanied by a written response to the prepenalty notice containing the information required by § 515.703(b)(1)(i) through (iii). An untimely hearing request or written response to the prepenalty notice constitutes a waiver of a hearing.

(c) *Signature of filings.* All hearing requests, motions, responses, interrogatories, requests for deposition transcripts, requests for protective orders, and all other filings relating to requests for and responses to discovery or pertaining to the hearing process, must be signed by each requesting party or, if represented, by each party's counsel.

(d) *Computation of time*—(1) *Final date on weekend or holiday.* Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Office of Foreign Assets Control is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(2) *Closing time.* The time for filing any document expires at 5:00 p.m. local Washington, DC time on the last day when such filing may be made.

§ 515.706 Hearing.

(a) *Notice of hearing.* (1) Any respondent requesting a hearing shall receive notice of the time and place of the hearing at the service address provided pursuant to § 515.703(b)(1)(iii). Requests to change the time and place of a hearing may be submitted to the Administrative Law Judge, who may modify the original notice or subsequently set hearing dates.

All requests for a change in the time or place of a hearing must be received in the Administrative Law Judge's chambers and served upon the parties no later than 15 working days before the scheduled hearing date.

(2) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554–557, pursuant to section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001–6010) and section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16).

(b) *Powers.* The Administrative Law Judge shall have all powers necessary to conduct the hearing, consistent with 5 U.S.C. 554–557, including the following powers:

(1) To administer oaths and affirmations;

(2) To require production of records or any information relative to any act or transaction subject to this part, including the imposition of sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(3) To receive relevant and material evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this part;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling or prehearing conferences as deemed necessary;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Secretary or the Secretary's designee shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Secretary or to the Secretary's designee a recommended decision as provided in §§ 515.711(d) and 515.716(e);

(9) To recuse himself on motion made by a party or on the Administrative Law Judge's own motion;

(10) To establish time, place, and manner limitations on the attendance of the public and the media for any public hearing;

(11) To perform all necessary or appropriate measures to discharge the duties of an Administrative Law Judge; and

(12) To set fees and expenses for witnesses, including expert witnesses.

(c) *Appearance and practice in a civil penalty hearing*—(1) *Appearance before an Administrative Law Judge by*

counsel. Any member in good standing of the bar of the highest court of any state, commonwealth, possession, or territory of the United States, or the District of Columbia may represent respondents upon written notice to the Administrative Law Judge in a civil penalty hearing.

(2) *Appearance before an Administrative Law Judge by a nonlawyer.* A respondent may appear on his own behalf; a duly authorized member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any corporation may represent that corporation upon written notice to the Administrative Law Judge in a civil penalty hearing.

(3) *Office of Foreign Assets Control representation.* The Office of Foreign Assets Control shall be represented by the Office of General Counsel of the United States Department of the Treasury.

(d) *Conflicts of interest.*—(1) *Conflict of interest in representation.* No individual shall appear as counsel for a party in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person, or by counsel's own interests.

(2) *Corrective Measures.* The Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(e) *Ex parte communications*—(1) *Definition.* The term *ex parte communication* means any material oral or written communication not on the public record concerning the merits of an adjudicatory proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these regulations that takes place between:

(i) A party to the proceeding, a party's counsel, or any other individual; and

(ii) The Administrative Law Judge handling that proceeding, or the Secretary, or the Secretary's designee.

(2) *Exceptions.* (i) A request to learn the status of the proceeding does not constitute an *ex parte communication*; and

(ii) Settlement inquiries and discussions do not constitute *ex parte communications*.

(3) *Prohibition on ex parte communications.* From the time a respondent requests a hearing until the

date that the Secretary or the Secretary's designee issues a final decision, no party, interested person, or counsel therefor shall knowingly make or cause to be made an ex parte communication. The Administrative Law Judge, the Secretary, and the Secretary's designee shall not knowingly make or cause to be made to a party, or to any interested person or counsel therefor, any ex parte communication.

(4) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the Administrative Law Judge, the Administrative Law Judge shall cause all such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within 10 calendar days of the receipt of service of the notice or of receipt of a memorandum of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (e)(5) of this section, appropriate under the circumstances, or may file an interlocutory appeal with the Secretary or the Secretary's designee.

(5) *Sanctions.* Any party to the proceeding, a party's counsel, or any other individual, who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Administrative Law Judge for good cause shown, or that may be imposed upon interlocutory appeal taken to the Secretary or the Secretary's designee, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue which is the subject of the prohibited communication.

(f) *Time limits.* Except as provided elsewhere in this subpart, the Administrative Law Judge shall establish all time limits for filings with regard to hearings conducted pursuant to this subpart, except for decisions on interlocutory appeals filed with the Secretary or the Secretary's designee.

(g) *Failure to appear.* The unexcused failure of a respondent to appear in person at a hearing or to have duly authorized counsel appear in respondent's place constitutes a waiver of the respondent's right to a hearing and is deemed an admission of the violation alleged. Without further proceedings or notice to the respondent, the Administrative Law Judge shall enter a finding that the right to a hearing

was waived, and the case shall be determined pursuant to § 515.704.

§ 515.707 Interlocutory appeal.

(a) *Interlocutory appeals.* When exceptions, requests for extensions, or motions, including motions for summary disposition, are denied by the Administrative Law Judge, interlocutory appeals may be taken to the Secretary or to the Secretary's designee for a decision.

(b) *Filing deadline.* Interlocutory appeals must be filed no later than 15 calendar days after the matter being appealed has been decided in writing by the Administrative Law Judge. Parties may request that the Administrative Law Judge transmit the written decision to the parties by facsimile transmission, courier, or other expedited means in addition to service of the decision via the U.S. Postal Service by registered or certified mail, return receipt requested. Such requests must be supported by a written statement of need for expedited delivery. Timely filing of the interlocutory appeal shall be determined by the date stated on the date-stamped registered or certified mail postal receipt.

(c) *Manner of filing.* Interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission to 202/622-1188, courier, or other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked "Attention: OFAC Interlocutory Appeal." Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent concurrently by registered or certified mail, return receipt requested.

§ 515.708 Settlement during hearing proceedings.

Any party may, at any time during the hearing, unilaterally submit written offers or proposals for settlement of a proceeding to the Secretary or the Secretary's designee, at the address listed in § 515.707(c). Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a hearing. No settlement offer or proposal, nor any subsequent negotiation or resolution, is admissible as evidence in any hearing before this tribunal.

§ 515.709 Motions.

(a) *Written motions.* Except as otherwise specifically provided herein, an application or request for an order or ruling must be made by written motion, in typed format.

(1) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(2) No oral argument may be held on written motions unless directed by the Administrative Law Judge. Written memoranda, briefs, affidavits, and other relevant material and documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the Administrative Law Judge directs that such motion be made in writing.

(c) *Filing of motions—(1) In general.* Motions by respondents must be filed with the Administrative Law Judge and served upon the Office of the Chief Counsel, Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked "Urgent: Annex—Room 3133," unless otherwise directed by the Administrative Law Judge. Motions by the Office of Foreign Assets Control must be filed with the Administrative Law Judge and with each respondent or respondent's counsel. Motions may also be concurrently sent by facsimile transmission, courier, or other expedited means.

(2) *Interlocutory appeals.* Motions related to interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission to 202/622-1188, by courier, or by other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked "Attention: OFAC Interlocutory Appeal." Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent concurrently by registered or certified mail, return receipt requested.

(d) *Responses.* (1) Any party may file a written response to a motion within 20 calendar days of the date of its mailing, by registered or certified mail pursuant to this subpart. If directed by the Administrative Law Judge, the time period in which to respond may be shortened or extended. The Administrative Law Judge may allow each party to file a response before

finally ruling upon any oral or written motion. The Administrative Law Judge may allow a rejoinder to responses for good cause shown. If a rejoinder is permitted, it must be filed within 15 calendar days of the date the response was filed and served upon all parties.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

§515.710 Discovery.

(a) *In general.* The availability of information and documents through discovery is subject to the agency's assertion of privileges available to OFAC and/or to the Treasury and to the application of all exemptions afforded the agency pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a) to all facets of discovery, including interrogatories, depositions that seek the release of trade secrets, proprietary materials, third-party confidential and/or commercially sensitive materials, placement of information, documents and/or materials under seal and/or protective order, and interlocutory appeals to the Secretary or the Secretary's designee from any decision of the Administrative Law Judge.

(b) *Types of discovery.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees must take place in Washington, DC, at the U.S. Treasury Department or at the location where the Federal employee to be deposed performs his duties, whichever the Federal employee's supervisor or the Office of the Chief Counsel, Foreign Assets Control shall deem appropriate. All depositions of Federal employees shall be held at a mutually agreed upon date and time, and for a mutually agreed upon length of time.

(c) *Interrogatories.* Respondent's interrogatories must be served upon the Office of the Chief Counsel, Foreign Assets Control within 20 calendar days of respondent's written request for a hearing. The Office of Foreign Assets Control's interrogatories must be served within 30 calendar days of the receipt

of service of respondent's interrogatories or within 30 calendar days of the receipt of respondent's written request for a hearing if no interrogatories are filed by respondent by that time. Parties have 30 calendar days to respond to interrogatories from the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer.

(d) *Scope.* Parties may obtain discovery regarding any matter not privileged which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The Administrative Law Judge may make any order which justice requires to ensure that requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including the issuance of an order to show cause why a particular discovery request is justified upon the motion of the objecting party.

(e) *Privileged matter.* Privileged documents are not discoverable. Privileges include, inter alia, the attorney-client privilege, attorney work-product privilege, any government's or government agency's deliberative-process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(f) *Updating discovery.* Whenever a party receives new or additional information or documentation, all information produced, and all information required to be provided pursuant to the discovery and hearing process, must automatically be updated. The Administrative Law Judge may impose sanctions for failure to update, including prohibiting opposition to claims or defenses raised, striking pleadings or staying proceedings, dismissing the action or any part thereof, rendering a judgment by

default, and holding a party in contempt.

(g) *Time limits.* All discovery, including all responses to discovery requests, shall be completed no later than 20 calendar days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the Administrative Law Judge finds on the record that good cause exists for waiving the requirements of this paragraph (g).

§515.711 Summary disposition.

(a) *In general.* The Administrative Law Judge shall recommend that the Secretary or the Secretary's designee issue a final order granting a motion for summary disposition if the facts of the record show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.*

(1) Any party who believes that there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 calendar days after service of such a motion, or within such time period as allowed by the Administrative Law Judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the Administrative Law Judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the Administrative Law Judge shall determine whether the moving party is entitled to summary disposition. If the Administrative Law Judge determines that summary disposition is warranted, he or she shall submit a recommended decision to that effect to the Secretary. If the Administrative Law Judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

(e) *Interlocutory appeal.* Following receipt of the Administrative Law Judge's recommended decision relating to summary disposition, each party has the right to an interlocutory appeal to the Secretary or the Secretary's designee. The interlocutory appeal must be filed within 20 calendar days immediately following the Administrative Law Judge's recommended decision.

(f) *Partial summary disposition.* If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, the Administrative Law Judge shall defer submission of a recommended decision as to those claims. A hearing on the remaining issues must be ordered and those claims for which the Administrative Law Judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 515.712 Prehearing conferences and submissions.

(a) *Prehearing conferences.* The Administrative Law Judge may, on his or her own motion, or at the request of any party for good cause shown, direct counsel for the parties to meet with him or her (in person, by telephone, or by teleconference) at a prehearing conference to address any or all of the following:

- (1) Simplification and clarification of the issues;
- (2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;
- (3) Matters of which official notice may be taken;
- (4) Limitation of the number of witnesses;
- (5) Summary disposition of any or all issues;
- (6) Resolution of discovery issues or disputes; and
- (7) Such other matters as may aid in the orderly disposition of the proceeding.

(b) *Prehearing orders.* At, or within a reasonable time following the conclusion of, any prehearing conference, the Administrative Law Judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

(c) *Prehearing submissions.* Within 40 calendar days of the receipt of respondent's request for a hearing or at a time set by the Administrative Law Judge, the Office of Foreign Assets Control shall serve on the respondent and upon the Administrative Law Judge, the following:

- (1) Stipulations of fact, if any;
- (2) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and
- (3) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(d) *Deadline for respondent's and the other parties' submissions.* Unless for good cause shown the Administrative Law Judge permits an extension of time to file, the respondent and the other parties shall have 20 calendar days from the date of the submission by the Office of Foreign Assets Control of the items set forth in paragraph (c) of this section, and/or of any other party's service of items set forth in this paragraph (d), to serve upon the Administrative Law Judge and all parties, the following:

- (1) Its response to stipulations of fact, if any;
- (2) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and
- (3) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(e) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraphs (c) and (d) of this section, except for good cause shown.

§ 515.713 Public hearings.

(a) *In general.* All hearings shall be open to the public, unless the Administrative Law Judge, at his or her discretion, determines at any time prior to or during the hearing, that holding an open hearing would be contrary to the public interest. Within 20 calendar days of service of the notice of hearing from the Administrative Law Judge, any party may file with the Administrative Law Judge a request for a closed hearing, and any party may file a pleading in reply

to such a request. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or closed.

(b) *Filing document under seal.* (1) The Office of Foreign Assets Control may file any document or any part of a document under seal if disclosure of the document would be inconsistent with the protection of the public interest or if justice requires protection of any person, including a source or a party, from annoyance, threat, oppression, or undue burden or expense, or the disclosure of the information would be, or might reasonably lead to a disclosure, contrary to Executive Order 12958 or other Executive orders concerning disclosure of information, U.S. Treasury Department regulations, the Privacy Act, or the Freedom of Information Act.

(2) The Administrative Law Judge shall also safeguard the security and integrity of any documents under seal and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing portions of the hearing to the public. Release of any information under seal, in any form or manner, is subject to the same sanctions and the exercise of the same authorities as are provided with respect to ex parte communications under paragraph (e)(5) of this section.

(3) Should the Administrative Law Judge deny placement of any documents under seal or under protective order, any party, and any person whose documents or materials are at issue, may file an interlocutory appeal to the Secretary or the Secretary's designee. In such cases the Administrative Law Judge must not release or expose any of the records or documents in question to the public or to any other parties for a period of 20 calendar days from the date of the Administrative Law Judge's ruling, in order to permit a petitioner the opportunity either to withdraw the records and documents or to file an interlocutory appeal with the Secretary or the Secretary's designee requesting an order that the records be placed under seal.

(4) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the respective parties, except when it may be necessary to retain a record until the judicial process is completed.

(5) Written notice of all requests for release of protected documents or materials shall be given to the parties registered with the Administrative Law Judge at least 20 calendar days prior to any permitted release and prior to any

access not specifically authorized under the protective order. A copy of all requests for information, including the name, address, and telephone number of the requester, shall be provided to the petitioner. Each request for access to protected material must also provide the names, addresses, and telephone numbers of all persons represented by the requester, including those on whose behalf the requester seeks access to protected information. The Administrative Law Judge shall impose sanctions provided under § 515.706(e)(4) and (e)(5) for failure to provide this information.

§ 515.714 Conduct of hearings.

(a) *In general*—(1) *Overview.* Hearings shall be conducted to provide a fair and expeditious presentation of the relevant disputed issues and facts. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the relevant facts.

(2) *Order of hearing.* The Office of Foreign Assets Control shall present its case—in-chief first, unless otherwise ordered in advance by the Administrative Law Judge or otherwise expressly specified by law or regulation. The Office of Foreign Assets Control shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement.

(3) *Stipulations.* Unless the Administrative Law Judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which has been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* A record of the hearing shall be made by manual or electronic means, including through the use of audio recorded diskettes or audio-visual cassettes, and transcribed unless the Administrative Law Judge rules otherwise. The transcript shall be made available to any party upon payment of the cost thereof. The Administrative Law Judge shall have authority to order the record corrected, either upon a motion to correct, upon a motion to stipulate by the parties for good cause shown, or following notice to the parties upon the Administrative Law Judge's own motion. The Administrative Law Judge shall serve notice upon all parties, at the addresses provided by the parties pursuant to § 515.703(b)(1)(iii), that the certified transcript, together with all hearing exhibits and exhibits introduced

but not admitted into evidence at the hearing, has been filed with the Administrative Law Judge.

§ 515.715 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, evidence that is relevant and material is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence may be excluded if it is misleading or its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence need not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant and material, and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court.

(2) All matters officially noticed by the Administrative Law Judge shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Duplicate copies.* A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(d) *Objections to admissibility of evidence.* Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record. Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Rejected exhibits.* The Administrative Law Judge shall retain rejected exhibits, adequately marked for identification, in the event of an interlocutory appeal.

(f) *Stipulations.* The parties may stipulate as to any relevant matters of fact or to the authenticity of any relevant documents. Such stipulations may be received into evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(g) *Depositions of unavailable witnesses.* If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition within the United States to which all parties to the proceeding have received timely notice and an opportunity to participate, a

party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits. All costs of depositions shall be borne by the party requesting the deposition.

§ 515.716 Proposed decisions; recommended decision of Administrative Law Judge; final decision.

(a) *Proposed decisions.* Any party may file with the Administrative Law Judge a proposed decision within 30 calendar days after the parties have received notice that the transcript has been filed with the Administrative Law Judge, unless otherwise ordered by the Administrative Law Judge.

(b) *Reliance on relevant authorities.* The proposed decision must be supported by citation to relevant authorities and by transcript page references to any relevant portions of the record. At the same time the proposed decision is filed, a post-hearing brief may be filed in support. The post-hearing brief shall be filed either as part of the same document or in a separate document.

(c) *Reply briefs.* Reply briefs may be filed within 15 calendar days after the date on which the parties' proposed decision is due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed a proposed decision or a post-hearing brief may not file a reply brief.

(d) *Simultaneous filing required.* Absent a showing of good cause for the use of another procedure, the Administrative Law Judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

(e) *Recommended decision and filing of record.* Within 45 calendar days after expiration of the time allowed for filing reply briefs, the Administrative Law Judge shall file with and certify to the Secretary or the Secretary's designee the record of the proceeding and the decision. The record must include the Administrative Law Judge's recommended decision, including a determination either that there was no violation by the person named in the prepenalty notice, or that there was a violation by the person named in the prepenalty notice, and the recommended monetary penalty and/or civil forfeiture and/or other disposition available to the Office of Foreign Assets Control. In addition to the proposed decision, the record must include all prehearing and hearing transcripts, exhibits, and rulings, and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The Administrative

Law Judge shall have the recommended decision served upon each party.

(f) *Exceptions to the recommended decision.* When the Administrative Law Judge has issued his recommended decision, the Administrative Law Judge or his representative shall contact each party by telephone at the telephone number provided by each party pursuant to § 515.703(b)(1)(iii). Within 3 calendar days of telephoning the parties, the recommended decision shall be mailed by the Administrative Law Judge to the parties. A party may file written exceptions to the recommended decision with the Secretary or the Secretary's designee within 30 calendar days of the date the telephone call is placed by the Administrative Law Judge or his representative. A supporting brief may be filed at the time the exceptions are filed.

(g) *Final decision.* The final decision of the Secretary or the Secretary's designee shall be based on a review of the Administrative Law Judge's recommended decision and the entire record of the proceeding. The final written decision shall be provided to all parties.

§ 515.717 Judicial review.

Any person may seek judicial review as provided under 5 U.S.C. 702 for a penalty and/or forfeiture imposed pursuant to this part.

§ 515.718 Referral to United States Department of Justice; administrative collection measures.

In the event that the respondent does not pay the penalty imposed pursuant to this part within 30 calendar days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Dated: January 7, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 2, 1998.

James E. Johnson,

Assistant Secretary (Enforcement),
Department of the Treasury.

[FR Doc. 98-5358 Filed 2-26-98; 9:05 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR 22, 24, 27, 90, and 101

[FCC 98-18]

Public Mobile Radio Services, Personal Communications Services, Wireless Communications Services, Private Land Mobile Radio Services, and Fixed Microwave Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Memorandum Opinion and Order*, in response to a petition for forbearance, the Commission forbears from its existing procedures for transfers of control and assignment of licenses for non-substantial or "*pro forma*" transactions for certain wireless telecommunications licensees and adopts streamlined procedures in order to reduce such carriers' regulatory burdens.

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT:

David Furth at (202) 418-0620 or Rhonda Lien at (202) 418-7240 (Wireless Telecommunications Bureau/Commercial Wireless Division).

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order*, adopted and released February 4, 1998. The complete text of the *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 1231 20th St. N.W., Washington, D.C. 20037.

Synopsis of the Report and Order

I. Introduction

1. On February 4, 1997, the Wireless Telecommunications Practice Committee of the Federal Communications Bar Association (FCBA) filed a Petition for Forbearance from the application of the prior notification and approval requirements of section 310(d) of the Communications Act of 1934, as amended (the Act) to telecommunications carriers licensed by the Wireless Telecommunications Bureau of the Federal Communications Commission (Commission) for *pro forma* assignments of licenses and transfers of control. See 47 U.S.C. 310. On May 22, 1997, the Broadband Personal Communications Services Alliance of the Personal

Communications Industry Association (PCIA) filed a separate petition for forbearance, which reiterates FCBA's request for forbearance from section 310(d) and requests forbearance from other regulations as well. For the reasons discussed below, the Commission grants the FCBA Petition and that portion of the PCIA Petition relating to forbearance from section 310(d), subject to several exceptions noted below. This *Memorandum Opinion and Order* (Order) only addresses PCIA's request for forbearance from enforcement of section 310(d). PCIA's requests for forbearance of other regulations contained in PCIA's petition will be addressed in a separate order.

II. Background, Petition, and Comments

2. Section 310(d) of the Act forbids any assignment of a radio license or transfer of control of a radio licensee corporation without obtaining prior Commission consent, and states in relevant part: "No construction permit or station license * * * shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." 47 U.S.C. 310(d). Currently, transfers or assignments that do not "involve a substantial change in ownership or control," commonly referred to as *pro forma* transactions, must receive prior Commission approval but are exempt from the 30-day public notice requirement that would otherwise apply. Applicants identify whether their applications for transfer and assignment are *pro forma* in nature, and the Wireless Telecommunications Bureau (Bureau) processes *pro forma* applications through an initial determination that the application is in fact *pro forma* in nature, and a review of the application for accuracy and completeness. When these criteria are met, there is no need for additional public interest review of the application, because the person or entity retaining ultimate control of the license was subject to prior public interest review and approval by the Commission when it was originally awarded the license, whether by initial licensing or by a previous transfer or assignment. Therefore, where no substantial change of control will result from the transfer or assignment, grant of the application is presumptively in the public interest, and the application is placed on public notice as granted.

3. In its Petition, FCBA states that forbearance from the section 310(d) requirements of prior Commission application and approval of *pro forma* transfers and assignments is warranted under section 10 of the Act. Section 10 requires the Commission to forbear from applying any regulation or provision of the Act to a telecommunications carrier if it determines that: (1) Enforcement is not necessary to ensure that charges, practices, classifications and services are just and reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. See Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56, Section 10, codified at 47 U.S.C. 160(a). In making the determination that forbearance is consistent with the public interest, the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. 47 U.S.C. 160(b).

4. FCBA asserts that the Commission should forbear from enforcing its section 310(d) requirements with respect to *pro forma* transfers and assignments involving telecommunications carriers licensed by the Bureau because all three prongs of the section 10 forbearance standard are met. FCBA's Petition was filed on behalf of and in cooperation with numerous carriers holding radio licenses and the associations representing their interests. All of the commenters to the FCBA Petition support its request for forbearance and no oppositions were filed. PCIA's Petition was filed by the Broadband Personal Communications Services Alliance of the PCIA, representing numerous broadband personal communications services (PCS) licensees. All commenters to the section 310(d) portion of the PCIA Petition support forbearance from section 310(d). The Commission adopts streamlined procedures in response to these petitions only related to non-substantial transfer and assignments involving telecommunications carriers licensed by the Bureau. However, the Commission will continue to apply existing procedures to applications for *pro forma* transactions involving telecommunications carriers licensed by the Bureau that are subject to the Commission's unjust enrichment provisions, and proposed transactions involving changes to corporate

management through the use of proxy mechanisms.

III. Discussion

A. Scope of Proposed Forbearance—*Pro Forma v. Non-Pro Forma Transactions*

5. *Background.* In its Petition, the FCBA uses the term "non-substantial" or "*pro forma*" to refer to assignments and transfers of control that do not involve a substantial change in the ultimate *de facto* or *de jure* control of a licensee.

6. *Discussion.* The streamlined procedures that the Commission adopts herein apply only to *pro forma* transfers and assignments, that is, transfers and assignments that do not cause a "substantial change in ownership or control" of the license as provided in section 309(c)(2)(B) of the Act. 47 U.S.C. 309(c)(2)(B). Where a proposed transfer or assignment would result in a substantial change of *de jure* or *de facto* control, the transaction is not treated as *pro forma* and is outside the scope of the forbearance provided for in this Order. *De jure* control is control as a matter of law. It is present where a shareholder or shareholders voting together own or control fifty percent or more of the licensee's voting shares. *De jure* control of a partnership is similarly based on holding a fifty percent or greater voting interest. *De facto* control is defined as actual control of the licensee, and primarily applies where the party or entity in question has the power to control or dominate management of the licensee. Because it inherently involves issues of fact, *de facto* control is determined on a case-by-case basis, and may vary with the circumstances presented by each licensee. While the size of a person's or entity's ownership interest is relevant, it is not necessarily a determinative factor in establishing *de facto* control. Other factors that may be relevant to a finding of *de facto* control include: (1) Power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; (2) authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; (3) ability to play an integral role in major management decisions of the licensee; (4) authority to pay financial obligations, including expenses arising out of operating; (4) ability to receive monies and profits from the facility's operations; and (5) unfettered use of all facilities and equipment. See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253, 59 FR

63210 (December 7, 1994). Under some circumstances, a change in corporate management resulting from a proxy contest may affect *de facto* control.

7. In general, a substantial change in ownership or control occurs when there is a transfer of fifty percent or more a licensee's stock or a transfer that results in a stockholder, whose qualifications have not been passed on by the Commission, acquiring at least a fifty percent voting interest in a licensee. However, because there are other factors that also may be found in a particular case to substantially affect *de facto* control, there is no express rule or "bright-line" test that distinguishes those transfers and assignments of telecommunications licenses that involve substantial changes in ownership or control and those that do not. In the case of common carrier transfers and assignments, the Commission has applied the same standard that is set forth in § 73.3540(f) of its broadcast rules, which identifies common categories of transactions that are considered non-substantial and therefore are eligible for *pro forma* treatment: (1) Assignment from an individual or individuals (including partnerships) to a corporation owned or controlled by such individuals or partnerships without any substantial change in their relative interests; (2) assignment from a corporation to its stockholders without effecting any substantial change in the disposition of their interests; (3) assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; (4) corporate reorganization which involves no substantial change in the beneficial ownership of the corporation; (5) assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or (6) assignment of less than a controlling interest in a partnership. See 47 CFR 73.3540(f).

8. For purposes of this Order, the Commission limits its consideration of forbearance to the above categories of *pro forma* transactions only. The Commission is not changing its procedures with respect to Commission review and approval of non-*pro forma* transactions. The Commission also notes that applicants will continue to be responsible in each instance, as they are currently, for determining whether a proposed transaction is *pro forma* or non-*pro forma*, and for complying with the relevant rules and procedures that

govern Commission approval of such transactions. This *Order* also does not limit the Commission's authority to determine that a transaction presented to us as *pro forma* should in fact be classified as non-*pro forma*, or vice versa. The Commission considers telecommunications carriers licensed by the Bureau and subject to this *Order* to include telecommunications carriers licensed under part 21 (domestic public fixed radio services), part 22 (public mobile radio services), part 24 (personal communications services), part 27 (wireless communications services), part 90 (private land mobile radio services) and part 101 (common carrier fixed microwave services) of the Commission's rules. However, licensees governed by these rule parts who do not meet the definition of "telecommunications carrier" (e.g., public safety and private microwave licensees) are beyond the scope of the Commission's § 10 forbearance authority, and therefore are not subject to the revised procedures established by this *Order*. The Commission also reiterates that its treatment of *pro forma* transactions herein does not apply in other contexts, such as transfers of broadcast permits or licenses, where different statutory and policy considerations apply.

B. Analysis of Section 10 Forbearance Standard

9. Section 10 provides that the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier if it determines that:

(1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) Forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. 160(a).

i. Just and Reasonable Practices

10. *Background.* The first prong of the section 10 standard for forbearance is that enforcement of the regulation is not necessary to ensure that charges, practices, classifications, and services are just and reasonable, and are not unjustly or unreasonably discriminatory. 47 U.S.C. 160(a)(1). FCBA asserts that applications for *pro forma* transfers and assignments do not contain information concerning a carrier's charges, practices,

classifications, or services. Additionally, FCBA notes that the Commission has expressly declined to address such issues in connection with its review of major transfers and assignments, holding that such matters should be addressed separately.

11. *Discussion.* The Commission concludes that prior approval of applications for consent to *pro forma* transfers and assignments is not necessary to ensure that licensees' charges, practices, classifications, and services are just and reasonable, and not unjustly or unreasonably discriminatory. Because *pro forma* transactions do not affect actual control of the licensee, they are unlikely to have any impact on the licensees' charges, practices, classifications, or services. Thus, it has not been necessary to consider these issues in the Commission's review of *pro forma* transactions, and the Commission has never done so. Given the existence of other mechanisms to deal with these issues, and the fact that the Commission has had no need to consider them in the context of *pro forma* transactions, it concludes that the first prong of the forbearance standard is met.

ii. Consumer Protection

12. *Background.* The second prong of the § 10 forbearance standard requires that enforcement not be necessary for the protection of consumers. 47 U.S.C. 160(a)(2). FCBA argues that the vast majority of *pro forma* assignments and transfers do not affect consumers, but merely allow licensees to modify their corporate organization or ownership structure in a non-substantial way from the structure previously approved by the Commission. FCBA notes that for substantial transactions, the Commission often engages in a competitive analysis to determine the effects of the proposed transaction on consumers and on competition. FCBA asserts, however, that the Commission does not conduct such an analysis for *pro forma* transactions because, by definition, such transactions cannot significantly change ownership or control, and thus cannot have a significant impact on consumers.

13. *Discussion.* The Commission concludes that requiring prior review of *pro forma* transfers and assignments is not necessary for the protection of consumers. First, as several commenters note, non-substantial transactions are exempt from the public notice requirement of section 309(b), indicating that Congress perceived a decreased need for public scrutiny of such transactions prior to action by the Commission. The Commission also

finds, based on its experience reviewing *pro forma* applications, that *pro forma* transfers and assignments rarely, if ever, raise consumer issues, because the ultimate control of the licensee—which has already been subject to Commission review and approval—does not change as a result of the transaction. The Commission concludes that forbearance will not deprive consumers of protection because the Commission will continue to review any transfer or assignment that would result in a substantial change in a licensee's ownership or control. Moreover, in the unlikely event that a *pro forma* transfer or assignment raises such issues, the streamlined procedures the Commission adopts herein will provide an opportunity for Commission reconsideration if necessary.

iii. Public Interest

14. *Background.* The third prong of the section 10 forbearance standard requires that forbearance be consistent with the public interest. FCBA makes four arguments to support its assertion that this prong is met. First, FCBA asserts that forbearance would promote the public interest by allowing carriers to make non-substantial changes to their ownership structure or internal organization without delay to respond to competition. Second, FCBA argues that advance approval for *pro forma* assignments and transfers is not needed to safeguard the public interest, because no meaningful public interest determination is made when such applications are reviewed. Third, FCBA argues that eliminating the application requirements for *pro forma* transactions will allow a more efficient use of scarce public and private resources. Finally, FCBA asserts that forbearance will promote uniformity among services because different procedures exist for processing *pro forma* applications in different wireless services. Commenters uniformly support FCBA's arguments, and offer numerous examples of the increased public benefit that would result from forbearance.

15. *Discussion.* The Commission finds that, provided certain procedures discussed below are in place, forbearance from section 310(d) requirements for *pro forma* transactions is consistent with the public interest. Forbearance will promote competition by allowing carriers to change their ownership structure or internal organization without regulatory delay where such delay serves no useful function. Such efficiency will increase wireless carriers' ability to compete in today's marketplace, a goal frequently

advocated by Congress and the Commission.

16. For example, FCBA notes that licenses often must be transferred or assigned internally as a result of merging local subsidiaries into new business units, such as regional or national corporations in order to respond to competitors' business strategies. Alternatively, after two or more carriers merge during the course of a substantial transfer or assignment, the merged company may need to reorganize internally and make non-substantial changes in order to bring different services under common management. In both of these examples, carriers currently must file applications for *pro forma* assignments or transfers well in advance of the desired transaction and wait for Commission processing and grant of such applications, despite the fact that the changes would not result in a substantial change in ownership or control. Such regulatory delay hampers carriers' ability to respond efficiently to competitive conditions.

17. The Commission also concludes that advance approval of *pro forma* assignments and transfers is not needed because such transactions, by their nature, do not change the underlying ownership or control of licensees that the Commission has already reviewed and approved. As noted above, *pro forma* transactions are considered presumptively in the public interest because no substantial change of control is involved. Therefore, the only purpose of reviewing *pro forma* applications in advance is to determine that they are, in fact, *pro forma* in nature. While this is a legitimate objective, the Commission believes the same objective can be accomplished just as effectively and far more efficiently through a notification procedure. The vast majority of *pro forma* applications are for routine transactions where the *pro forma* nature of the transaction is self-evident. The Commission uses the information in these applications merely to update its ownership and control records, which, as noted below, can be accomplished just as easily by requiring written proof of a transaction after it has occurred or by requiring licensees to file updated forms after the transaction is complete.

18. The Commission further concludes that requiring prior review of hundreds of routine applications a year is not needed to protect against the rare instance in which an applicant may file a *pro forma* application that should be treated as non-*pro forma*. Under the forbearance procedures adopted herein, interested parties will have an opportunity to challenge and seek

reconsideration of any *pro forma* transaction granted by notification, and the Commission will retain the authority to rescind its approval of any purported *pro forma* transaction that it determines involves a substantial change of control. The Commission will also continue to require prior review of all substantial transfers and assignments and will evaluate the public interest implications of such proposed transactions as required by the Act. The Commission believes that elimination of the pre-transaction application and approval requirement for *pro forma* transactions will allow a more efficient use of scarce public and private resources. Additionally, forbearance will allow Bureau personnel to focus on non-*pro forma* applications for transfers and assignments that involve actual changes of control, as well as the initial review of new licensees.

19. Forbearance will also eliminate a significant and unnecessary expenditure of carrier and Commission resources. As FCBA and numerous commenters note, carriers must devote significant time and resources to prepare and file *pro forma* applications, track their status, and ensure that the transactions are consummated in the time allotted. Forbearance will free up these resources so that carriers can concentrate on providing competitive telecommunications services. FCBA also notes that existing procedures for *pro forma* transactions are a strain on Commission resources, because staff must process filing fees, assign file numbers, review applications for completeness, and prepare public notices of grants. Forbearance from these activities will allow the Commission to deploy its resources more efficiently.

20. Finally, forbearance will promote uniformity among services, as all wireless telecommunications carriers will be subject to the forbearance adopted in this *Order*. Licensees that hold authorizations in different wireless telecommunications services, such as PCS, paging, and cellular, will be able to make *pro forma* changes efficiently without filing multiple applications for each license and service. Thus, forbearance will facilitate *pro forma* transactions that include multiple services or licenses, such as an internal reorganization of a company that holds numerous licenses.

iv. Licensees Affected

21. *Background.* FCBA requests that the Commission adopt forbearance of section 310(d) requirements for all non-substantial transactions involving telecommunications carriers licensed by

the Bureau. A telecommunications carrier, as defined by the Act, is "any provider of telecommunications services," and "telecommunications service" is in turn defined as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public. See 47 U.S.C. 153(44), (46). In its petition, PCIA initially proposed that forbearance be applied only to broadband PCS carriers, but in its reply comments, PCIA agrees with commenters who contend that forbearance should be applied equally to all commercial mobile radio services (CMRS) licensees. Commenters who address this issue generally urge the Commission to apply forbearance broadly, either to all CMRS licensees or to all wireless telecommunications carriers licensed by the Bureau.

22. *Discussion.* The Commission concludes that the record establishes sufficient justification to forbear from enforcing section 310(d) requirements as they apply to all wireless telecommunications carriers. The Commission finds, based on the record, that forbearance will enhance competition among telecommunications carriers and serve the public interest. As noted above, many commenters support broad forbearance for CMRS providers, based on Congress' mandate when it enacted the 1993 Omnibus Reconciliation Act that similar mobile services receive similar regulatory treatment. The Commission also believes that the same forbearance should be extended to wireless telecommunications carriers who are not CMRS providers, *e.g.*, common carrier microwave licensees. While fewer commenters expressly addressed this issue, the Commission notes that no commenter expressly opposed FCBA's proposal to extend forbearance to all wireless telecommunications carriers, and the Commission sees no reason to distinguish among different categories of telecommunications carriers in this regard. Therefore, subject to the exceptions discussed below, the Commission will apply forbearance from section 310(d) requirements for *pro forma* applications uniformly to telecommunications carriers licensed under part 21 (domestic public fixed radio services), part 22 (public mobile radio services), part 24 (personal communications services), part 27 (wireless communications services), part 90 (private land mobile radio services), and part 101 (fixed microwave services) of the Commission's rules. However, as discussed above, the forbearance provisions of this *Order* do

not apply to licensees governed by these rule parts who do not meet the statutory definition of "telecommunications carrier." Under section 10, the Commission's forbearance authority only extends to telecommunications carriers and telecommunications services. It does not apply to services such as public safety and private point-to-point microwave, which do not involve the provision of "telecommunications service," *i.e.*, the offering of telecommunications for a fee to the public, or to such classes of users as to be effectively available to the public. 47 U.S.C. 153(44), (46). Thus, licensees in these non-telecommunications services will continue to be subject to existing procedures with respect to *pro forma* applications for assignment and transfer. The Commission recognizes that in some instances, this may cause inconvenience to licensees who hold both telecommunications and non-telecommunications licenses, because they will be unable to use the streamlined notification procedures adopted in this *Order* with respect to their non-telecommunications licenses. However, because section 10 does not extend forbearance to non-telecommunications services, the Commission is constrained from applying these procedures more broadly. Nevertheless, in order to minimize any disparity in the Commission's treatment of non-telecommunications as compared to telecommunications licenses, the Commission intends to consider adoption of expedited procedures for *pro forma* transfers and assignments of non-telecommunications licenses in an upcoming rulemaking implementing the Universal Licensing System for wireless services. The Commission is developing the Universal Licensing System to integrate its licensing databases and provide for electronic filing of wireless applications, including transfer and assignment requests.

v. Exceptions to Forbearance

23. While the Commission will generally apply forbearance to *pro forma* transactions involving telecommunications carriers, it concludes that existing procedures should continue to apply to applications for *pro forma* transactions involving licensees subject to the Commission's unjust enrichment provisions, *i.e.*, licensees that hold licenses on spectrum blocks restricted to designated entities, or licensees that utilize installment financing or have received bidding credits during the competitive bidding process. See 47 CFR 1.2111. Because *pro*

forma transactions involving these licenses may affect financial obligations to the Commission, transfer and assignment applications by these licensees are processed differently than other *pro forma* applications, and require additional review, paperwork, and coordination, as well as additional processing time. Each transaction involving a license subject to unjust enrichment provisions must be carefully scrutinized to ensure that the proposed transaction, even if *pro forma* in nature, would not violate any of the Commission's unjust enrichment rules. The Commission must also process additional paperwork related to any installment financing or bidding credits, and coordinate the approval of financial documentation with the applicant and the U.S. Department of Treasury.

24. The Commission does not find that licensees subject to its unjust enrichment provisions meet the section 10 forbearance standard. Because these licensees have received financial benefits and have continuing financial obligations to the Commission and, in turn, to the public, even a *pro forma* transfer from one affiliated entity to another may have implications with respect to the transferee's eligibility for the same financial benefits, the ability of the transferee to meet its financial obligations, and the ability of the Commission to take recourse in the event of default or unjust enrichment. The Commission believes that continued application of its section 310(d) procedures in such circumstances is in the public interest, because it enables the Commission to review the financial implications of the transfer before approving it. Therefore, the Commission will continue to enforce its section 310(d) prior notice and approval requirements as applied to those licenses subject to its unjust enrichment provisions.

25. The Commission also concludes that existing *pro forma* application procedures should be retained in connection with transfers arising out of shareholder proxy contests. The Commission has stated that changes in the composition of a licensee's board of directors resulting from a proxy contest must be carefully analyzed in terms of potential outcome in order to determine the appropriate transfer procedures. Although the Commission recognized that in many instances, such changes do not constitute a transfer of control that would require prior Commission approval, it concluded that under limited circumstances, a change in corporate management arising from a proxy contest could result in a substantial transfer of control to persons

or persons or entities who had not been subject to prior Commission review. *Id.* Therefore, the Commission concluded that transfer applications arising out of proxy contests could be filed under existing *pro forma* transfer and assignment procedures, but that applicants would also be required to supplement their applications with information on citizenship, other attributable interests, and other relevant information. *Id.*

26. Because each transaction involving a proxy mechanism requires careful analysis of the potential outcome to ensure that there is no substantial transfer of control, the Commission does not believe that forbearance from its prior notification and application procedures in this context meets the public interest prong of the section 10 forbearance standard. The Commission notes that neither FCBA nor any of the commenters have specifically addressed whether forbearance should be extended to proxy-related transfers. To ensure that a proxy contest does not result in control passing to persons or persons or entities who have not been subject to prior Commission review, the Commission continues to believe that it should review such potential changes in corporate management prospectively under existing *pro forma* procedures. Therefore, the Commission declines to extend forbearance to *pro forma* transactions involving use of proxy mechanisms at this time.

C. Procedures Adopted for Pro Forma Transfers and Assignments

27. *Background.* Under the Commission's current rules, when a telecommunications carrier files an application for consent to transfer control of its license or assign its license, it must file either an FCC Form 490, "Application for Assignment of Authorization or Consent to Transfer of Control of Licensee," or, if it is a common carrier microwave licensee, a Form 702, "Application for Consent to Assignment of Radio Station Construction Authorization or License for Stations in Services Other than Broadcast," or Form 704, "Application for Consent to Transfer of Control." These forms contain information on the assignee or transferee, new licensee information, basic licensee qualifications, and certifications by the assignor/assignee or transferor/transferee. The forms must be accompanied by a description of the transaction and a public interest showing. Additionally, if not a common carrier microwave licensee, the assignee or transferee must file a report qualifying it as a common carrier radio

licensee by filing an FCC Form 430 unless a current report is already on file with the Commission. See 47 CFR 22.137(a), 24.839(b)(3), 27.324, 90.153(a).

28. The Bureau makes every attempt to process *pro forma* transactions within 30 days, but cannot guarantee grant by date certain, especially at the end of the calendar year. Additionally, those non-substantial transactions subject to the Commission's unjust enrichment provisions, 47 CFR 1.2111, are processed no earlier than ninety days from the filing date of the application, as they involve additional paperwork and review and the coordination of the loan documentation with the applicant and the United States Department of Treasury. Once the transfer or assignment has been approved, the Commission places the grant of the *pro forma* transaction on public notice as approved, and sends the applicant a consent authorization, FCC Form 726-C for CMRS licensees or FCC Form 732-C for common carrier microwave licensees. Applicants other than common carrier microwave applicants must respond in writing within sixty days of the Form 726-C and certify that the approved transaction has been consummated. See 47 CFR 22.137(b), 27.324, 90.153(b). As a result of the Commission's recent part 101 proceeding, which consolidated its point-to-point microwave rules, common carrier microwave licensees are subject to streamlined procedures for transfers and assignments, which vary slightly from the procedures used by other telecommunications carriers. While they must file an application prior to a proposed transfer or assignment transaction, they do not need to file a post-consummation letter or an FCC Form 430.

29. *Discussion.* The Commission agrees with commenters that its recordkeeping needs would be best addressed by requiring written notification of a *pro forma* transaction within a certain time period after the transaction is completed. Such procedures will ensure that the Commission's records are current, and a clear public record exists of the changes that resulted from any *pro forma* transaction. Also, the procedures adopted are slight modifications of existing rules which should be familiar to every telecommunications carrier. The Commission disagrees with those commenters who suggest that no written notification of a *pro forma* transaction should be required, or that such proof should only be required in annual filings. Such procedures would allow more time to elapse after consummation

than is currently permitted, and would also allow the Commission's public records to quickly become outdated.

30. The Commission therefore adopts several of the proposals suggested by commenters as a condition of the adopted forbearance and amends the transfer and assignment sections of its rules in parts 22, 24, 27, 90, and 101. Within 30 days after consummation of a *pro forma* transaction, the licensee must submit written proof of such transaction either in letter form or by filing the appropriate transfer or assignment form currently in use, *i.e.*, Form 490, 702, or 704, so that the Commission can place its application on public notice as granted. In order to obtain streamlined processing under these procedures, licensees who use Form 490, 702, or 704, rather than a letter, to notify us of the transaction should indicate on the form, as they currently do, that the transaction is *pro forma*. This 30-day notification requirement is a slight modification of the Commission's current requirement that licensees notify it within 60 days of consummation, and of the Commission's streamlined procedures for common carrier microwave licensees. However, the Commission believes that, despite this shortened notification period, licensees will benefit from its streamlined procedures, as they will no longer have to seek pre-transaction approval by the Commission prior to consummating a *pro forma* transaction. Common carrier microwave licensees will no longer have to seek pre-transaction approval, but will only have to provide post-consummation information. This modification treats all telecommunications carriers alike and allows them to take advantage of the Commission's streamlined procedures. In addition, these requirements could be subject to further modification as a result of the Commission's upcoming development of the Universal Licensing System (ULS), which will provide for electronic filing of wireless telecommunications applications, including transfer and assignment requests. The Commission also anticipates proposing certain rule changes to implement ULS in an upcoming rulemaking. If adopted, these proposals may slightly modify the procedures the Commission adopts in this *Order* by requiring the use of a new post-consummation form for electronic filing, and the Commission will take appropriate action upon the final determination of these proposals.

31. Additionally, if a licensee chooses to notify the Commission of a *pro forma* transaction in a letter form, the post-transaction notification letter must

contain the licensee's certification that the subject transfer or assignment is non-substantial and that, together with all previous non-substantial transactions, it does not involve a change in the ultimate *de facto* or *de jure* control of the licensee. If the transfer or assignment of more than one license is involved, a single letter may be filed, so long as all licenses affected by the transfer are identified by call sign in the letter.

32. In addition to requiring post-consummation notification, the Commission concludes that licensees must concurrently provide updated ownership information in order to ensure that the public has a record of any changes that have occurred to their ownership structure. Therefore, the Commission continues to require each assignee or transferee to file an updated ownership report on FCC Form 430 when it notifies the Commission of the consummated transaction, unless an updated report is already on file with the Commission. See 47 CFR 22.137(a), 24.839(b)(3), 90.153(a). If such a report is on file, the assignee or transferee must update this report to reflect any changes. If the licensee's name has changed as a result of the transaction, it must request reissuance of the license in the new name, as is currently required. Additionally, a licensee that transfers or assigns its license within three years of receiving the license through competitive bidding remains subject to the reporting requirements of § 1.2111(a) of its rules. See 47 CFR 1.2111(a). Such licensee must file the documentation required by this rule when it files its post-consummation notification.

33. Upon receipt of the Form 490, 702, or 704 or letter notification from the parties, the Commission will place the transaction on public notice as granted. This will provide an opportunity for public scrutiny of the transaction. Moreover, any interested party who objects to the transaction may, within 30 days from the date upon which public notice is given, file a petition requesting reconsideration. See 47 U.S.C. 405; see also 47 CFR 1.106(b). The Commission believes this procedure will protect the public interest by deterring any attempt to misuse its processes and by providing the public with accurate information regarding Commission licensees.

IV. Procedural Matters

34. *Paperwork Reduction Act Analysis.* This *Memorandum Opinion and Order* contains an information collection that was submitted to the Office of Management and Budget

(OMB) for emergency approval under the Paperwork Reduction Act.

V. Ordering Clauses

35. Accordingly, *it is Ordered That* Parts 22, 24, 90, and 101 of the Commission's Rules are amended, effective April 2, 1998.

36. Additionally, *it is Ordered That*, pursuant to sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 160, the Petition for Forbearance filed by the Federal Communications Bar Association Wireless Telecommunications Practice Committee on February 4, 1997 is *Granted in Part and Denied in Part* to the extent discussed above.

37. Additionally, *it is Ordered That*, pursuant to sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 160, the Petition for Forbearance filed by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association on May 22, 1997 is *Granted in Part and Denied in Part* to the extent discussed above.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 22, 24, 27, 90, and 101 of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.137 is amended by adding paragraphs (a)(1) and (a)(2) and revising the first sentence in paragraph (b) to read as follows:

§ 22.137 Assignment of authorization; transfer of control.

* * * * *

(a) * * *

(1) *Forbearance from pro forma assignments and transfers of control.* Licensees that are telecommunications carriers as defined in 47 U.S.C. 153 are subject to streamlined procedures for *pro forma*, i.e., non-substantial, transfers and assignments.

(2) A *pro forma* assignee or transferee is not required to seek prior FCC approval for the transaction, but must notify the FCC no later than 30 days after the event causing the assignment or transfer, either by filing an FCC Form 490 or in letter form. If a letter is submitted, it must contain a

certification that the transfer or assignment is non-substantial and, together with all previous non-substantial transactions, does not involve a change in the licensee's ultimate control. A single letter may be filed for a transfer or assignment of control of more than one authorization if each authorization affected is identified by call sign. Licensees must concurrently update ownership information on their FCC Form 430, if necessary.

(b) *Notification of completion.*

Assignments and transfers of control must be completed within 60 days of FCC approval, except those licensees subject to the streamlined procedures of paragraph (a)(1). * * *

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

4. Section 24.439 is amended by adding paragraph (a)(3) to read as follows:

§ 24.439 Transfer of control or assignment of station authorization.

(a) * * *

(3) *Forbearance from pro forma assignments and transfers of control.* PCS licensees that are telecommunications carriers as defined in 47 U.S.C. 153 are subject to streamlined procedures for *pro forma*, i.e., non-substantial, transfers and assignments. A *pro forma* assignee or transferee is not required to seek prior FCC approval for the transaction, but must notify the FCC no later than 30 days after the event causing the assignment or transfer, either by filing an FCC Form 490 or in letter form. If a letter is submitted, it must contain a certification that the transfer or assignment is non-substantial and, together with all previous non-substantial transactions, does not involve a change in the licensee's ultimate control. A single letter may be filed for a transfer or assignment of control of more than one authorization if each authorization affected is identified by call sign in the letter. Licensees must concurrently update ownership information on their FCC Form 430, if necessary.

* * * * *

5. Section 24.839 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 24.839 Transfer of control or assignment of license.

(a) * * *

(1) *Forbearance from pro forma assignments and transfers of control.* PCS licensees that are telecommunications carriers as defined in 47 U.S.C. 153 are subject to streamlined procedures for *pro forma*, i.e., non-substantial, transfers and assignments.

(2) A *pro forma* assignee or transferee is not required to seek prior FCC approval for the transaction, but must notify the FCC no later than 30 days after the event causing the assignment or transfer, either by filing an FCC Form 490 or in letter form. If a letter is submitted, it must contain a certification that the transfer or assignment is non-substantial and, together with all previous non-substantial transactions, does not involve a change in the licensee's ultimate control. A single letter may be filed for a transfer or assignment of control of more than one authorization if each authorization affected is identified by call sign in the letter. Licensees must concurrently update ownership information on their FCC Form 430, if necessary.

* * * * *

PART 27—WIRELESS COMMUNICATIONS SERVICES

6. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. sections 154, 301, 302, 303, 307, 309, and 332.

7. Section 27.324 is amended by adding paragraph (a)(3) and revising paragraph (b)(3) to read as follows:

§ 27.324 Transfer of control or assignment of station authorization.

(a) * * *

(3) *Forbearance from pro forma assignments and transfers of control.* WCS licensees that are telecommunications carriers as defined in 47 U.S.C. 153 are subject to streamlined procedures for *pro forma*, i.e., non-substantial, transfers and assignments. A *pro forma* assignee or transferee is not required to seek prior FCC approval for the transaction, but must notify the FCC no later than 30 days after the event causing the assignment or transfer, either by filing an FCC Form 490 or in letter form. If a letter is submitted, it must contain a certification that the transfer or assignment is non-substantial and, together with all previous non-substantial transactions, does not involve a change in the licensee's ultimate control. A single letter may be

filed for a transfer or assignment of control of more than one authorization if each authorization affected is identified by call sign in the letter. Licensees must concurrently update ownership information on their FCC Form 430, if necessary.

* * * * *

(b) * * *

(3) *Notification of completion.* The Commission shall be notified by letter of the date of completion of the assignment or transfer of control, except those licensees subject to the streamlined procedures of paragraph (a)(3) of this section.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

8. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 252–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

9. Section 90.153 is amended by adding paragraphs (a)(1) and (a)(2) and revising the first sentence in paragraph (b) to read as follows:

§ 90.153 Transfer or assignment of station authorization.

(a) * * *

(1) *Forbearance from pro forma assignments and transfers of control.* Licensees that are telecommunications carriers as defined in 47 U.S.C. 153 are subject to streamlined procedures for *pro forma*, i.e., non-substantial, transfers and assignments.

(2) A *pro forma* assignee or transferee is not required to seek prior FCC approval for the transaction, but must notify the FCC no later than 30 days after the event causing the assignment or transfer, either by filing an FCC Form 490 or in letter form. If a letter is submitted, it must contain a certification that the transfer or assignment is non-substantial and, together with all previous non-substantial transactions, does not involve a change in the licensee's ultimate control. A single letter may be filed for a transfer or assignment of control of more than one authorization if each authorization affected is identified by call sign in the letter. Licensees must concurrently update ownership information on their FCC Form 430, if necessary.

(b) *Notification of completion.* Assignments and transfers of control of commercial mobile radio licenses must be completed within sixty (60) days of Commission approval, except those licensees subject to the streamlined

procedures of paragraph (a)(1) of this section. * * *

* * * * *

PART 101—FIXED MICROWAVE SERVICES

10. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

11. Section 101.53 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 101.53 Assignment or transfer of station authorization.

(a) * * *

(1) *Forbearance from pro forma assignments and transfers of control.* Licensees that are telecommunications carriers as defined in 47 U.S.C. 153 are subject to streamlined procedures for *pro forma*, i.e., non-substantial, transfers and assignments.

(2) A *pro forma* assignee or transferee is not required to seek prior FCC approval for the transaction, but must notify the FCC no later than 30 days after the event causing the assignment or transfer, either by filing an FCC Form 490 or in letter form. If a letter is submitted, it must contain a certification that the transfer or assignment is non-substantial and, together with all previous non-substantial transactions, does not involve a change in the licensee's ultimate control. A single letter may be filed for a transfer or assignment of control of more than one authorization if each authorization affected is identified by call sign in the letter. Licensees must concurrently update ownership information on their FCC Form 430, if necessary.

* * * * *

[FR Doc. 98–5336 Filed 3–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–189; RM–9135]

Radio Broadcasting Services; Nassawadox, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a petition for rule making filed by Ken Robol proposing the allotment of Channel 252A at Nassawadox, Virginia, as the community's first local aural transmission service. See 62 FR 46707,

August 4, 1997. Petitioner failed to file comments stating his intention to apply for Channel 252A if allotted. Therefore, in keeping with the Commission's policy to refrain from allotting a channel to a community absent an expression of interest, we have dismissed the petition for Nassawadox. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–189, adopted February 11, 1998, and released February 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–5439 Filed 3–2–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–209; RM–9152]

Radio Broadcasting Services; Coarsegold, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 233A to Coarsegold, California, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Thomas L. Whitlock d.b.a. West Coast Wireless. See 62 FR 54007, October 17, 1997. Coordinates used for Channel 233A at Coarsegold, California, are 37–18–51 and 119–42–20. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 6, 1998. A filing window for Channel 233A at Coarsegold, California, will not be opened at this time. Instead, the issue of opening a filing window for this

channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-209, adopted February 11, 1998, and released February 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Coarsegold, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-5438 Filed 3-2-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-125; RM-9058]

Radio Broadcasting Services; Payson, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 257A to Payson, Arizona, as that community's third local FM transmission service, in response to a petition for rule making filed by Steven D. Bingham. See 62 FR 23426, April 30, 1997. Coordinates used for Channel

257A at Payson, Arizona, are 34-13-54 and 111-20-12. As Payson is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to this allotment was requested but has not been received. Therefore, Channel 257A has been allotted to Payson with the following interim condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement" ("Agreement"). The condition is a temporary measure as we have determined that Channel 257A at Payson complies with the Agreement. Once an official response from the Mexican government has been obtained, the interim condition may be removed. With this action, the proceeding is terminated.

DATES: Effective April 6, 1998. A filing window for Channel 257A at Payson, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-125, adopted February 11, 1998, and released February 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 257A at Payson.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-5437 Filed 3-2-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-159; RM-9122]

Radio Broadcasting Services; Arcadia and Fort Meade, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document reallots Channel 252C2 from Arcadia, Florida, to Fort Meade, Florida, and modifies the license for Station WWRZ accordingly, in response to a petition filed by Hall Communications, Inc. See 62 FR 39798, July 24, 1997. The coordinates for Channel 252C2 at Fort Meade are 27-41-45 and 81-48-49. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97-159, adopted February 11, 1998, and released February 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended

by removing Arcadia, Channel 252C2 and adding Fort Meade, Channel 252C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-5436 Filed 3-2-98; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket No. PS-130; Amdt. 194-1]

RIN 2137-AD12

Pipeline Safety: Change in Response Plan Review Cycle

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Confirmation of effective date and correction of direct final rule.

SUMMARY: This document confirms the effective date of the direct final rule that changes the reporting cycle for facility response plan submissions to five years for operators who are required to submit facility response plans to RSPA.

Pipeline operators were previously required to submit facility response plans every three years. This document also corrects a citation contained in the Background section of the direct final rule, and addresses the comments that were submitted to RSPA by clarifying certain language.

DATES: The effective date of the direct final rule published on December 24, 1997, (62 FR 67292) is confirmed to be February 23, 1998. The effective date of the correction to the Direct Final Rule is February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Taylor, (202) 366-8860, or by e-mail at jim.taylor@rspa.dot.gov, regarding the subject matter of this Notice; or the RSPA Dockets Unit, (202) 366-5046, for copies of the direct final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the direct final rule published in the **Federal Register** on December 24, 1997, (62 FR 67292), on page 67292, in the third column, the first sentence of third paragraph of the Background section incorrectly refers to 49 CFR 194.121(b). The sentence should refer to 49 CFR 194.121(a).

Need for Clarification

The procedures governing issuance of direct final rules are in 49 CFR 190.339. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that unless an adverse comment or notice of intent to file an adverse comment is received within a specified comment period, the Administrator will issue a confirmation document advising the public that the direct final rule will either become effective on the date stated in the direct final rule or at least 30 days after the publication date of the confirmation. If an adverse comment or notice of intent to file an adverse comment had been received, RSPA would have issued a timely notice in the **Federal Register** to confirm that fact and withdrawn the direct final rule in whole or in part. According to the procedures, an adverse comment is one that explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to the rule is not an adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

As discussed below, RSPA received two comments on the direct final rule. RSPA does not consider any of the comments to be adverse comments under the direct final rule procedures.

Consequently, RSPA is publishing this document to confirm the effective date announced in the direct final rule.

The California Department of Fish and Game's Office of Spill Prevention and Response and the American Petroleum Institute provided comments. Although both were supportive of the direct final rule in concept, both expressed concerns about application of the new rules.

California suggested that RSPA should require operators to review their plans annually for any corrections, deletions, or additions, submitting minor changes to RSPA annually, and submitting substantive changes as soon as they occur. RSPA shares California's concerns and believes that it is prudent for operators to review their own plans periodically to ensure that the documents are current. Although RSPA is not adopting California's suggested requirement, RSPA will consider it for a future rulemaking later this year.

The American Petroleum Institute (API) commented that the five-year cycle should commence on the date RSPA approves a response plan,

whenever that takes place. RSPA agrees, and applies this rule to "significant and substantial harm" facilities. However, RSPA believes the plan review cycle for facilities designated as "substantial harm" commences on the date of the most recent plan submission based on the fact that RSPA does not issue approvals for "substantial harm" facilities. RSPA will clarify when it issues the final rule for 49 CFR part 194 later this year. API also identified a typographical error in a regulatory citation. RSPA has corrected the error. API commented that they believed that there is no current requirement for substantial harm facilities to submit plans. RSPA disagrees, and has left the reference intact.

In response to comments received, RSPA provides the following specific clarifications:

1. As proposed, § 194.121(a) indicates that response plans should be submitted five years from the date of submission of these plans to RSPA. To clarify, plans for facilities designated as "substantial harm" facilities should be submitted based on the most recent date of submission of the plans to RSPA, rather than on the date of approval, because "substantial harm" facilities have not been issued an approval date by RSPA. However, plans for facilities designated as "significant and substantial harm" should be submitted based on the most recent approval date issued by RSPA. RSPA will clarify when it issues the final rule for 49 CFR part 194, subpart B is issued later this year.

2. On page 67292, in the third column, the last sentence of fourth paragraph under the Background section states: "Although the current three-year cycle for all plans is ending, when this rule becomes effective there will be no requirement to resubmit existing plans until two years from now." This sentence could be interpreted to require an operator whose plan was approved in 1997 to resubmit the plan again in two years, and every five years thereafter. This is not the intent of RSPA. RSPA's intent is that if an operator's plan was approved in 1997, the next submission would not be required until 2002, five years from the plan's approval date.

3. The Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251-1387) specifies that response plans must be submitted for onshore facilities that "because of (their) location, could reasonably be expected to cause substantial harm to the environment," as well as for facilities that "could reasonably be expected to cause significant and substantial harm to the environment * * *" (33 U.S.C. 1321(j)(5)(B)(iii) and 1321(j)(5)(D)).

RSPA believes that all operators of onshore oil pipelines are required to submit facility response plans under 49 CFR part 194, but has decided to review and approve only those plans designated by the operators as posing a threat of "significant and substantial harm to the environment."

Issued in Washington, DC on February 25, 1998.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98-5380 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-60-P

Proposed Rules

Federal Register

Vol. 63, No. 41

Tuesday, March 3, 1998

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 357

RIN 3064-AA97

Determination of Economically Depressed Regions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of proposed rule.

SUMMARY: The FDIC is withdrawing a proposed rule to amend its regulation designating economically depressed regions at 12 CFR Part 357. The proposed rule, published at 57 FR 60140 on December 18, 1992, would have updated the list of states designated as "economically depressed regions" for purposes of section 13(k)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(k)(5). No comments were received and the proposed rule was never adopted as final. Elsewhere in this issue of the **Federal Register**, the FDIC is publishing a final rule that provides criteria to be used by the FDIC to determine which regions are "economically depressed" rather than identifying particular states by regulation.

DATES: The proposed rule published at 57 FR 60140, December 18, 1992 is withdrawn on March 3, 1998.

FOR FURTHER INFORMATION CONTACT: John P. O'Keefe, Chief, Economic Analysis Section, (202) 898-3945, David Horne, Financial Economist, (202) 898-3981, Division of Research and Statistics; Michael Phillips, Counsel, Legal Division, (202) 898-3581, FDIC, 550 17th Street, N.W., Washington, DC 20429.

By order of the Board of Directors.

Dated at Washington, D.C., this 10th day of February, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98-5376 Filed 3-2-98; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-SW-25-AD]

Airworthiness Directives; Eurocopter France Model AS-350B, BA, B1, B2, and D, and Model AS-355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France (Eurocopter) Model AS-350B, BA, B1, B2, and D, and Model AS-355E, F, F1, F2, and N helicopters. This proposal would require inspections of the main gearbox suspension bi-directional cross-beam (cross-beam) for cracks, and replacement of the cross-beam if a crack is found. This proposal is prompted by several reports of cracks in the cross-beam. The actions specified by the proposed AD are intended to provide a terminating action to prevent failure of the cross-beam that could cause the main gearbox to pivot, resulting in severe vibrations and a subsequent forced landing.

DATES: Comments must be received by April 2, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 96-SW-25-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW-111,

2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5123, fax (817) 222-5961.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, 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 No. 97-SW-25-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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-25-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS-350B, BA, B1, B2, and D, and Model AS-355E, F, F1, F2, and N helicopters. The DGAC advises that cracks were discovered in the cross-beam. The DGAC issued AD 96-156-

071(B), dated July 31, 1996, applicable to Model AS-350 helicopters, and AD 96-155-053(B), dated July 31, 1996, applicable to Model AS-355 helicopters. The DGAC subsequently issued AD 96-156-071(B)R1, applicable to Model AS-350 helicopters, and AD 96-155-053(B)R1, applicable to Model AS-355 helicopters, both dated June 4, 1998.

Eurocopter France has issued Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS-350 helicopters, and Eurocopter Service Bulletin No. 05.00.29, applicable to Model AS-355 helicopters, both dated May 26, 1996, and both of which specify repetitive checks of the cross-beam for cracks, and replacement with an airworthy cross-beam of any cross-beam in which a crack is found.

These helicopter models are manufactured in France 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 DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS-350B, BA, B1, B2, and D, and Model AS-355E, F, F1, F2, and N helicopters of the same type design registered in the United States, the proposed AD would require visual and dye-penetrant inspections of the cross-beam for cracks, and replacement with an airworthy cross-beam if a crack is found.

The FAA estimates that 454 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per helicopter to accomplish each visual inspection with an estimated average of 150 visual inspections per helicopter, and 3 work hours per helicopter to accomplish the dye-penetrant inspection, and 6 work hours per helicopter to replace the cross-beam, if necessary, and that the average labor rate is \$60 per work hour. Parts costs would be approximately \$6,000 per cross-beam. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$5,012,160 to perform an average of 150 visual inspections and one dye-

penetrant inspection per helicopter, and to replace the cross-beam on all 454 helicopters.

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 adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 97-SW-25-AD.

Applicability: Model AS-350B, BA, B1, B2, and D, and Model AS-355E, F, F1, F2, and N helicopters, with main gearbox suspension bi-directional cross-beam (cross-beam), part number (P/N) 350A38-1018-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main gearbox diagonal cross-beam that could lead to rotation of the main gearbox, resulting in severe vibrations and a subsequent forced landing, accomplish the following:

(a) For cross-beams having 2,000 or more hours time-in-service (TIS) or 10,000 or more operating cycles:

Note 2: The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Within 30 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 30 hours TIS or 150 operating cycles, visually inspect the cross-beam for cracks in accordance with paragraph 2.B.1 of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS-350 helicopters, and Eurocopter France Service Bulletin No. 05.00.29, applicable to Model AS-355 helicopters, both dated May 26, 1997.

(2) If a crack is found as a result of the inspections required by paragraph (a)(1) of this AD, remove the cross-beam and replace it with an airworthy cross-beam.

(b) For cross-beams having 5,000 or more hours TIS:

(1) Within 550 hours TIS or 2,750 operating cycles, whichever occurs first, after compliance with paragraph (a)(1) of this AD, perform a dye-penetrant inspection in accordance with paragraph 2.B.2 of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS-350 helicopters, and Eurocopter Service Bulletin No. 05.00.29, applicable to Model AS-355 helicopters, both dated May 26, 1996.

(2) If a crack is found as a result of the inspections required by paragraphs (b)(1) of this AD, remove the cross-beam and replace it with an airworthy cross-beam.

(c) Prior to installing any replacement cross-beams, regardless of TIS, inspect the replacement cross-beam in accordance with paragraph (b)(1) of this AD.

(d) 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, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send

it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) 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 helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96-156-071(B)R1 and AD 96-155-053(B)R1, both dated June 4, 1997.

Issued in Fort Worth, Texas, on February 24, 1998.

Eric Bries,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. 98-5354 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102144-98]

RIN 1545-AV90

Source and Grouping Rules for Foreign Sales Corporation Transfer Pricing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance to taxpayers who have made an election to be treated as a foreign sales corporation (FSC). The regulations provide rules clarifying the special sourcing rules under section 927(e)(1) and provide a deadline for the election to group transactions. This document also provides notice of a public hearing on these proposed regulations. The text of the temporary regulations also serves as the text of the proposed regulations.

DATES: Written comments must be received by June 1, 1998. Requests to speak (with outlines of oral comments) to be discussed at the public hearing scheduled for June 24, 1998, at 10 a.m., must be received by June 3, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-102144-98), room 5226, 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-102144-98), 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 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. The public hearing will be held in Room 2615, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Elizabeth Beck (202) 622-3880; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 925 and 927. The temporary regulations contain rules relating to the grouping of transactions under the FSC transfer pricing rules and the special source rules under section 927(e)(1). The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does 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 written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All

comments will be available for public inspection and copying.

A public hearing has been scheduled for June 24, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue 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 written comments by June 1, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by June 3, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the schedule of 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 the proposed regulations is Elizabeth Beck, of the Office of the Associate Chief Counsel (International). Other personnel from the IRS and Treasury Department also participated in the development of these regulations.

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 the following entries to the table in numerical order to read as follows:

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

Section 1.925(a)-1 is also issued under 26 U.S.C. 925(b)(1) and (2) and 927(d)(2)(B).

Section 1.925(b)-1 is also issued under 26 U.S.C. 925(b)(1) and (2) and 927(d)(2)(B).
* * *

§ 1.925(a)-1 [Added]

Par. 2. Section 1.925(a)-1 is added as follows:

[The text of proposed § 1.925(a)-1 consisting of paragraphs (c)(8)(i) and (e)(4) is the same as the text of § 1.925(a)-1T(c)(8)(i) and (e)(4) as amended elsewhere in this issue of the **Federal Register**.]

§ 1.925(b)-1 [Added]

Par. 3. Section 1.925(b)-1 is added as follows:

[The text of proposed § 1.925(b)–1 consisting of paragraph (b)(3)(i) is the same as the text of § 1.925(b)–1T(b)(3)(i) as amended elsewhere in this issue of the **Federal Register**].

§ 1.927(c)–1 [Added]

Par. 4. Section 1.927(e)–1 is amended as follows:

[The text of proposed § 1.927(e)–1 is the same as the text of § 1.927(e)–1T published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–5127 Filed 3–2–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300618; FRL–5772–4]

RIN 2070–AB18

Potassium Dihydrogen Phosphate; Proposed Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an exemption from the requirement of a tolerance for residues of potassium dihydrogen phosphate (KH_2PO_4) in or on all food commodities, when applied as a fungicide in accordance with good agricultural practices to control powdery mildew in fruits and vegetables. EPA is proposing this regulation on its own initiative.

DATES: Comments, identified by the docket control number [OPP–300618] must be received on or before May 4, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit IV of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be

claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Suku Oonnithan, c/o Product Manager (PM) 91, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location; telephone number; and e-mail address: Crystal Station #1, 5th Floor, 2800 Crystal Drive, Arlington, VA 22202; 703–308–9524; oonnithan.suku@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. section 346a(d), EPA proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of potassium dihydrogen phosphate in or on all food commodities.

I. Risk Assessment and Statutory Authority

New section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food commodity) only if EPA determines that the tolerance is “safe.” Section 408(c)(2)(A)(ii) defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” These include exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.” EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues.

First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Risk Assessment and Statutory Findings

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, reliability, and relationship to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Toxicological Profile

Potassium dihydrogen phosphate is a naturally occurring mineral and is widely used as a fertilizer with no reported adverse effects. The acute toxicological data available on potassium dihydrogen phosphate include: acute oral toxicity in rats ($\text{LD}_{50} > 500 \text{ mg/kg}$ and Toxicity Category III), acute dermal toxicity in rabbits ($\text{LD}_{50} > 2,000 \text{ mg/kg}$ and Toxicity Category III), primary eye irritation in rabbits (Toxicity Category III), and primary skin irritation in rabbits (Toxicity Category IV).

Phosphate is ubiquitous and abundant in biological materials. Most of the phosphate ingested by humans and animals is converted to orthophosphate, both as H_2PO_4 and HPO_4 in the digestive tract, prior to absorption in the small intestine. Phosphate is found in blood, cytoplasm, bone, teeth, urine, and feces. It is essential in the tightly regulated physiological and metabolic processes of energy production, carbohydrate metabolism, iron absorption, plasma buffering, maintenance of certain hormone levels, and muscular contraction. Phosphates are molecular components of phospholipids, nucleic acids, energy generating compounds, certain sugars, and some proteins. Dietary phosphate, that is not absorbed is passed through the body via the feces and the absorbed excess phosphate is excreted renally via the urine.

Potassium also is ubiquitous in nature and in biological systems. It is an essential cationic component of body fluids and cytoplasm. It is essential for amino acid and sugar transport, cell permeability, muscle contraction, and is required as a cofactor for certain enzymes. Excess potassium is excreted in the urine. Potassium also is found in

saliva, sweat, tears, and in gastric secretions and fluids.

Potassium phosphate is widely used as a fertilizer. Therefore its use as a pesticide is not likely to significantly increase exposure that already occurs in the diet from natural sources, including drinking water. While deficiencies of potassium and phosphate may adversely impact human health, excessive intake via natural exposures does not.

B. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*—i. *Food*. It is anticipated that no significant residues of potassium dihydrogen phosphate will occur in treated foods other than that present as a mineral and as mineral complexes manufactured by the plant through photosynthesis and enzymatic processes.

ii. *Drinking water exposure*. Potassium dihydrogen phosphate is used as an agricultural fertilizer. Exposure to its residues in drinking water from pesticidal use is not expected to be significant or harmful to human health.

2. *Other non-occupational exposure*—i. *Dermal exposure*. No undue risk is expected as a result of the use of potassium dihydrogen phosphate as a fungicide.

ii. *Inhalation exposure*: None expected as a result of the use of potassium dihydrogen phosphate as a fungicide.

C. Cumulative Exposure to Substances with Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers “available information concerning the cumulative effects of a particular pesticide’s residues” and “other substances that have a common mechanism of toxicity.” The Agency believes that “available information” in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of the toxicity for conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out

to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanisms of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes the results of this pilot process will increase the Agency’s scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity for evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanism of toxicity increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism can be resolved. These include pesticides that are toxicologically and structurally dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Potassium dihydrogen phosphate does not share any common mechanisms of toxicity with other pesticide chemicals. Its use as a fungicide should not significantly increase exposure to other uses as an agricultural fertilizer. Therefore, no impact on the potential for toxic effects from the pesticidal use of potassium dihydrogen phosphate is expected.

D. Safety Determinations

1. *U.S. population*. Potassium dihydrogen phosphate has low mammalian toxicity and EPA has exempted it from tolerance when used as an inert ingredient as a buffering agent in pesticide formulations (40 CFR 180.1001(d)). The subject chemical occurs in nature and has been used as a fertilizer for many years with no reported adverse effects. Based on available information, the Agency believes that exposure to this chemical will not pose any appreciable risks to human health.

2. *Infants and children*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, the Agency believes that there is reliable data to support that potassium dihydrogen phosphate is practically non-toxic to mammals, including infants and children, and, thus, there are no threshold effects, and EPA has not used a margin of exposure (safety) approach to assess the safety of potassium dihydrogen phosphate. As a result, the provision requiring an additional margin of exposure (safety) does not apply.

E. Other Considerations

1. *Endocrine disruptors*. There are no reports of any estrogenic and other adverse effects to human population as a result of the use of potassium dihydrogen phosphate as an agricultural fertilizer. Based on this information combined with its low mammalian toxicity, EPA concludes that there is a reasonable certainty that no adverse endocrine effects will result from the use of potassium dihydrogen phosphate as a fungicide.

2. *Analytical method(s)*. Since the Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation, the Agency has concluded that an analytical method is not required for enforcement purposes for the residues of potassium dihydrogen phosphate.

F. Existing Tolerances

No existing tolerances or exemptions from the requirement of a tolerance have been issued for potassium dihydrogen phosphate as an active ingredient in the United States.

G. International Tolerances

There are no CODEX tolerances or international tolerance exemptions for potassium dihydrogen phosphate.

H. Conclusion

Based on the information and data considered, EPA is proposing that an exemption from the requirement of a tolerance be established as set forth below.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the

available scientific data and other relevant information in support of this action. Based on the information and data considered, the Agency has determined that, in amending 40 CFR part 180 as proposed, there is reasonable certainty that no harm to the general population including infants and children will result from aggregate exposure to the pesticide chemical residue.

III. Comments

Under FFDCA section 408(e)(2), EPA must provide for a public comment period before issuing a final tolerance or tolerance exemption under section 408(e)(1). The public comment period is to be for 60 days unless the Administrator for good cause finds that it is in the public interest to reduce that comment period.

IV. Public Docket and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP-300618] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP-300618]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

V. Regulatory Assessment Requirements

This action proposes an exemption from the tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this proposed rule does not

contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VI. 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, the Agency has 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 is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: February 18, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1193 is added to subpart D to read as follows:

§ 180.1193 Potassium dihydrogen phosphate; exemption from the requirement of a tolerance.

Potassium dihydrogen phosphate is exempted from the requirement of a tolerance in or on all food commodities when applied as a fungicide in accordance with good agricultural practices.

[FR Doc. 98-5418 Filed 3-2-98; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-18, RM-9204]

Radio Broadcasting Services; Macon and Hampton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by U.S. Broadcasting Limited Partnership seeking the reallocation of Channel 300C1 from Macon to Hampton, GA, as the community's first local aural service, and the modification of its license for Station WPEZ to specify Hampton as the station's community of license. Channel 300C1 can be allotted to Hampton in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.4 kilometers (12.7 miles) southwest of the community, at coordinates 33-15-30 North Latitude and 84-26-21 West Longitude, to accommodate petitioner's desired transmitter site.

DATES: Comments must be filed on or before April 13, 1998, and reply comments on or before April 28, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Irving Gastfreund, Kaye, Scholer, Fierman, Hays & Handler, LLP, The McPherson Building, 901 Fifteenth Street, NW., Suite 1100, Washington, DC 20005-2327 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-18, adopted February 11, 1998, and released February 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-5435 Filed 3-2-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-19; RM-9219]

Radio Broadcasting Services; Smith Mills, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Henry

G. Lackey proposing the allotment of Channel 233A at Smith Mills, Kentucky, as the community's first local aural transmission service. Channel 233A can be allotted to Smith Mills in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 kilometers (8.9 miles) west to avoid a short-spacing to the licensed site of Station WTRI-FM, Channel 235B, Mount Carmel, Illinois. The coordinates for Channel 233A at Smith Mills are North Latitude 37-47-26 and West Longitude 87-55-23.

DATES: Comments must be filed on or before April 13, 1998, and reply comments on or before April 28, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Patricia M. Chuh, Pepper & Corazzini, L.L.P., 1176 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-19, adopted February 11, 1998, and released February 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-5434 Filed 3-2-98; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-97-3242; Notice 3]

RIN 2127-AF67

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: This document denies three petitions for reconsideration of NHTSA's May 1996 final rule rescinding the colorfastness requirements for seat belt assemblies. The petitions are denied because the petitioners, the Automotive Occupant Restraints Council (AORC), Russell J. Neff and Naricot Industries (NI), have, with one exception, not raised any new issues or presented any new information that was not considered in issuing the final rule.

AORC and NI both raised a new issue, i.e., the potential for toxicity in non-colorfast dyes. However, neither petitioner submitted any information supporting their allegations that non-colorfast dyes might be toxic. NHTSA observes that regardless of colorfastness, there has never been a toxicity requirement incorporated in Standard No. 209. In the absence of any evidence that non-colorfast dyes for webbing are toxic or that such dyes would be more likely to be used if the colorfastness requirement is not reinstated, the agency is denying the petition.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues:

Clarke Harper, Office of Vehicle Safety Standards, NPS-11, telephone (202) 366-4916, facsimile (202) 366-4329, electronic mail "charper@nhtsa.dot.gov".

For legal issues:

Otto Matheke, Office of the Chief Counsel, NCC-20, telephone (202)

366-5263, facsimile (202) 366-3820, electronic mail "omatheke@nhtsa.dot.gov".

I. Background

The colorfastness requirement was initially promulgated as part of initial Federal Motor Vehicle Safety Standards for both seat belt assemblies and child restraint systems. Pursuant to the March 4, 1995 directive, "Regulatory Reinvention Initiative," from the President to the heads of departments and agencies, NHTSA undertook a review of all its regulations and directives. On June 19, 1995, the agency published a notice of proposed rulemaking (NPRM) proposing the rescission of the colorfastness requirements in Standard No. 209, "Seat Belt Assemblies" and Standard No. 213 "Child Restraint Systems" (60 FR 31946). After considering the comments received in response to the NPRM, NHTSA issued a final rule on May 6, 1996 (61 FR 20170) rescinding the colorfastness requirements.

II. Rescission of the Colorfastness Requirements

A. Notice of Proposed Rulemaking

In its June 19, 1995 NPRM proposing to rescind the colorfastness requirements, the agency stated its tentative conclusion that market forces would be sufficient to encourage seat belt manufacturers to use webbing that would not stain clothing. The agency also indicated that it was not aware of any basis for believing that eliminating the colorfastness requirements would reduce colorfastness or safety.

B. Final Rule and Response to Public Comments

On May 6, 1996, NHTSA issued a final rule rescinding the colorfastness requirements (61 FR 20170). The agency received 5 comments in response to the NPRM. The commenters were: the Industrial Fabrics Association International (IFAI), Chrysler, Volkswagen, the Automotive Occupant Restraints Council (AORC), and Ford.

Because the public comments bear directly on the issues raised in the petitions for reconsideration, NHTSA is discussing below the comments raised in opposition to the NPRM. Three commenters (IFAI, Chrysler, and Ford) supported the proposal, indicating that the colorfastness would be maintained voluntarily. Two commenters (Volkswagen and AORC) opposed rescinding the requirements. Volkswagen believed that rescission would not reduce the cost burden on manufacturers because they would have

to ensure colorfastness notwithstanding the absence of a requirement. AORC opposed rescission more adamantly because it believed that, while major manufacturers would continue to comply, smaller, less experienced manufacturers might use non-colorfast webbing. It believed that this would result in increased consumer dissatisfaction, increased non-use of safety belts, and increased injuries.

Because the comments were split, the agency contacted four additional sources not represented by the commenters: a safety belt manufacturer (Indiana Mills and Manufacturing), a child seat manufacturer (Gerry Baby Products Company), a test laboratory (Dayton T. Brown Testing), and a webbing manufacturer (Narricot Industries). The first three sources agreed that colorfastness would be voluntarily maintained. Narricot Industries expressed concern that market pressures could require it to reduce colorfastness to remain cost competitive.

After reviewing this information, the agency decided to issue the final rule rescinding the colorfastness requirements. The majority of the manufacturers who commented or were contacted indicated that they would voluntarily maintain colorfastness, even if they had concerns that some others might not. NHTSA concluded that countervailing market forces would minimize the possibility and extent of any such lessening of colorfastness. The agency noted that if a problem with colorfastness were to occur, the affected consumers would complain to the responsible manufacturer and likely insist on having the belt replaced, instead of forgoing use of the belt. NHTSA also concluded that the proportion of the driving population likely to notice and complain about lack of colorfastness has grown substantially since the 1970's in parallel to the increase in seat belt use.

III. Petitions for Reconsideration

In separate submissions, the Automotive Occupant Restraint Council (AORC), Narricot Industries (NI) and Russell Neff petitioned NHTSA to reconsider the rescission of the colorfastness requirements. The NI petition, dated June 18, 1996, argued that the colorfastness requirement should not be rescinded because a neglect of colorfastness by smaller equipment and aftermarket manufacturers could cause increased consumer resistance to belt use. The NI petition also indicated that children may ingest dyes and chemicals exuded from webbing with poor colorfastness

and thereby be exposed to toxic materials.

The petitions submitted by AORC and Russell Neff on June 20, 1996, repeated the concerns voiced by NI in regard to consumer resistance to belt use caused by poor colorfastness. AORC also indicated that it was concerned about the possible toxicity of dyes and chemicals from belts that were not colorfast.

NI and Russell Neff stated their concern that the market for seat belt webbing extends beyond supplying large vehicle and child seat manufacturers with webbing for installation in their products. In the view of these petitioners, the existence of other markets, such as webbing for installation in conversion vans, school buses, recreational vehicles, the automotive aftermarket, and others, creates an opportunity for manufacturers of lower quality webbing to sell non-colorfast products while certifying that these products meet Standards No. 209 and 213.

IV. Agency Response

The agency notes that with the exception of the concerns raised regarding the toxicity of dyes and chemicals from non-colorfast belts, that the arguments submitted by the petitioners had previously been considered by the agency before issuing the final rule. NHTSA's conclusion at that time was that market forces would be sufficient to compel manufacturers to use webbing that would remain colorfast. While reiterating their view that market forces may encourage the use of non-colorfast webbing by suppliers seeking to offer a product of minimal quality at the lowest possible price, the petitioners have not submitted any new information to support that conclusion. The petitioners have also failed to provide any information refuting the agency's conclusion that consumers would not accept non-colorfast belts. As outlined in the notice establishing the final rule, seat belt use has increased substantially and dramatically since the 1970's. Increased belt use indicates that consumers have an increased interest in safety and a greater understanding of the role that seat belt use plays in preventing injury. Also, all 50 states have some form of child restraint law and 49 states mandate seat belt use. Consumers who must use seat belts or who understand the vital role seat belts play in safety, are not likely to tolerate belts that stain their clothing.

NHTSA also observes that agency discussions with a test facility, U.S. Testing, that has performed compliance

testing for Standards No. 209 and 213 for over 20 years indicate that dyeing and coloring techniques for belt webbing have improved greatly since belt installation and use have become both required and more widespread.

Two of the petitioners, AORC and NI, also indicated that non-colorfast dyes may present an opportunity for toxic materials to come in contact with infants and children who may introduce belt webbing into their mouths. These petitioners have consistently argued that lower cost non-colorfast webbing may enter the marketplace if the colorfastness requirement is eliminated. In the view of the petitioners, non-colorfast dyes are more likely to be toxic than colorfast ones and that webbing made with toxic dyes is less expensive

to produce than other webbing. However, the agency notes that neither petitioner provided any evidence that dyes used for webbing, regardless of cost, are toxic. Petitioners also did not offer any evidence that color transfer from non-colorfast webbing commonly used in webbing could cause injury. NHTSA further observes that neither Standard No. 209 or Standard No. 213 have ever required that webbing, whether colorfast or not, be non-toxic. Reinstatement of the colorfastness requirements would therefore do little to address this concern.

V. Denial of Petitions for Reconsideration

NHTSA has carefully considered the issues raised in the separate petitions for reconsideration filed by the

Automotive Occupant Restraint Council (AORC), Narricot Industries (NI) and Russell Neff. As explained in this document, NHTSA concludes that petitioners' arguments for reinstating the colorfastness requirements of Standard No. 209 and Standard No. 213 are not sufficiently persuasive to warrant such reinstatement. Therefore, the petitions for reconsideration are denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: February 26, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-5455 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-59-P

Notices

Federal Register

Vol. 63, No. 41

Tuesday, March 3, 1998

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, March 13, 1998. The meeting will be held at the David W. Dyer Federal Building and U.S. Court House in Miami, Florida.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following.

- I. Chairman's Welcome
- II. Chairman's Report
- III. Report of the Task Force on the Council Report to Congress on Alternative Ways to Implement Section 106-Discussion of direction and content
- IV. Consideration of California Freeway 710-Action on Council comments and decision to refer the case to the Council on Environmental Quality

V. Report of the Task Force on Regulations—Status report

VI. Executive Director's Report

A. Significant Section 106 Cases-Report and discussion

B. Legislation in the 105th Congress-Report and discussion

VII. New Business

VIII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW, Room 809, Washington, DC 202-606-8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW #809, Washington, DC 20004.

Dated: February 25, 1998.

John M. Fowler,
Executive Director.

[FR Doc. 98-5339 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-10-M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: March 10, 1998; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to keep secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or

the International Broadcasting Bureau. (5 U.S.C. 552b.(c) (2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Massey at (202) 401-3736.

Dated: February 27, 1998.

David W. Burke,
Chairman.

[FR Doc. 98-5560 Filed 2-27-98; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Technology and Aerospace Industries, Office of Microelectronics, Medical Equipment and Instrumentation, Semiconductor Data Collection Program (DCP); Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, 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 the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted in 60 days on or before May 4, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Dorothea Blouin, Office of Microelectronics, Medical Equipment and Instrumentation, Room 1015, Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230; phone (202) 482-1333 and fax number (202) 482-0975.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Data Collection Form is the vehicle by which individual "Foreign" (non-Japanese) semiconductor

companies voluntarily report their sales to Japan. The information provided by the Data Collection Program (DCP) is used by the U.S. Government to calculate foreign market share in the Japanese semiconductor market to ensure access to the Japanese market gained under the 1986 and 1991 U.S.-Japan Semiconductor Arrangement continues under the 1996 Semiconductor Agreement.

II. Method of Collection

The Department of Commerce distributes Form ITA-4115P and the instruction manual to semiconductor companies after their eligibility is checked. The applicant completes the form and then forwards it to Price Waterhouse, who submits a summary report to the U.S. Department of Commerce/Office of Microelectronics for calculation of foreign (non-Japanese) share of the Japanese market.

III. Data

OMB Number: 0625-0211.

Form Number: ITA-4115P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 38.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 456 hours.

Estimated Total Annual Cost: The estimated annual cost for this collection is \$41,040 (\$34,200 for respondents and \$6,840 for federal government).

IV. Requested for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5459 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

Agency: Bureau of the Census.

Title: American Community Survey

Group Quarters Screening Test.

Form Number(s): ACS-2(GQ).

Agency Approval Number: 0607-0836.

Type of Request: Revision of a currently approved collection.

Burden: 75 hours.

Number of Respondents: 450.

Avg Hours Per Response: 10 minutes.

Needs and Uses: Planning is currently underway for the 1998 American Community Survey (ACS). Data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade.

As part of 1998 ACS testing, a sample of Group Quarters (GQs) will be enumerated. GQs include places such as student dorms, correctional facilities, hospitals, nursing homes, shelters, and military quarters. The forms and procedures for all enumeration aspects of the 1998 ACS, including GQ enumeration, have been separately approved by OMB. The Census Bureau must also test its procedures for collecting screening information from GQ operators prior to the GQ enumeration begins. The screening operation, the subject of this request, will serve to update information we already have on-hand about the GQ and its residency, tell us if the GQ is within scope for ACS enumeration, and, most importantly, allow us to determine if a mail enumeration of the residents is possible. If a mail enumeration is not possible, face-to-face interviews with GQ residents will be necessary.

In this request, we are increasing the burden hours to accommodate for the ACS site expansion in 1998. We are also testing only one version of the screening form this year (as opposed to three in 1997). Other minor procedural changes have also been made.

Affected Public: Businesses or other for-profit, not-for-profit institutions, farms.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5351 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

Agency: Bureau of the Census.

Title: Advance Monthly Retail Sales Survey.

Form Number(s): B-104.

Agency Approval Number: 0607-0104.

Type of Request: Revision of a currently approved collection.

Burden: 4,100 hours.

Number of Respondents: 4,100.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The Bureau of the Census conducts the Advance Monthly Retail Sales Survey to collect monthly sales data from a national sample of retail establishments on a timely basis in order to provide an early indication of changes in current retail trade activity at the United States level. Data are collected monthly from small, medium, and large size businesses.

Policy makers such as the Federal Reserve Board need to have the most timely estimates in order to anticipate economic trends and act accordingly. The Bureau of the Census releases the

advance sales estimates 9 days after the end of the data month in a press release called "Advance Monthly Retail Sales Report." Without these early estimates, the next available measure of retail sales is the "preliminary" estimate released about 40 days after the data month.

The Bureau of Economic Analysis (BEA), the Council of Economic Advisors, and other government agencies and businesses use the data to formulate economic policy and make decisions. These estimates have a high BEA priority because of their timeliness. Other users of the advance sales estimates include the Council of Economic Advisors, Bureau of Economic Analysis, Federal Reserve Board, other government agencies, and businesses.

We are increasing the sample size from 3,363 to 4,100 to improve the quality of the data.

Affected Public: Businesses or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5352 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

1999 New York City Housing and Vacancy Survey; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before May 4, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Peter Fronczek, Census Bureau, FB3-1433, Washington, DC 20233-8500, phone: 301-457-3199.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct the 1999 New York City Housing and Vacancy Survey (NYCHVS) under contract for the City of New York. The primary purpose of the survey is to measure the rental vacancy rate which is the primary factor in determining the continuation of rent control regulations. Other survey information is used by city and state agencies for planning purposes as well as the private sector for business decisions. The laws of New York require such a survey to be conducted every three years.

Information to be collected includes: Age, gender, race, hispanic origin, and relationship of all household members; employment status, education level, and income for persons aged 15 & above; owner/renter status (tenure) for all households, amount of rent paid, as well as kitchen and bathroom facilities availability, maintenance deficiencies, neighborhood suitability, and specific questions about each unit such as number of rooms and bedrooms. The survey also poses a number of items relating to handicapped accessibility. Finally, a shorter series of similar questions are asked for any units that are vacant. Note that all vacant units and approximately five percent of occupied units will be reinterviewed for quality assurance purposes.

II. Method of Collection

All information will be conducted by personal interview.

III. Data

OMB Number: 0607-0757 (expired 09/30/96)

Form Number: H-100, H-108(reinterview)

Type of Review: Regular

Affected Public: Households and businesses

Estimated Number of Respondents: 17,200 interviews; 2,000 reinterviews

Estimated Time Per Response: 40 minutes occupied (16,000); 10 minutes vacant (1,200); 10 minutes reinterview (2,000)

Estimated Total Annual Burden

Hours: 11,200

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondent's Obligation: Voluntary

Legal Authority: Local Emergency Housing Rent Control Act, Laws of New York (Chapters 8603 and 657)

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5349 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Current Industrial Reports Surveys—WAVE II (Mandatory and Voluntary Submissions)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 4, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to:

Contact	Industries	Telephone	Address
Michael Zampogna	Manufactured nondurable products.	(301) 457-4810	Bureau of Census, Manufacturing & Construction Division, Room 2212, Building 4, Washington, DC 20233.
Kenneth Hansen	Manufactured durable products ...	(301) 457-4755	Bureau of Census, Manufacturing & Construction Division, Room 2207, Building 4, Washington, DC 20233.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys

provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart

collects annual data from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes we group the surveys into three Waves. The mandatory and voluntary surveys in each Wave are separately submitted. Thus, a total of six clearances cover all of the surveys in the CIR program. One Wave is submitted for reclearance each year. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave II for clearance. The surveys in Wave II are as follow:

Mandatory surveys	Voluntary surveys
M20J—Oilseeds, Beans and Nuts	*M20A—Flour Milling.
M20L—Fats and Oils (Renderers)	*M32G—Glass Containers.
M22N—Cotton in Public Storage	*M33J—Steel (Producers).
M22P—Cotton Manmade Fiber Staple	MQ28A—Inorganic Chemicals.
MQ23A—Apparel	MQ28C—Industrial Gases.
MQ23X—Bed and Bath Furnishings	MQ28F—Paint, Varnish, & Lacquer.
MA22F—Yarn	MQ31A—Shoes and Slippers.
MQ35W—Metalworking Machinery	*MQ36C—Fluorescent Lamp Ballast.
MA22F—Yarn	MA20D—Confectionery.
MA22K—Knit Fabric	MA35N—Fluid Power Products.
MA22Q—Carpet and Rugs	MA35U—Vending Machines.
MA24T—Lumber	MA36L—Electric Light Fixtures.
MA28A—Inorganic Chemicals.	
MA28B—Inorganic Fertilizer.	
MA28C—Industrial Gases.	
MA28G—Pharmaceutical.	
MA31A—Shoes and Slippers.	
MA33L—Insulated Wire and Cable.	
MA35L—Internal Combustion Engines.	
MA35P—Pumps and Compressors.	
MA36E—Electric Housewares and Fans.	
MA36M—Consumer Electronics.	
MA36Q—Semiconductor & Etc.	
MA38R—Electromed/Irradiation Equipment.	

*These voluntary surveys have mandatory annual counterparts.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be

mailed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607-0395—Mandatory Surveys. 0607-0206—Voluntary & Annual Counterparts Surveys.

Form Number: See Chart Above.

Type of Review: Regular Review.

Affected Public: Businesses, other for profit, or organizations.

Estimated Number of Respondents: Mandatory Surveys—35,931; Voluntary & Annual Counterparts Surveys—7,333; Total—43,264.

Estimated Time Per Response: Mandatory Surveys—20.50 hrs. avg.

Voluntary & Annual Counterparts Surveys—9.52 hrs. avg.

Estimated Total Annual Burden: Mandatory Surveys—27,636 hours. Voluntary & Annual Counterparts Surveys—5,330 hours. Total—32,970 hours.

Estimated Total Annual Cost: The estimated cost to respondents for all the CIR reports in Wave II for fiscal year 1998 is \$426,302.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys. Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart collects annual data from those firms not participating in the more frequent collection.

Legal Authority: Title 13, United States Code, Sections 61, 81, 131, 182, 224, and 225.

IV. Request for Comments

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 (including hours and cost) 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5350 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export Procedures for Non-parties to the Chemical Weapons Convention (CWC) and Exports of Schedule 1 Chemicals Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before May 4, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC was signed by the United States in Paris on January 13, 1993, and was submitted by President Clinton to the United States Senate on November 23, 1993, for its advice and consent to ratification. The CWC prohibits, *inter alia*, the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons.

The U.S. is under obligation by this international treaty to impose certain trade controls and notify the Organization for Prohibition of Chemical Weapons (OPCW) of exports of all Schedule 1 chemicals. Therefore, the Bureau of Export Administration will require exporters to obtain an End-Use Certificate, issued by government of the importing country, prior to export of all Schedule 2 and 3 chemicals to countries not party to the CWC. BXA will also require prior notification of all exports of Schedule 1 chemicals to CWC States Parties, and annual reports of such exports.

II. Method of Collection

Written notification and recordkeeping.

III. Data

OMB Number: None.

Form Number: N/A.

Type of Review: Submission for new collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 2 hours per response.

Estimated Total Annual Burden Hours: 700.

Estimated Total Annual Cost: \$0 (no capital expenditures are required).

IV. Request for Comments

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 (including hours and cost) 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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5462 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Authorization Act; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before May 4, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and

Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required as the result of the amending of the Export Administration Regulations (15 CFR parts 730-799) (EAR) to incorporate changes needed to comply with the National Defense Authorization Act (NDAA—Public Law 105-85, 111 Stat. 1629). There are two components of this information collection authorization, advance notification of all exports and reexports of computers with CTP's between 2,000 and 7,000 MTOPS to Computer Tier Group 3 countries (using existing form BXA-748P and electronic submission), and post shipment verification of the export of high performance computers (with a CTP greater than 2,000 MTOPS) to Tier 3 countries requiring exporters to provide a written report to BXA within 30 days of export. To simplify the latter, BXA is developing a new form that will incorporate the relevant data elements and replace the written report, thereby standardizing the data format for the applicant, and enabling the use of information technology in the processing of the data.

II. Method of Collection

Submitted on forms.

III. Data

OMB Number: 0694-0107.

Form Number: BXA 748P.

Type of Review: Renewal of existing collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,800.

Estimated Time Per Response: 5 to 52 minutes per response.

Estimated Total Annual Burden Hours: 782.

Estimated Total Annual Cost: \$15,640.

IV. Request for Comments

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 (including hours and cost) 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. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5463 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export License Information on Bill of Lading; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before May 4, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information serves as official representations to customs officials to promote orderly export and transit of shipments for delivery to an ultimate consignee in a foreign country. Forwarders and brokers are required to use the information and show it on loading documents to reflect the exporters' chosen authorization for export and to reflect and represent that authorization to U.S. Customs officials clearing exports.

II. Method of Collection

Submitted on Bill of Lading.

III. Data

OMB Number: 0694-0094.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 3,500,000.

Estimated Time Per Response: 4-5 seconds per response.

Estimated Total Annual Burden Hours: 4,600.

Estimated Total Annual Cost: \$45,000 (no capital expenditures are required).

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5464 Filed 3-2-98; 8:45 am]

BILLING CODE 3510-33-P

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 2:00 p.m., Thursday,
March 5, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5615 Filed 2-27-98; 3:39 pm]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 10:00 a.m., Thursday,
March 5, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5618 Filed 2-27-98; 3:39 pm]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 11:00 a.m., Friday,
March 13, 1998.

PLACE: 1155 21st St. N.W., Washington,
D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance
Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5621 Filed 2-27-98; 3:40 pm]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 2:00 p.m., Thursday,
March 26, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule
Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5616 Filed 2-27-98; 3:39 pm]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 11:00 a.m., Friday,
March 6, 1998.

PLACE: 1155 21st St. NW., Washington,
DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance
Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5619 Filed 2-27-98; 3:40 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 2:00 p.m., Monday,
March 16, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5622 Filed 2-27-98; 3:40 pm]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 3:00 p.m., Tuesday,
March 31, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5617 Filed 2-27-98; 3:39 pm]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 3:00 p.m., Tuesday,
March 10, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5620 Filed 2-27-98; 3:40 pm]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act Meeting**

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 2:00 p.m., Monday,
March 23, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5623 Filed 2-27-98; 3:45 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION**Sunshine Act Meeting****AGENCY HOLDING THE MEETING:**

Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 27, 1998.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5624 Filed 2-27-98; 3:45 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION**Sunshine Act Meeting****AGENCY HOLDING THE MEETING:**

Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, March 30, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-5625 Filed 2-27-98; 3:45 pm]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Submission for OMB Review; Comment Request****ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Number 0730-0003.

Type of Request: Revision.

Number of Respondents: 20,150.

Responses Per Respondent: 1.

Annual Responses: 20,150.

Average Burden Per Response: 8 minutes (average).

Annual Burden Hours: 2,958.

Needs and Uses: The information collection requirement is necessary to determine the kind and quality of services Defense Finance and Accounting Service (DFAS) customers want and expect, as well as their satisfaction with existing services. DFAS will conduct a variety of activities to include, but not necessarily limited to customer satisfaction surveys, transaction based telephone interviews, Interactive Voice Response Systems (IVRS) telephonic surveys, etc. This collection of information complies with E.O. 12862. The information collected focuses on customer perceptions and can help identify agency operations that need quality improvement, provide early detection of process or systems problems, and focus attention on areas where customer service and functional training or changes in existing operations will improve service delivery.

Affected Public: Individuals or households; business or other for-profit; not-for profit institutions; State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: February 24, 1998.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-5337 Filed 3-2-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Department of the Army**

Final Supplemental Environmental Impact Statement (FSEIS) for Final Site Selection and Authorization for Implementation of the Proposed G.V. (Sonny) Montgomery Range, Camp Shelby Training Site, Camp Shelby, Mississippi

AGENCIES: National Guard Bureau, Department of the Army, DOD; U.S.

Department of Agriculture, Forest Service.

ACTION: Notice of availability.

SUMMARY: In the July 1994 Military Use of Forest Service Lands Final Environmental Impact Statement (FEIS), the G.V. (Sonny) Montgomery Range is referred to as the Multiple Purpose Range Complex-Heavy (MPRC-H). Any reference to the MPRC-H in this or other documents refers to the G.V. (Sonny) Montgomery Range. The July 1994 FEIS and Record of Decision provided an environmental analysis in support of the issuance of a special use permit for continued military use of Forest Service lands in De Soto National Forest. The FEIS recognized that military use of Forest Service lands included construction of an MPRC-H within the Camp Shelby complex, although it did not specify the location. This FSEIS document contains the site-specific environmental analysis concerning the proposed location and alternatives on Camp Shelby for MPRC-H construction.

The G.V. (Sonny) Montgomery Range is a standard Army gunnery range which has three maneuver avenues with two course roads per avenue. Only non-dud producing (or "nonexplosive") ammunition will be fired within the target array. The range has a maximum of 270 targets that can be engaged with either live fire or the Multiple Integrated Laser Engagement System (MILES). The proposed range facility would allow armor and mechanized infantry units to fulfill all their gunnery requirements on an annual basis. The proposed project would consist of the range operation and control area, the downrange area, and the vehicle holding and maintenance area. The range operation and control area is the center of responsibility for overall control and coordination of movement and training exercises within the complex and is also the administrative center for the range complex. Range support facilities in this area may include the control tower, general instruction buildings, personnel and storage buildings, target maintenance building, latrines, covered mess, covered bleachers, and lysterbag holder. Also, an ammunition loading/unloading dock for armor munitions and an ammunition breakdown shelter for infantry should be provided (Huntsville Multiple Purpose Range Complex-Heavy Design information Guide).

The downrange area consists of three 4,500-meter by 300-meter lanes, each separated by a 50-meter buffer zone, and a 1- to 2-acre vehicle holding and

maintenance area that contains a 100-square-meter hardstand.

The proposed G.V. (Sonny) Montgomery Range supports collective training at the platoon and lower levels. Units using the proposed range complex will include tanks, infantry/cavalry fighting vehicles and attack helicopters. This advanced training develops collective skills at the small unit level. It requires sections and platoons to employ moving and stationary target engagement techniques with all weapon systems during daylight and periods of limited visibility.

The lack of an MPRC-H at Camp Shelby was noted in the Department of Defense response to a Government Accounting Office report, "Peacetime Training Did Not Adequately Prepare Combat Brigades for Gulf War," dated September 1991. The Army National Guard considers construction of this range complex vital to the training and combat readiness of the armor and mechanized infantry units that train at Camp Shelby. The proposed range complex will enhance the training capabilities and efficiencies at Camp Shelby by providing for simultaneous utilization of tank gunnery ranges and tank maneuver areas. It will permit more tanks to complete fire requirements simultaneously, leading to more efficient and effective utilization of training facilities at Camp Shelby.

A 45-day public review and comment period was provided for the Draft Supplemental Environmental Impact Statement (DSEIS). Two public meetings were conducted in Hattiesburg, Mississippi, on the DSEIS after the Notice of Availability was published. After all the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the DSEIS to constitute the FSEIS.

DATES: The public review period for this FEIS ends 30 days after the date of publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**. After the 30-day waiting period on the FSEIS has ended, a Record of Decision will be published.

ADDRESSES: Copies of the FSEIS will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Tim Powell, Public Affairs Office, Mississippi Army National Guard, P.O. Box 5027, Jackson Mississippi 39296-5027, telephone (601) 973-62710, facsimile extension 6176.

Dated: February 25, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98-5428 Filed 3-2-98; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on April 2, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: February 25, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01001-3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File (March 2, 1994, 59 FR 9965).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of Naval Intelligence, National Maritime Intelligence Center, 4251 Suitland Road, Washington, DC 20395-5720.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access provided on a need to know basis only. Manual records are maintained in locked file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is a sensitive compartmented information facility which is protected by enhanced security devices. Access is controlled by password or other use code system.'

* * * * *

N01001-3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File.

SYSTEM LOCATION:

Office of Naval Intelligence, National Maritime Intelligence Center, 4251 Suitland Road, Washington, DC 20395-5720.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel of the Naval Reserve Intelligence Program and applicants for affiliation with the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military duty assignments and military promotions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 503, Department of the Navy; 10 U.S.C. 6011, Navy Regulations; 44 U.S.C. 3101, Records

Management by Federal Agencies, and E.O. 9397 (SSN).

PURPOSE(S):

To determine qualifications for members of the Naval Reserve Intelligence Program and to provide a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support projects of the reserve program and mobilization planning requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized floppy/hard disk; microform; and paper records.

RETRIEVABILITY:

Name, Social Security Number, or any file element.

SAFEGUARDS:

Access provided on a need to know basis only. Manual records are maintained in locked file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is a sensitive compartmented information facility which is protected by enhanced security devices. Access is controlled by password or other use code system.

RETENTION AND DISPOSAL:

Records are maintained for a period of five years after last data filed and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Naval Intelligence, National Maritime Intelligence Center, 4251 Suitland Road, Washington, DC 20395-5720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Naval Intelligence, National Maritime Intelligence Center, 4251

Suitland Road, Washington, DC 20395-5720.

The request should contain the full name of the requester, home address, date and place of birth. Persons submitting written requests must properly establish their identity to the satisfaction of the Office of Naval Intelligence. This can be accomplished by either submitting a notarized signature or providing an unsworn declaration that states, 'I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct.' Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject of the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Office of Naval Intelligence, National Maritime Intelligence Center, 4251 Suitland Road, Washington, DC 20395-5720.

The request should contain the full name of the requester, home address and date and place of birth. Persons submitting written requests must properly establish their identity to the satisfaction of the Office of Naval Intelligence. This can be accomplished by either submitting a notarized signature or providing an unsworn declaration that states, 'I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct.' Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject of the record.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reserve data submitted by the individual and investigative reports from the Naval Criminal Investigative Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98-5338 Filed 3-2-98; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement Notification for the A-01 Outfall Constructed Wetlands Project at the Savannah River Site (SRS)

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: DOE proposes to construct and operate an artificial wetlands to treat effluent from the A-01 outfall located on SRS. The A-01 effluent has consistently not met proposed outfall limits which will become effective on October 1, 1999. DOE needs to reduce the copper and chronic toxicity levels in the effluent to ensure compliance when these proposed outfall limits go into effect. It has been determined that a subsurface flow wetlands and an associated detention basin would adequately treat the effluent to meet the new discharge limits. As part of the proposed project activities, a new outfall structure would be constructed within the 100-year floodplain and wetlands associated with Tim's Branch, the headwaters stream into which the treated effluent would be discharged. These activities would necessitate temporary construction access, construction of the new outfall structure, and placement of riprap material in this drainage corridor. In accordance with title 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain or wetlands.

DATES: Comments on the proposed action due on or before March 18, 1998.

ADDRESSES: Comments regarding this assessment should be addressed to Andrew R. Grainger, National Environmental Policy Act (NEPA) Compliance Officer, Savannah River Operations Office, Building 773-42A, Room 212, Aiken, South Carolina 29808. The fax/phone number is (800) 881-7292. The e-mail address is nepa@srs.gov.

FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U. S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586-4600 or (800) 472-2756.

A location map showing the project sites and further information can be obtained from the Savannah River

Operations Office (see ADDRESSES above).

SUPPLEMENTARY INFORMATION: The recent issuance of the revised National Pollutant Discharge Elimination System (NPDES) permit for SRS by the South Carolina Department of Health and Environmental Control (SCDHEC) established new outfall limits for copper, lead, mercury, and chronic toxicity which will become effective on October 1, 1999. Subsequent to SCDHEC issuing the revised permit, samples taken at the A-01 outfall have resulted in the effluent consistently not meeting the new 1999 outfall limits for copper and chronic toxicity. DOE needs to implement actions to reduce these concentrations prior to that time when the new outfall limits are scheduled to go into effect. Extensive research has indicated that a constructed subsurface flow wetlands with an associated detention basin would treat these constituents and reduce the concentrations below the new permit limits before the effluent reaches the NPDES compliance sampling point.

The proposed action entails the construction, and operation of the following: (1) A system of pipes to collect the process and storm water effluent from the local outfalls (i.e., A-01, A-03, A-04, A-05, and A-06), (2) a subsurface flow wetlands/detention basin complex to treat the effluent from these outfalls, and (3) an outfall system to discharge the treated effluent into Tim's Branch, the previously-established onsite receiving stream for the subject outfalls. The A-01 sampling point monitored by both SRS and SCDHEC would be relocated from the current location to the new outfall structure prior to the effluent flow entering the waters of the State.

Construction of the collection pipeline and subsurface flow wetlands/detention basin complex would involve the siting and implementation of these project components in upland areas above the floodplain and wetlands areas associated with Tim's Branch. These upland sites are currently occupied by either planted pine forest or previously-developed area (e.g., graveled parking lots). The pine forest, dominated by a mature overstory of longleaf pine (*Pinus palustris*), has been managed by the U.S. Forest Service over the past four decades for timber production purposes only. Best management practices (e.g., placement of silt fences) would be employed during construction activities associated with this portion of the proposed action to ensure there is no deposition of erosional material or

sediment into the downslope wetland areas.

Construction of the new outfall discharging into Tim's Branch would entail placement of an outflow pipe from the wetlands/basin complex, construction of an outfall structure on the margin of the stream channel, and placement of riprap within the streambed itself to prevent erosion and scouring by the discharged effluent. The location of the proposed new outfall would be on the south side of the Tim's Branch stream corridor. The width of wetland area within that portion of the stream corridor is approximately two to four meters. The stream channel is deeply cut into the bottomland and the streambed is situated approximately one to two meters below the grade of the surrounding forest floor. These wetlands are characterized by a headwaters drainage habitat dominated by an overstory of sweetgum (*Liquidambar styraciflua*), water oak (*Quercus nigra*), and hickory (*Carya* spp.). Hydrology is provided through effluent from the local NPDES outfalls and storm water runoff from the surrounding higher elevation lands. The soils within the stream channel appear to be largely erosional sediment in composition. The project activities to be located immediately on the south side of Tim's Branch and within the streambed itself are also located within the 100-year floodplain. Proceeding with this proposed action will require authorization by the U.S. Army Corps of Engineers under a Clean Water Act Section 404 nationwide permit.

A number of mitigation activities would be implemented to minimize potential impacts to the floodplain and wetlands. Operation of construction equipment in the wetland and floodplain areas would be minimized. Silt fences and other erosion control structures as needed would be installed to ensure there is no deposition in the downslope wetland areas. Minimal wetland acreage (i.e., less than 0.3 acres) would be impacted as a result of fill associated with the aforementioned outfall structure and placement of riprap material in the streambed.

Additionally, an erosion control plan would be developed so that the proposed action complies with applicable State and local floodplain protection standards and further to ensure that no additional impacts to wetlands will occur due to erosion and sedimentation. Best management practices would be employed during construction and maintenance activities associated with this proposed action.

In accordance with DOE regulations for compliance with floodplain and

wetland environmental review requirements (title 10 CFR Part 1022), DOE will prepare a floodplain and wetlands assessment for this proposed DOE action. The assessment will be included in the environmental assessment (EA) being prepared for the proposed action in accordance with the requirements of NEPA. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA or may be issued separately.

Issued in Aiken, SC, on February 19, 1998.

Lowell E. Tripp,

Director, Engineering and Analysis Division,
Savannah River Operations Office.

[FR Doc. 98-5422 Filed 3-2-98; 8:45 am]

BILLING CODE 6450-15-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-406-011]

CNG Transmission Corporation; Notice of Tariff Compliance Filing

February 25, 1998.

Take notice that on February 20, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 37A, and the revised tariff sheets listed on Appendix A to the filing, for inclusion in its FERC Gas Tariff, Original Volume No. 2A.

CNG requests an effective date of January 6, 1998 for its revised tariff sheets.

CNG states that the purpose of this filing is to comply with two directives of the Commission's February 5 order in the captioned proceeding: to reflect an effective date of January 6, 1998, for Sheet No. 37A, and to file revised tariff sheets effective January 6, 1998, that reflect CNG's proposed rate increase on individual X rate schedules in Volume 2 A of its FERC Gas Tariff.

CNG states that copies of its letter of transmittal and enclosures are being mailed to all parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-5372 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-245-000]

Columbia Gas Transmission Corporation; Notice of Application

February 25, 1998.

Take notice that on February 19, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030-1046, filed in Docket No. CP98-245-000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon the transportation and exchange service with Union Light, Heat and Power Company (Union Light) provided under rate Schedule X-33, as revised, and all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the referenced exchange service provides for the transportation of natural gas by Union Light, for the account of Columbia, to Cincinnati Gas & Electric Company (CG&E) at multiple delivery points in Hamilton County, Ohio. Columbia states that it no longer delivers natural gas to CG&E in Ohio and instead delivers natural gas to CB&E in Kentucky, thus eliminating the need for the Rate Schedule X-33 agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 18, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-5369 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-238-000]

Destin Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization

February 25, 1998.

Take notice that on February 17, 1998, Destin Pipeline Company, L.L.C. (Destin), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP98-238-000 a request pursuant to §§ 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208) for authorization to construct, install and operate a lateral pipeline and appurtenant facilities to accommodate the transportation of natural gas production from two new production platforms to be located in Main Pass Block 279 (Main Pass 279 Platform) and in Main Pass Block 281 (Main Pass 281 Platform) for connection into Destin's 36-inch mainline system at its Main Pass 260 Platform for ultimate delivery to downstream pipeline interconnections in southern and central Mississippi, under Destin's blanket certificate issued in Docket Nos. CP96-657-000 and -001 pursuant to Section 7 of the Natural Gas Act, all as

more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Destin is proposing to construct, install and operate (i) Approximately 65,000 feet of 24-inch-diameter lateral pipeline from Destin's Main Pass 260 Platform to a sub-sea valve near the Main Pass 279 Platform, a pig receiver to be installed at the Main Pass 260 Platform, and sub-sea valving to be installed at the end of the 24-inch lateral pipeline in Main Pass Block 279, all in Federal Waters, Gulf of Mexico; (ii) approximately 1,000 feet of 12-inch-diameter tie-in pipeline from a sub-sea tie-in located on the 24-inch lateral near the Main Pass 279 Platform to the Main Pass 279 Platform, a riser, and a pig launcher to be installed at the Main Pass 279 Platform, all in Federal Waters, Gulf of Mexico; (iii) approximately 6,500 feet of 20-inch-diameter tie-in pipeline from a sub-sea tie-in located on the 24-inch lateral in Main Pass Block 280 to the Main Pass 281 Platform, a riser, and a pig launcher to be installed at the Main Pass 281 Platform, all in Federal Waters, Gulf of Mexico; and (iv) two Receipt Points located on the Main Pass 279 and the Main Pass 281 Platforms, with measurement facilities to be installed at both Receipt Points.

Destin states that the proposed facilities will enable it to receive additional gas supplies from the Eastern Gulf of Mexico for transportation to downstream markets onshore in Mississippi. Destin states that CNG Producing Company, majority working interest owner and operator, and two smaller working interest owners, Walter Oil & Gas Corporation and Sonat Exploration GOM Inc., have requested transportation services on Destin's system for their production from leases in Block 734 in the Viosca Knoll Area and in Blocks 279, 280, 281 and 284 in the Main Pass Area, East Addition, Gulf of Mexico (Committed Leases). Destin states that these shippers have entered into Reserve Commitment Agreements with Destin under which they have dedicated their production from the Committed Leases. Destin also states that the shippers have initially agreed to transport up to 230 MMcf per day of production from the Committed Leases, and that such production will be transported through the proposed Lateral Facilities and through Destin's mainline system under Destin's Rate Schedule FT-2.

Destin estimates the cost for the construction and installation of the jurisdictional facilities to be \$14,990,068. The total cost of the project is \$18,990,068, which includes a contribution in Aid of Construction of

\$4,000,000 to be made by Destin for a portion of the cost of the shippers' production platform which Destin proposes to include in its jurisdictional rate base.

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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98-5367 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-120-017]

Koch Gateway Pipeline Company; Notice of Refund Report

February 26, 1998.

Take notice that on February 23, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing its RP94-120 Refund Report.

Koch states that this filing is in compliance with the Commission's January 28, 1998 "Order on Remand", Docket No. RP94-120-016. As directed in the Order, Koch states that it tendered refunds on February 9, 1998 to the affected parties for qualifying transactions.

Koch states that a copy of the report has been served upon affected customers, interested state commissions and all parties designated on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5445 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-246-000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

February 25, 1998.

Take notice that on February 20, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana Street, Houston, Texas 77210, filed in Docket No. CP98-246-000 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) under NorAm's blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 for authorization to construct and operate certain facilities in Arkansas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT specifically requests authority to install a 2-inch tap and 4-inch meter station on NGT's Line KM-12 in Union County, Arkansas. NGT states that the meter station is being constructed to provide service to Arkla, a division of NorAm Energy Corporation (Arkla). NGT states that the estimated volumes for delivery through these facilities are approximately 100,000 MMBtu of natural gas annually and 1,200 MMBtu of natural gas on a peak day. The estimate cost of the facilities is \$7,859 and Arkla would reimburse NGT for \$7,223.

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. 98-5370 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-234-000]

Northern Natural Gas Company; Notice of Application

February 25, 1998.

Take notice that on February 13, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98-234-000 an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder (18 CFR 157.7 and 157.18), requesting permission and approval to abandon, by sale to Westar Transmission Company (Westar), and American Gathering, L.P. (AG) certain compression, pipeline and receipt and delivery point facilities, with appurtenances, located in Texas and certain services rendered thereby, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would convey to Westar and AG facilities consisting of 15 compressor units at four compressor stations totaling 6,995 hp and about 72 miles of pipeline, two to 24 inches in diameter, all receipt and delivery points located along the length of the line, and all other related facilities. Specifically, Northern proposes to abandon by sale to Westar all facilities on the discharge side of the Cargray Processing Plant to the inlet of its Spearman compressor station an abandon by sale to AG all facilities on the suction side of the Cargray Processing Plant. It is stated that the facilities will be conveyed for \$2,446,690 at closing.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 18, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will

be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the Abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98-5365 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-956-000]

Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin); Notice of Filing

February 25, 1998.

Take notice that on February 6, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing an amendment to its filing of an amendment to its filing of a Firm Point-to-Point Transmission Service Agreement between NSP and the City of Medford, Wisconsin-Medford Electric Utility.

NSP is in response to the Commission's deficiency letter dated January 9, 1998. NSP is requesting that the filed Firm Point-to-Point Transmission Service Agreement, as corrected by this filing, be accepted for filing effective January 1, 1998. NSP

requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

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 March 9, 1998. 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. 98-5364 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1098-000]

PP&L, Inc.; Notice of Filing

February 24, 1998.

Take notice that on January 26, 1998, PP&L, Inc., 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 Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 10, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-5361 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-513-001]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

February 25, 1998.

Take notice that on February 20, 1998, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheet, to become effective March 23, 1998.

First Revised Sheet No. 130p

On December 22, 1997, Sea Robin filed a proforma tariff sheet in conjunction with its Initial Comments to the Technical Conference held on December 11, 1997, in this proceeding. The tariff sheet sets forth the terms and conditions under which Sea Robin proposed to implement an open season for firm transportation service in the event of a scheduled maintenance event on its system. The Commission's February 17, 1998, Order approved the proforma tariff sheet with one procedural clarification. Specifically, the sheet modifies Section 4(g)(v) of Rate Schedule FTS-2 of Sea Robin's tariff to require Sea Robin to implement an open season in the event of a scheduled maintenance event that would cause a limitation of mainline capacity for more than ten (10) days. The open season must be held for a minimum period of 48 hours, and the Commission's February 17, 1998 Order required that at least 24 hours of the 48-hour period be held during a business day.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-5373 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP98-140-000]

Tennessee Gas Pipeline Company;
Notice of Tariff Filing

February 26, 1998.

Take notice that on February 23, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 405C. Tennessee requests an effective date of March 25, 1998.

Tennessee states that Fifth Revised Sheet No. 405C proposes a new tariff provision that would allow Tennessee under certain limited circumstances to reserve existing capacity, or capacity that will soon become available, for expansion projects.

Tennessee further states that it will post on its EBB that it is reserving capacity for an expansion project and identify such capacity in its posting. Tennessee will only reserve capacity for expansion projects for which an open season has been held within one year of the date that Tennessee posts the capacity as reserved. Tennessee will make the reserved capacity available for short-term contracts during the interim period before the expansion project goes into service.

Any person desiring to be heard or to protest this 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 Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-5446 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. CP98-239-000]

Texas Eastern Transmission
Corporation; Notice of Certificate
Application

February 26, 1998.

Take notice that on February 17, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, for authorization to abandon (by removal) a portion of Texas Eastern's Line No. 14, in Orange County, Texas, and for a certificate authorizing Texas Eastern to replace that pipeline segment, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Texas Eastern refers to its pipeline replacement project as its Vidor Project. The Vidor Project calls for the replacement of approximately 1,365 feet of Texas Eastern's 30-inch, Line No. 14, in Orange County, Texas, and the abandonment (by removal) of the existing 30-inch pipeline segment to be replaced, as a safety upgrade of that pipeline segment (from Class 2 to Class 3 under the U.S. Department of Transportation's regulations 49 CFR Part 192). The 1,365-foot pipeline segment being replaced lies between MP 22.91 and MP 23.16 on Line No. 14. The estimated total capital cost of the replacement is \$924,000.

Texas Eastern states that the replacement pipeline segment will not change the system's maximum daily design capacity, and that the 30-inch, replacement pipeline segment will have a design delivery capacity equivalent to the facilities being replaced. Texas Eastern also states that the Vidor Project will require the disturbance of 3.53 acres of land (of which 1.85 acres will be temporary work space), that the project will require a 25-foot offset from the existing pipeline, and that (as a result) Texas Eastern plans to acquire a 0.67-acre strip of land as a new permanent right-of-way and relinquish the corresponding 0.67-acre strip of its existing right-of-way.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should, on or before March 19, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the

Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every intervenor. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments, or any other filing it makes with the Commission, to every other intervenor in the proceeding, in addition to the 14 copies it must file with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties, or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee of this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and a grant of the requested certificate are required by the public convenience and necessity. If a motion for leave to

intervene is timely filed, or the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5443 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-344-007]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 25, 1998.

Take notice that on February 20, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective February 1, 1998:

First Revised Sheet No. 11C

Ninth Revised Sheet No. 13

First Revised Sheet No. 13A

Texas Gas states that the filing seeks expeditious approval to place interim reduced rates into effect for Rate Schedules FSS, ISS, PAL, and EFT on a month-to-month basis pending continuation of settlement negotiations. The interim reduced rates reflect an agreement in principle on all issues in the above-captioned rate proceeding, subject to continuing settlement progress. Interim reduced rates are already in effect for Texas Gas's other Rate Schedules.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions, as well as all parties on the service list in Docket No. RP97-344.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests may be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98-5371 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-236-000]

Transcontinental Gas Pipe Line Corporation; Notice of Application To Abandon

February 25, 1998.

Take notice that on February 17, 1998, Transcontinental Gas Pipe Line Corporation, (Transco) P.O. Box 1396, Houston, Texas 77251, filed under Section 7(b) of the Natural Gas Act, for authority to abandon by transfer to Williams Gas Processing-Gulf Coast Company, L.P. (WGP) 450.07 miles of pipeline in Texas which comprise Transco's Tilden-McMullen Gathering System (TMGS). The facilities will be transferred to WGP at a net-book value of \$24,809,376. Transco's request is more fully set forth in the application on file with the Commission and open to public inspection.

Transco's TMG is located in Wharton, Jackson, Victoria, Goliad, Bee, Live Oak, LaSalle, Atascosa, Frio, San Patricio, Dewitt and McMullen Counties, Texas. Specifically Natural proposes to Transfer to WGP:

1. The Tilden Treating Plant-Located in central McMullen County, Texas. The plant consists of two 1,200-HP compressors.

2. Approximately 450.07 miles of 2-inch to 24-inch pipeline.

3. Two 2500 HP compressors with a total horsepower of 5,000.

Transco states that after abandonment, certain receipt points on Transco's master receipt point list will be deleted. Transco states further, that affected parties have been notified. Transco seeks authority to remove the points from the affected rate schedules and contracts and to terminate such services or the portion of such services affected by this application.

Any person desiring to be heard or make any protest with reference to said application should on or before March 18, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98-5366 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1840-000]

UtiliCorp United Inc.; Notice of Filing

February 24, 1998.

Take notice that on February 12, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with American Electric Power Service Corporation. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to American Electric Power Service Corporation pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by

American Electric Power Service Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

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 March 10, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-5362 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1841-000]

UtiliCorp United Inc.; Notice of Filing

February 24, 1998.

Take notice that on February 12, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with American Electric Power Service Corporation. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to American Electric Power Service Corporation pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by American Electric Power Service Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

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 Rule 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 March 10, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-5363 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98-6-000]

Wenert Trich; Notice of Petition for Adjustment

February 25, 1998.

Take notice that on February 17, 1998, Wenert Trich (Trich), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),¹ requesting:

(1) To be relieved of the obligation to make Kansas ad valorem tax refunds to Panhandle Eastern Pipe Line Company (Panhandle), with respect to his interest in six Kansas leases and the corresponding (but unspecified) wells; and

(2) To be relieved of any obligation to make such refunds on behalf of the other interest owners in those leases, otherwise required of the operator by the Commission's September 10, 1997 order in Docket Nos. GP97-3-000, GP97-4-000, GP97-5-000, and RP97-369-000.²

Trich's petition is on file with the Commission and open to the public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals³ directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The

Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Trich states that he is a retired, former producer that has not operated oil and gas wells since 1989, and has not been engaged in gas sales since that time. Trich also states that the six Kansas leases were sold for salvage in 1987 and 1988. Trich adds that there are 85 other working, royalty, and overriding royalty interest owners in the subject leases. Trich states that his own interest in the subject leases amounts to \$2,473.40 of the principal identified by Panhandle, and \$5,181.25 of the interest. Trich states that he billed the individuals and companies that were interest owners in the subject leases, and has since received four checks totaling \$407.20. Trich states that he is sending those payments to Panhandle.

Trich asserts that he has made a good-faith effort to recover the refunds owned by the other working, royalty and overriding royalty interest owners, and requests to be relieved: (1) Of his obligation to make Kansas ad valorem tax refunds to Panhandle; and (2) the obligation to make such refunds on behalf of the other working, royalty, and overriding royalty interest owners, on the basis that paying the refunds would cause him a special hardship.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-5374 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

¹ 15 U.S.C. 3142(c) (1982).

² See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

³ *Public Service Company of Colorado v. FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96-954 and 96-1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP98-244-000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

February 26, 1998.

Take notice that on February 19, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98-244-000 a request pursuant to Sections 157.205, 157.208, 157.212, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, 157.212, 157.216) for authorization (1) to replace and relocate the Kansas Gas Service Company, a Division of ONEOK, Inc. (Kansas Gas), Whispering Hills town border meter setting and appurtenant facilities and (2) to abandon by reclaim the Kansas Gas Monticello West town border meter setting and appurtenant facilities and transfer the volume associated with Monticello West to the new Whispering Hills town border meter setting, all in Johnson County, Kansas under the blanket certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williams connected the storage line serving Whispering Hills to the Bonner Springs 10-inch pipeline pursuant to the notice filed in Docket No. CP97-608-000. However, the proposed line to connect the Monticello West town border was not constructed.

Williams will connect the proposed new town border setting to both the Bonner Springs 10-inch line and the Craig storage field 20-inch line. The new town border setting will initially be served from the 10-inch Bonner Springs line since the 20-inch Craig storage line is being used to complete withdrawal of gas from the Craig storage field. Williams cannot begin withdrawing gas from the north end of the storage field until the proposed abandonment and replacement of the town border settings has been completed. After the storage field is depleted, the Bonner Springs 10-inch line will be conveyed to Kansas Gas as contemplated in the Craig storage field abandonment filing, and the new Whispering Hills town border setting will be served from the Craig 20-inch line which Williams will retain.

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.

David P. Boergers,*Acting Secretary.*

[FR Doc. 98-5444 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP98-242-000]

Williams Gas Processing-Gulf Coast Company, L.P.; Notice of Petition for Declaratory Order

February 25, 1998.

Take notice that, on February 17, 1998, Williams Gas Processing-Gulf Coast Company, L.P. (WGP), P.O. Box 1396, Houston, Texas 77251, filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207). WGP requests a declaratory order stating that its acquisition of the Tilden-McMullen Gathering System (TMGS), currently owned by Transcontinental Gas Pipe Line Corporation (Transco), will not subject WGP to the jurisdiction of the Commission. All of this is more fully set forth in the application, which is on file with the Commission and open to public inspection.

This petition is a companion to Transco's concurrent application in Docket No. CP98-236-000, to abandon the TMGS by transfer to WGP. WGP is a limited partnership formed for the purpose of acquiring and operating gathering and processing facilities. WGP is wholly owned by Williams Field Services Group, Inc., which in turn, is a wholly-owned subsidiary of The Williams Companies, Inc. WGP is also an affiliate of Transco, which is a subsidiary of the Williams Companies, Inc.

WGP and Transco have entered into a Transfer Agreement under which Transco will transfer its TMGS

gathering facilities to WGP. WGP states that after the transfer, WGP will provide gathering and treating services on the TMGS Gathering system. WGP states further that it has executed post-abandonment gathering agreements with two of the current shippers, and intends to negotiate with all existing shippers.

The TMGS is located in Wharton, Jackson, Victoria, Goliad, Bee, Live Oak, La Salle, Atascosa, Frio, San Patricio, Dewitt and McMullen Counties, Texas. The facilities comprising the TMGS include a Treating Plant in McMullen County, Texas, an 450.21 miles of 2-inch to 24-inch pipeline.

Any person desiring to be heard or make any protest with reference to said application should on or before March 18, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not service to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WGP to appear or be represented at the hearing.

Linwood A. Watson, Jr.,*Acting Secretary.*

[FR Doc. 98-5368 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP98-168-000]

Williams Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Pampa Pipeline Abandonment Project and Request for Comments on Environmental Issues

February 25, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the abandonment of facilities, about 126.1 miles of various diameter pipeline, meter stations, and a compressor station, proposed in the Pampa Pipeline Abandonment Project.¹ This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Williams Natural Gas Company (Williams) proposes to abandon by sale to CPI Pipe and Tube, Inc. (CPI) about 126.1 miles of 12-, 16-, and 20-inch-diameter pipeline, meter stations, and appurtenant facilities on its Pampa pipeline system in Hemphill County, Texas and Ellis, Woodward, and Woods Counties, Oklahoma. CPI, in turn, proposes to reclaim for salvage about 114.3 miles of 20-inch-diameter pipeline, about 0.7 mile of 16-inch-diameter pipeline, and about 0.5 mile of 12-inch-diameter pipeline, and to abandon in place about 6.9 miles of 20-inch-diameter, about 0.2 mile of 16-inch-diameter pipeline, and about 3.5 miles of 12-inch-diameter pipeline. The meter stations along the pipeline route would be reclaimed with the pipeline.

The pipeline would be abandoned in place at road and railroad crossings, all waterbody and wetland crossings, and any other environmentally sensitive locations. In addition, Williams would abandon in place the Higgins Compressor Station in Hemphill County, Texas.

The location of the project facilities is shown in appendix 1.² If you are

interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Abandonment by Removal

The current permanent right-of-way width is 66 feet. No additional right-of-way would be required by CPI to remove and salvage the pipeline. Removal of the proposed facilities would require about 924 acres of land. Upon completion of the removal project the current permanent right-of-way would no longer be required and the land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the abandonment of the proposed project under these general headings.

- geology and soils
- water resources and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected

landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified at least two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Williams. These issues may be changed based on your comments and our analysis.

- The project crosses potential lesser prairie-chicken habitat (Texas species of concern) along the route.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.1;
- Reference Docket No. CP98-168-000; and
- Mail your comments so that they will be received in Washington, DC on or before March 30, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

¹ Williams Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

² The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street,

N.E., Washington, D.C. 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-5360 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Expanded Use of the Docket Prefix "IS" for Oil Pipeline Filings and Availability of Information

February 25, 1998.

Take notice that on March 1, 1998, the Federal Energy Regulatory Commission will cease using the oil pipeline docket prefix "OT" and instead will use an "IS" docket prefix.

The Commission receives tariff filings and related materials from jurisdictional oil pipeline companies pursuant to the requirements of 18 CFR Parts 340, 341, 342, 343, 344, 346, and 348. Filings previously given an "OT" docket prefix will now be assigned an "IS" prefix. The "IS" docket prefix has been used for oil pipeline filings which were likely to require formal action. Now this prefix will also be assigned to and designate the more routine, non-controversial, oil pipeline filings. Future use of the "OT" docket prefix will terminate upon institution of this policy.

The format of the "IS" docket prefix will remain unchanged. The "IS" prefix will be followed by the last two digits of the fiscal year in which the filing is received at the Commission, and a number assigned in numerical sequence beginning with "1" at the start of each fiscal year.

Also, as part of the Commission's continuing effort to provide easier access to its information, future oil pipeline filings will be available through the Commission's Records and Information Management System.

This notice is issued for the information and aid of jurisdictional companies, the public and practitioners before the Commission as an

explanation of the docketing prefix used by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-5359 Filed 3-2-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5973-1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Revision—Application for Reference and Equivalent Method Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for Reference and Equivalent Method Determination; OMB Control Number 2080-0005, expiration date May 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 2, 1998.

FOR FURTHER INFORMATION CONTACT:

Contact Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 559.06.

SUPPLEMENTARY INFORMATION:

Title: Application for Reference and Equivalent Method Determination (OMB Control No. 2080-0005); EPA ICR No. 0559.06, expiring May 31, 1998. This is a request for a revision of a currently approved collection.

Abstract: State air monitoring agencies are required to use EPA-designated reference or equivalent methods in their air monitoring networks to determine compliance with the national ambient air quality standards (NAAQS). A manufacturer or seller of an air monitoring method (more specifically, an air monitoring sampler or analyzer that is the basis of the method) which seeks EPA designation of the method must carry out prescribed tests of the method. The test results along with other information must then

be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information to determine whether the particular method should be designated as either a reference or equivalent method. After designation of a method, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. Following designation of a method for PM_{2.5}, the applicant must also maintain its manufacturing facility as a ISO 9991-registered facility and annually submit a checklist signed by an ISO-certified auditor to verify adherence to specific quality assurance requirements in the manufacture of the samplers or analyzers sold as part of a designated method. Responses to the collection of information are voluntary but are required to obtain the benefit of EPA-designation of a method or product as a reference or equivalent method (40 CFR part 53). Submission of information that is claimed by the applicant to be confidential business information may be necessary to make a reference or equivalent method determination. The confidentiality of any submitted information identified as such will be protected in full accordance with 40 CFR part 53.15 and all applicable provisions of 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/07/97 (62 FR 52333); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1,129 hours per response, although individual burdens may vary substantially from that average. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources, complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: For-profit businesses, State and Local Governments.

Estimated Number of Respondents: Six (6) per year.

Frequency of Response: As needed, per application.

Estimated Total Annual Hour Burden: 6,772 hours.

Estimated Total Annualized Cost Burden: \$125,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA-ICR No. 0559.06 and OMB Control No. 2080-0005 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 25, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98-5414 Filed 3-2-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5972-9]

Electric Utility Hazardous Air Pollutant Study Final Report to Congress

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

ACTION: Notice of Document Availability.

SUMMARY: The Final Report to Congress on the EPA's Electric Utility Hazardous Air Pollutant Study (hereafter "Final Report") has been completed. This Final Report was prepared by the EPA in response to section 112(n)(1)(A) of the Clean Air Act as amended in 1990 (hereafter "the Act"), which required the EPA to submit to Congress the results of a study of emissions of

hazardous air pollutants (HAPs) from electric utility steam generating units (utilities) and on the hazards to public health reasonably anticipated to occur as a result of these emissions. Congress directed that the report describe alternative control strategies for HAP emissions which may warrant regulation.

DATES: The Final Report was transmitted to the Congress on February 24, 1998.

ADDRESSES: Copies of the Final Report will be available from Public Docket No. A-92-55 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460. The docket is located at the above address in room M-1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday. The Final Report (docket entry A-92-55, I-A-____) is available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260-7548 or -7549. The FAX number for the Center is (202) 260-4000. A reasonable fee may be charged for copying docket materials. The final report will also be available on the Technology Transfer Network (TTN) (see below) and from the National Technical Information Service (NTIS). The NTIS may be accessed by telephone at (800) 553-6847 or through the Internet at "<http://www.fedworld.gov/ntis/ntishome.html>."

Docket

Docket No. A-92-55, containing supporting information used in developing the Final Report, is available for public inspection and copying as noted above. The docket is an organized file of information used by the EPA in the development of this Final Report.

Technology Transfer Network

The final report is available electronically on the TTN, one of the EPA's electronic bulletin boards. The final report is accessible through the Internet at "<http://www.epa.gov/airlinks>."

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this study, contact Mr. William Maxwell [telephone number (919) 541-5430], Combustion Group, Emission Standards Division (MD-13), or Mr. Chuck French [telephone number (919) 541-0467], Risk and Exposure Assessment Group, Air Quality Strategies and Standards Division (MD-15), U.S. Environmental Protection

Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The final report provides information regarding the emission, fate, and transport of HAPs from utilities. The primary components of the report are: (1) A description of the industry; (2) an analysis of emissions data; (3) an assessment of hazards and risks due to inhalation exposures to 67 HAPs; (4) assessments of risks due to multipathway (inhalation plus non-inhalation) exposures to four HAPs (radionuclides, mercury, arsenic, and dioxins); and (5) a discussion of alternative control strategies. The assessment for mercury in the report also includes a description of emissions, deposition estimates, control technologies, and a dispersion and fate modeling assessment which includes predicted levels of mercury in various media (including soil, water, and freshwater fish) based on modeling from four representative utility plants using hypothetical scenarios.

Based on available information and current analyses, the EPA believes that mercury from coal-fired utilities is the HAP of greatest potential concern and merits additional research and monitoring. There are uncertainties regarding the extent of risks due to mercury exposures including those from utility emissions. Further research and evaluation are needed to gain a better understanding of the risks and impacts of utility mercury emissions. In addition, further research and evaluation of potential control technologies and strategies for mercury are needed.

For a few other HAPs, there also are still some remaining potential concerns and uncertainties that may need further study. First, the screening multipathway assessments for dioxins and arsenic suggest that these two HAPs are of potential concern (primarily from coal-fired plants); however, further evaluations and review are needed to better characterize the impacts of dioxins and arsenic emissions from utilities. Second, nickel emissions from oil-fired utilities are of potential concern, but significant uncertainties still exist with regards to the nickel forms emitted from utilities and the health effects of those various forms. The impacts due to HAP emissions from gas-fired utilities are negligible based on the results of this study; therefore, the EPA feels that there is no need for further evaluation of the risks of HAP emissions from natural gas-fired utilities.

Dated: February 25, 1998.

Richard D. Wilson,

Acting Assistant, Administrator for Air and Radiation.

[FR Doc. 98-5411 Filed 3-2-98; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 24, 1998.

SUMMARY: The Federal Communications Commission, 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 information collection(s), 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 Commission's burden estimate; (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 May 4, 1998. 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 Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0502.

Title: Section 73.1942, Candidate rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 11,518.

Estimated Time Per Response: 0.5 hours for disclosure of lowest unit charge; 20 hours for calculation of lowest unit charge; 2 hours for review of records.

Total Annual Burden: 650,767 hours.

Frequency of Response: On occasion reporting requirement.

Estimated Cost Per Respondent: N/A.

Needs and Uses: Section 315(b) of the Communications Act directs broadcast stations to charge political candidates the "lowest unit charge of the station" for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.

Section 73.1942 requires broadcast licensees to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). Section 74.1942 also requires licensees to calculate the lowest unit charge. Stations are also required to review their advertising records throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. The disclosure would assure candidates that they are receiving the same lowest unit charge as other advertisers.

OMB Approval Number: 3060-0211.

Title: Section 73.1943, Political file.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 15,817.

Estimated Time Per Response: 0.25 hours per request (each station is estimated to have 25 political broadcasts per year).

Total Annual Burden: 98,856 hours.

Frequency of Response: On occasion reporting requirement.

Estimated Cost Per Respondent: N/A.

Needs and Uses: Section 73.1943 requires licensees of broadcast stations to keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the

licensee of such request. The data is used by the public to assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other qualified candidates.

OMB Approval No.: 3060-0788.

Title: DTV Showings/Interference Agreements.

Form No.: FCC 301/FCC 340.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 20.

Estimated Hours Per Response: 55 hours (5 hours applicant; 60 hours advisory committee).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: Undetermined.

Estimated Total Annual Burden: 100 hours.

Needs and Uses: Section V-D of the FCC 301/FCC 340 begins with a "Certification Checklist." This checklist contains a series of questions by which applicants may certify compliance with key processing requirements. The first certification requires conformance with the DTV Table of Allotments. In the Sixth Report and Order in MM Docket No. 87-268, the Commission allowed flexibility for DTV facilities to be constructed at locations within five kilometers of the reference allotment sites without consideration of additional interference to analog or DTV service, provided the DTV service does not exceed the allotment reference height above average terrain or effective radiated power. In order for the Commission to process applications that cannot certify affirmatively, the rules adopted in the Sixth Report and Order require applicants to submit a technical showing to establish that their proposed facilities will not result in additional interference to TV broadcast and DTV operations.

Additionally, in the Sixth Report and Order, the Commission permitted broadcasters to agree to proposed DTV facilities that do not conform to the initial allotment parameters, even though they might be affected by potential new interference. The Commission also recognized that industry frequency coordination could help to facilitate the implementation of the DTV service, and it encouraged the broadcast industry to continue their voluntary coordination efforts through a process open to all affected parties. In this regard, the Commission will consider granting applications on the basis of interference agreements, including agreements obtained through

the coordination process, if it finds that such grants will serve the public interest. These agreements must be signed by all parties to the agreement. In addition, the Commission needs the following information to enable such public interest determinations: a list of parties predicted to receive additional interference from the proposed facility, a showing as to why a grant based on the agreements would serve the public interest, and technical studies depicting the additional interference. Applicants who use a voluntary coordination process should provide the name, address and telephone number of the person who coordinated studies and a description of how the coordination process was open to all interested parties.

The technical showings and interference agreements will be used by FCC staff to determine if the public interest would be served by the grant of the application and to ensure that the proposed facilities will not result in additional interference.

OMB Approval Number: 3060-0500.

Title: Section 76.607, Resolution of Complaints.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 11,365 cable television systems.

Estimated Time Per Response: 1-26 hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: \$56,825. The annual printing, photocopying and stationery costs associated with the disclosure and recordkeeping requirements accounted for in this collection are estimated to be \$5 per cable system. $11,365 \text{ systems} \times \$5 = \$56,825$.

Total Annual Burden to Respondents: 306,855 hours. Based on Commission records, there are approximately 11,365 cable television systems in the nation. The average burden for cable systems to advise subscribers at least once each calendar year of the procedures for resolution of complaints is estimated to be one hour per system. This information is assumed to be easily disclosed to subscribers as part of, or attached to, monthly billing statements. $11,365 \text{ systems} \times 1 \text{ hour} = 11,365 \text{ hours}$. The average burden for cable systems to undergo recordkeeping procedures for subscriber complaints/resolutions is estimated to be no more than .5 hours per week, or 26 hours per year. $11,365 \text{ systems} \times 26 \text{ hours} = 295,490 \text{ hours}$. $11,365 + 295,490 = 306,855 \text{ total annual burden hours}$.

Needs and Uses: On March 4, 1992, the Commission adopted a Report and Order, FCC 92-61, MM Docket Nos. 91-169 and 85-381 in the matter of cable television technical and operational requirements. This rulemaking added Section 76.607 to the Commission's rules. Section 76.607 requires cable system operators to advise subscribers at least once each calendar year of the procedures for resolution of complaints about the quality of television signals delivered. Section 76.607 also requires that records be maintained by cable system operators on all such subscriber complaint and resolution of complaints for at least a one-year period. The records are used by local franchising authorities to assess the technical performance of cable television systems and to ensure that quality service is being provided to subscribers.

OMB Approval Number: 3060-0316.

Title: Section 76.305, Records to be maintained locally by cable system operators for public inspection.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 4,670 cable television systems.

Estimated Time Per Response: 26 hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: \$46,700. The annual printing, photocopying and stationery costs associated with the recordkeeping requirements accounted for in this collection are estimated to be \$10 per cable system. $4,670 \text{ systems} \times \$10 = \$46,700$.

Total Annual Burden to Respondents: 121,420 hours. According to the National Cable Television Association's Cable Television Developments publication, Fall 1997, p. 11, there are an estimated 10,943 cable television systems in the nation, of which approximately 4,670 serve more than 1,000 subscribers. The average burden for each cable system serving more than 1,000 subscribers to comply with Section 76.305 recordkeeping requirements that are not already accounted for in other OMB information collections is estimated to be 26 hours yearly. This estimate is based on FCC staff's knowledge and familiarity with the availability of the data required. $4,670 \text{ cable systems} \times 26 \text{ hrs. per week} = 121,420 \text{ hours}$.

Needs and Uses: Section 76.305 requires cable television systems having 1000 or more subscribers to maintain a public inspection file containing various records in accordance with the

following Sections of the Commission's rules: Section 76.207 (political file); Section 76.221 (sponsorship identifications); Section 76.79 (EEO records available for public inspection); Section 76.225(c) (commercial records for children's programming); Section 76.601(c) (proof-of-performance test data); Section 76.601(e) (signal leakage logs and repair records); Section 76.701(h) (records for leased access); and records kept regarding the testing and activation of Emergency Alert Systems. Many of the recordkeeping requirements listed have OMB approval under separate information collection Control Numbers. Specifically, the recordkeeping requirements set forth in Section 76.207 are approved under OMB Control Number 3060-0313. The recordkeeping requirements set forth in Section 76.221 are approved under OMB Control Number 3060-0315. The recordkeeping requirements set forth in Section 76.79 are approved under OMB Control Number 3060-0348. The recordkeeping requirements set forth in Section 76.601(e) are approved under OMB Control Number 3060-0332. Finally, the recordkeeping requirements set forth in Section 76.701(h) no longer exist in the Code of Federal Regulations. On May 7, 1997, the Commission released a Memorandum Opinion and Order in MM Docket No. 92-258, FCC 97-156, which amended Section 76.701 and removed subsection (h). This information collection, Control Number 3060-0316, therefore accounts for the remaining recordkeeping requirements set forth in Section 76.305. These records are used by Commission staff in field inspections/investigations, by local public officials and by the public to assess a cable television system's performance and to ensure that the system is in compliance with all of the Commission's applicable rules and regulations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-5403 Filed 3-2-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

February 25, 1998.

SUMMARY: The Federal Communications Commission, 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 information collection(s), 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 Commission's burden estimate; (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: Persons wishing to comment on this information collection should submit comments May 4, 1998.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0331.

Title: Section 76.615(b), Notification requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 1,200.

Estimated Time Per Response: .5 hours.

Estimated Cost per Respondent: \$55,200, calculated as follows: Postage and stationery costs are estimated to \$1 per notification. (1,200 notifications × \$1 = \$1,200.) Section 76.615(b) notifications are also subject to an application fee, pursuant to Section 8 of the Communications Act of 1934, as amended. The current fee is \$45 per notification. (1,200 notifications × \$45 = \$54,000. Total costs = \$1,200+\$54,000 = \$55,200.)

Total Annual Burden: 600 hours. Section 76.615(b) notifications are filed with the Commission on an as-needed basis. We estimate that the Commission currently receives approximately 1,200 Section 76.615(b) notifications annually. The average burden on each licensee is .5 hours per notification. (1,200 notifications × .5 = 600 hours.)

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 76.615(b) requires that cable TV system operators notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 KHz bandwidth in any 160 microsecond time period equal to or greater than 10-4 watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical frequency bands. The notifications are used by Commission staff to locate and eliminate harmful interference as it occurs, to help assure safe operation of aeronautical and marine radio services and to minimize the possibility of interference to these safety-of-life services.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 98-5404 Filed 3-2-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2258]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 26, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857-3800. Oppositions to these petitions must be filed March 18, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Telecommunications Act of 1996 Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against

Common Carriers (CC Docket No. 96-238).

Number of Petitions Filed: 4.

Subject: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94-102).

Number of Petitions Filed: 2.

Subject: In the Matter of Part 90 and 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services (PR Docket No. 92-235).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,
Acting Secretary.

[FR Doc. 98-5405 Filed 3-2-98; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1195-DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-1195-DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster which was closed effective January 14, 1998, is now reopened to allow for additional damage resulting from continuing severe storms, high winds, tornadoes, and flooding. The incident period for this declared disaster is December 25, 1997, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98-5431 Filed 3-2-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1204-DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA-1204-DR), dated February 12, 1998, and related determinations.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include Public Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 12, 1998:

Broward, Dade and Monroe Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98-5432 Filed 3-2-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1195-DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA-1195-DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Baker, Bradford, Brevard, Clay, Columbia, Duval, Hamilton, Hardee, Highlands, Marion, Manatee, Seminole, Suwannee, and Volusia for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98-5433 Filed 3-2-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL HOUSING FINANCE BOARD

[No. 98-N-3]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted

the information collection entitled "Monthly Survey of Rates and Terms on Conventional, 1-Family, Nonfarm Loans," commonly known as the "Monthly Interest Rate Survey" or "MIRS", to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on April 30, 1998.

DATES: Interested persons may submit comments on or before April 2, 1998.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, D.C. 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, 202/408-2837, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Timothy D. Forsberg, Financial Analyst, Financial Analysis and Reporting Division, Office of Policy, 202/408-2968, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and use of Information Collection

The Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), first provided data concerning a survey of mortgage interest rates in 1963. No statutory or regulatory provision explicitly required the FHLBB to conduct the MIRS, although references to the MIRS did appear in several federal and state statutes. Responsibility for conducting the MIRS was transferred to the Finance Board upon dissolution of the FHLBB in 1989. See Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101-73, Title IV, section 402(e)(3)-(4), 103 Stat. 183, codified at 12 U.S.C. 1437 note, and Title VII, section 731(f)(1), (f)(2)(B), 103 Stat. 433 (Aug. 9, 1989). In 1993, the Finance Board promulgated a final rule describing the method by which it conducts the MIRS. See 58 FR 19195 (Apr. 13, 1993), codified at 12 CFR 902.3. Since its inception, the MIRS has provided the only consistent source of information on mortgage interest rates and terms and house prices for areas smaller than the entire country.

Statutory references to the MIRS include the following:

- Pursuant to their respective organic statutes, the Federal National Mortgage Association (also known as Fannie Mae) and the Federal Home Loan Mortgage

Corporation (also known as Freddie Mac) use the MIRS results as the basis for annual adjustments to the maximum dollar limits for their purchase of conventional mortgages. See 12 U.S.C. 1454(a)(2), 1717(b)(2). The Fannie Mae and Freddie Mac limits were first tied to the MIRS by the Housing and Community Development Act of 1980. See Public Law 96-399, Title III, section 313(a)-(b), 94 Stat. 1644-1645 (Oct. 8, 1980). At that time, the nearly identical statutes required Fannie Mae and Freddie Mac to base the dollar limit adjustments on "the national average one-family house price in the monthly survey of all major lenders conducted by the [FHLBB]." See 12 U.S.C. 1454(a)(2), 1717(b)(2) (1989). When Congress abolished the FHLBB in 1989, it replaced the reference to the FHLBB in the Fannie Mae and Freddie Mac statutes with a reference to the Finance Board. See FIRREA, Title VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433.

- Also in 1989, Congress required the Chairperson of the Finance Board to take necessary actions to ensure that indices used to calculate the interest rate on adjustable-rate mortgages (ARMs) remain available. See *id.* Title IV, sec. 402(e)(3)-(4), 103 Stat. 183, codified at 12 U.S.C. 1437 note. At least one ARM index, known as the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders, is derived from the MIRS data. The statute permits the Finance Board to substitute an ARM index after notice and comment only if the new ARM index is based upon data substantially similar to that of the original ARM index and substitution of the new ARM index will result in an interest rate substantially similar to the rate in effect at the time the new ARM index replaces the existing ARM index. See 12 U.S.C. 1437 note.

- Congress indirectly connected the high cost area limits for mortgages insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development to the MIRS in 1994 when it statutorily linked these FHA insurance limits to the purchase price limitations for Fannie Mae. See Public Law 103-327, 108 Stat. 2314 (Sept. 28, 1994), codified at 12 U.S.C. 1709(b)(2)(A)(ii).

- The Internal Revenue Service uses the MIRS data in establishing "safe-harbor" limitations for mortgages purchased with the proceeds of mortgage revenue bond issues. See 26 CFR 6a.103A-2(f)(5).

- Statutes in several states and U.S. territories, including California, Indiana, Michigan, Minnesota, New Jersey,

Wisconsin, and the Virgin Islands, refer to, or rely upon, the MIRS. See, e.g., Cal. Rev. & Tax 439.2 (Deering 1996) (value of owner-occupied single family dwellings for tax purposes); Cal. Civ. 1916.7, 1916.8 (mortgage rates); Ind. Code Ann. 28-1-21.5-1 (Burns 1996) (mortgage instruments); Iowa Code 534.205 (1995) (real estate loan practices); Mich. Stat. Ann. 23.1125(21) (1996) (enforcement of mortgages); Minn. Stat. 92.06 (1996) (payments for state land sales); N.J. Rev. Stat. 31:1-1 (1996) (interest rates); Wis. Stat. 138.056 (1996) (variable loan rates); V.I. Code Ann. tit. 11, section 951 (1996) (legal rate of interest).

The Finance Board uses the information collection to produce the MIRS and for general statistical purposes and program evaluation. Economic policy makers use the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs, and initial fees and charges on mortgage loans. Other federal banking agencies use the MIRS results for research purposes. Information concerning the MIRS is regularly published in the popular trade press, in Finance Board releases, and in publications of other federal agencies.

The likely respondents include a sample of 390 savings associations, mortgage companies, commercial banks, and savings banks. The information collection requires each respondent to complete FHFB Form 10-91 on a monthly basis.

The OMB number for the information collection is 3069-0001. The OMB clearance for the information collection expires on April 30, 1998.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 390, with twelve responses per respondent. The estimate for the average hours per response is 1.0 hours. The estimate for the total annual hour burden is 4,680 hours (390 respondents x 12 responses/respondent x approximately 1.0 hour).

C. Comment Request

In accordance with the requirements of 5 C.F.R. 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on December 11, 1997. See 62 FR 65265 (Dec. 11, 1997). The 60-day comment period closed on February 9, 1998. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the

proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: February 25, 1998.

William W. Ginsberg,

Managing Director.

[FR Doc. 98-5377 Filed 3-2-98; 8:45 am]

BILLING CODE 6725-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, on or before March 13, 1998.

Agreement No.: 218-011530-001.

Title: Samson/Sea-Land Cooperative Working Agreement.

Parties: Samson Tug and Barge Sea-Land Service, Inc.

Synopsis: The proposed modification changes the Agreement's expiration date from April 8, 1998 to January 1, 1999.

Agreement No.: 202-011604-001.

Title: USA Conference.

Parties: Sea-Land Service, Inc., A.P. Moller-Maersk Line, Farrell Lines Incorporated.

Synopsis: The proposed modification deletes the provision under Article 7 of the Agreement which requires the parties to post a financial guarantee.

Dated: February 25, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98-5356 Filed 3-2-98; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION**Ocean Freight Forwarder License Applicants**

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Inter-Ocean Cargo Group, Inc., 11682 S.W. 142 Court, Miami, FL 33186,
Officers: Ciro Mendez, President,
Miguel Angel Martel, Vice President

Dated: February 25, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98-5357 Filed 3-2-98; 8:45 am]

BILLING CODE 6730-01-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. The application also will 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. 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 March 27, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Community Bank Capital Corporation*, Alpharetta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of North Georgia, Alpharetta, Georgia, which is converting from a thrift to a state chartered bank.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Belvedere Capital Partners, Inc., California Community Financial Institutions Fund Limited Partnership, and Belvedere Bancorp*, all of San Francisco, California; to acquire between 47.1 percent and 77.4 percent of the voting shares of National Business Bank (in organization), Torrence, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 26, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-5429 Filed 3-2-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM**Notice of Meeting of Consumer Advisory Council**

The Consumer Advisory Council will meet on Thursday, March 19. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C. For this meeting, the location has been changed to the Board Room of the Eccles Building. The meeting will begin at 9:00 a.m. and is expected to continue until 4:00 p.m., with a lunch break approximately between 1:00 p.m. and 2:00 p.m. The Eccles Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics.

Recommendations to Simplify Mortgage Lending Disclosures. The Consumer Credit Committee will lead a discussion of issues related to legislative recommendations being developed to simplify, consolidate, and streamline

the provisions of the Board's Regulation Z (Truth in Lending) and HUD's Regulation X (Real Estate Settlement Procedures) affecting home mortgage lending. In particular, attention will focus on the feasibility of providing consumers with firm costs for shopping purposes, and the possibility/desirability of adding new consumer protections against abusive lending and foreclosure practices.

Bank Regulatory Issues. The Bank Regulation Committee will lead a discussion regarding the ongoing implementation of the revised Community Reinvestment Act regulations; in particular, attention will focus on interagency efforts to enhance uniformity in CRA examinations conducted by the four banking agencies.

Electronic Communication. The Depository and Delivery Systems Committee will lead a discussion regarding an upcoming Board proposal to permit electronic notices, disclosures, and documentation to substitute for paper communications under Board regulations that implement the Electronic Fund Transfer Act, Truth in Lending Act, the Consumer Leasing Act, the Truth in Savings Act, and the Equal Credit Opportunity Act.

Issues Related to the Year 2000. The Council will discuss issues related to encouraging public awareness of preventive measures being taken by financial institutions and other entities to prepare for the century date change, and of error resolution and other rights that consumers will have in the event problems occur.

Governor's Report. Reserve Board Member Laurence H. Meyer will report on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Individual Council members' will present views on the economic conditions present within their industries or local economies.

Committee Reports. Council committees will report on their work plans for 1998.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit views to the Council regarding any of the above topics may do so by sending written statements to Deanna Aday-Keller, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Aday-Keller, 202-452-6470. Telecommunications Device for the Deaf

(TDD) users may contact Diane Jenkins, 202-452-3544.

Board of Governors of the Federal Reserve System, February 25, 1998.

William W. Wiles

Secretary of the Board

[FR Doc. 98-5382 Filed 3-2-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, March 9, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206, beginning at approximately 5 p.m., two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.bog.frb.fed.us> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-5636 Filed 2-27-98; 3:49 pm]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA-98-3]

Fiscal Year 1998 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to establish, or expand and improve, Statewide Senior Legal Hotlines whose purpose is to advance the quality and

accessibility of the legal assistance provided to older people.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for four (4) to five (5) projects that establish, or expand and improve, Statewide Senior Legal Hotlines aimed at advancing the quality and accessibility of the legal assistance provided to older people.

The deadline date for the submission of applications is May 11, 1998. Eligibility for grant awards is limited to public and/or nonprofit agencies, organizations, and institutions experienced in providing legal assistance to older persons.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW, Room 4264, Washington, DC 20201, or by calling 202/619-2987.

Dated: February 24, 1998.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 98-5332 Filed 3-2-98; 8:45 am]

BILLING CODE 4150-40-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98022]

Traumatic Brain Injury Surveillance and Traumatic Brain Injury Follow-up Registries

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for population-based data systems for Traumatic Brain Injury (TBI). The program will serve two purposes:

Part I—To support or enhance existing State surveillance systems for TBI to ensure they are population-based and provide high quality, useful data.

Part II—To develop or enhance population-based registries of persons sustaining TBI to better define the outcomes and secondary conditions associated with the injury.

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 to improve the quality of life. This announcement is related to the priority areas of Unintentional Injuries, Violent and Abusive Behavior, and Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under sections 301, 317, 391-394a, of the Public Health Service Act (42 U.S.C. 241, 247b, 280b-1 and 280b-2) as amended, and supported by Public Law 104-166.

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 the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands and the Republic of Palau.

State agencies applying under this announcement that are other than the official State health department must provide written concurrence for the application from the official State health department.

For each part of this announcement, only one application per Part, from each State, may enter the review process and be considered for an award under this program.

Applicants may apply for Part I only or for Part I and Part II or for Part II only.

Priority preferences for Part I will be given to competing-continuation applicants who were funded under Announcement 526, who currently participate in CDC's multi-State TBI surveillance system, i.e., States that have provided population-based TBI data to CDC for cases incident in years 1994 or later.

Note: Public Law 104-65, dated December 19, 1995, states that an organization described in section 501(c)(4) of the IRS Code of 1986, which engages in lobbying activities, shall not be eligible for the receipt of Federal funds constituting an award, a grant, contract, loan, or any other form.

Availability of Funds

Approximately \$1,310,000 is available in FY 1998 to fund approximately six awards under Parts I and II of this announcement:

Part I—Up to \$550,000 is available in FY 1998 to fund up to four awards to support or enhance existing State surveillance systems for TBI. It is expected that the average award will be in the range of \$125,000—\$135,000.

Part II—Up to \$760,000 is available in FY 1998 to fund two awards to develop or enhance population-based registries of persons with TBI, including initial efforts addressing persons treated in emergency departments for TBI but not hospitalized. It is expected that the average award will be \$380,000.

Both Part I and Part II projects are expected to begin on or about August 1, 1998, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Cooperative agreement funds cannot be used to replace other existing funds for TBI surveillance or registry activities.

Continuation awards within the project period will be made on the basis of satisfactory performance and the availability of funds.

Use of Funds

Restriction on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105-78) states in section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the

preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Prohibition on Use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 specifies that: "None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the new language in the CDC's 1998 Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background & Definitions

Background

Among all types of injury, traumatic brain injury is most likely to result in death or permanent disability. The incidence and prevalence, severity, and cost of TBI indicate its importance as a public health problem.

A. Some estimates and studies of incidence have indicated that traumatic brain injuries may result in more than 500,000 emergency department visits, 260,000 hospitalizations and more than 51,000 deaths each year in the United States.

B. The severity of the nonfatal injuries is shown by estimates that each year

70,000 to 90,000 people sustain TBI resulting in permanent disability.

C. The costs of TBI—acute care, rehabilitation, chronic care, and indirect costs—are unknown but certainly enormous. One estimate suggests that head injuries impose an annual economic burden of \$37 billion in direct and indirect costs. These estimates of cost fail to account for the extraordinary losses experienced by the families and friends of those who have died or sustained disability from TBI.

D. TBI is largely preventable. The leading causes of TBI are motor-vehicle crashes, falls, and violence.

State-based Surveillance. Over the past several years, many States have responded to the need for better TBI data by developing public health surveillance systems. These data systems are beginning to provide ongoing population-based incidence and etiologic information that is useful to plan and evaluate public health programs. Building on these efforts, CDC funded four States in 1995 (Announcement 526) and eleven more States in 1997 (Announcement 526) to conduct ongoing population-based TBI surveillance.

Methods of data collection vary among these surveillance systems. All obtain mortality data from State vital records or multiple-cause-of-death data files. Data on hospitalizations for TBI are obtained by several mechanisms: Employing legal reporting requirements for CNS injuries similar to reporting requirements for certain communicable diseases, using existing hospital discharge data systems or trauma registries, or relying on a combination of these methods. Changes in health care practices in the United States in recent years have resulted in a smaller proportion of persons with TBI being admitted to hospitals after evaluation in emergency departments. To assess the public health importance of TBIs increasingly being treated only in emergency departments, a few States are developing methods to expand TBI surveillance to include emergency department-based care.

Lack of information about outcomes of TBI. Although there are increasing data to describe the current incidence and etiology of TBI, little is known, on a population basis, about the outcomes experienced by persons who survive traumatic brain injury. These outcomes include: their impairments, disabilities (functional limitations), and handicaps (e.g., limits in ability to return to full social participation including major roles such as work or school); the occurrence of secondary conditions; and the need for and use of post-acute

medical, rehabilitation, and social services. In fact, most of what is known about outcomes is based on studies that rely on case series methodology, small regional samples, and anecdotal reports. Greater understanding of these issues is important for several reasons: First, a better understanding of outcomes will add to our knowledge about the public health impact and societal costs associated with disabling injuries. Second, a better understanding of specific impairments associated with disabling injuries could lead to improving acute care and rehabilitation interventions aimed at reducing the severity of impairment and related disabilities. Third, little is known about barriers to receiving needed rehabilitation and other health-related services following TBI. In 1995, under Announcement 526—Part II, CDC funded one State (Colorado) to develop a population-based registry of persons with TBI to assess the outcomes they experience and their need for services in the year following injury.

Additionally, there is a critical lack of information about outcomes experienced by persons who experience a TBI which does not result in hospitalization. Critical work is needed to evaluate the quality of emergency department data for TBI surveillance, to define relevant public health outcome measures for persons with TBI who are not hospitalized, and to develop methods to collect outcome data among this group.

Definitions

Traumatic Brain Injury (TBI) and essential data elements for TBI surveillance are fully defined in CDC's **"Guidelines for Surveillance of Central Nervous System Injury."** For ordering a copy of the Guidelines, see the sections: **Where to Obtain Additional Information and Traumatic Brain Injury Surveillance References.**

Surveillance is the ongoing, systematic collection, analysis, and interpretation of health data necessary for designing, implementing, and evaluating public health programs.

Hospital discharge data (HDD) are summary data compiled by hospitals for all patients admitted and discharged. These data, which are usually entered in a computer data base maintained by each hospital, include information on patient age, sex, residence, diagnoses coded according to the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM codes), services provided, service charges, and dates of hospital admission and discharge. In some jurisdictions, hospital discharge data are compiled

from all patients in all hospitals and are maintained in a centralized, population-based, data collection system. In other jurisdictions, these data are separately maintained by each hospital.

Hospital emergency departments (ED's) are defined as facilities offering 24-hour emergency medical services affiliated with an acute care hospital of six or more beds.

Impairment refers to loss or abnormality of an organ, extremity, tissue, or other body part such as an amputated or paralyzed extremity.

Disability (functional limitation) refers to a restriction or lack of ability to perform an action or activity considered normal for a human being, such as walking.

Handicap refers to a disadvantage for a given individual, resulting from impairment or disability, that limits or prevents the fulfillment of a role that is considered normal for that individual. See World Health Organization, International Classification of Impairments, Disabilities, and Handicaps, Geneva, 1980.

A *secondary condition* is a disease, impairment, or disability that occurs at an increased frequency among people with a primary disabling condition. See Institute of Medicine, Disability in America—Toward a National Agenda for Prevention, National Academy Press, Washington 1991.

Timeliness refers to the promptness with which surveillance systems gather, analyze, and report information gathered. For purposes of the multi State TBI surveillance system related to this program, TBI case-level data should be submitted to CDC in less than 18 months from the end of each calendar year under surveillance.

A population-based *registry* is defined as a system of ongoing registration of all or a representative sample of all cases of a condition in a defined population, such that cases can be related to the population base. (adapted from Last JM. A Dictionary of Epidemiology, Oxford University Press, New York, 1988.)

Purpose

The purpose of this program is to promote the quality and availability of TBI data:

Part I—To support or enhance existing State TBI surveillance systems, in order to promote a multi-State surveillance system that uses common case definitions and data elements according to CDC's Guidelines for Central Nervous System Injury Surveillance. This multi-State surveillance system is defining the magnitude of TBI at a national level, defining the

spectrum of severity of injury, helping to identify populations at high risk, and defining the distribution of external causes of injury, in order to plan injury control programs addressing prevention and service provision.

Part II—To develop or enhance population-based data collection methods to define the longer term public health impacts of TBI—examining the outcomes of TBI (impairments, disabilities, and handicaps). Part II is intended to support the development or enhancement of pilot registries that assess persons six to 12 months following hospitalization for TBI. It is expected that Part II recipients will build on experience gained and methods developed by the Colorado Department of Health and Environment/Craig Hospital Project, funded under P.A. 526. Part II. Additionally, Part II funding will support activities to evaluate the quality of emergency department data for TBI surveillance and initiate the development of methods to assess outcomes among persons treated for TBI in hospital EDs but not hospitalized.

Application Requirements

Part I—Eligible applicants must:

1. Demonstrate the existence of a population-based TBI surveillance system Statewide or a population-based TBI surveillance system in a geopolitical jurisdiction of the State of 1.5 million people or more.

2. Demonstrate the availability of at least one year of TBI data from the TBI surveillance system (either calendar year 1995 or 1996 data).

3. Document that legislation and/or regulations are in place that support current collection of TBI data, and that confidentiality is protected.

Part II—Eligible applicants must:

1. Apply for funding under Part I of this announcement, or currently be funded under Announcement 716.

2. Demonstrate that data are collected with personal identifiers including names.

3. Document that legislation and/or regulations are in place that allow follow-up of persons with TBI.

4. Demonstrate that the population targeted for follow-up is either Statewide or in a geopolitical jurisdiction of the State of 1.5 million people or more.

An affirmative response to each requirement is necessary for the full objective review of applications under Part I or II. The applicant must provide this documentation on a separate page

to be included as the first page of the application, entitled: "Application Requirements Declaration."

Cooperative Activities

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities) below.

Part I

Recipients of awards under Part I of this announcement will conduct population-based TBI surveillance Statewide or in a population defined by a geopolitical jurisdiction of the State of 1.5 million or more.

A. Recipient Activities include but will not be limited to:

1. Conduct Statewide surveillance of TBI using the definitions, data elements, and methods described in the CDC Guidelines for Central Nervous System Injury Surveillance. Recipients will collect information addressing diagnosis, demographics, etiology, severity, and outcome as defined in section **Application Content** of this announcement. Recipients are expected to link data obtained from State vital records (death certificates and/or multiple-cause-of-death data) and hospital discharge data, to produce a non-duplicative data set for the population under surveillance. Since hospital discharge data and vital records may not contain complete information describing injury cause, circumstances, severity, and outcome, recipients are expected to obtain additional data from hospital medical records and/or medical examiner/coroner reports in either all cases or a representative sample of cases.

2. Evaluate the surveillance system for completeness and validity of data collected.

3. Develop and submit an annual report to CDC on the analysis of surveillance data.

4. Compile case-level and summary surveillance data each year and submit these data to CDC in a timely (see Definitions:Timeliness) manner for use in a multi-State TBI surveillance data base. Case level data must be formatted according the CDC Guidelines for Surveillance of Central Nervous System Injury.

5. Develop a yearly work plan which includes measurable objectives with appropriate time lines and associated activities.

B. CDC Activities:

1. Provide technical assistance for effective surveillance program planning and management.

2. Provide technical assistance to evaluate the surveillance system for completeness and validity.

3. Maintain and analyze multi-State data and regularly report analysis findings.

4. Conduct site visits to assess program progress and mutually resolve problems, as needed.

5. Facilitate communication/coordination among States to improve efficiency of activities and quality of surveillance data.

Part II

Recipients of funds for Part II are expected to develop or enhance—and evaluate—a population-based registry to collect follow-up data on persons hospitalized with TBI Statewide or in a population defined by a geopolitical jurisdiction of the State of 1.5 million or more. It is expected that recipients of these funds will build on the experience gained and methods developed by the project funded in 1995 under Announcement 526—Part II (Colorado). It is also expected recipients of these funds will collaborate with one another in order to develop their projects.

A. Recipient Activities include but are not limited to:

1. Define the target population.
2. Develop tracking mechanisms to facilitate follow up of persons with TBI; i.e., develop and maintain access to persons who have been hospitalized for TBI.

3. Define the minimal data set for follow-up, and interview and/or other methods of follow-up and data collection. The data set should include information about primary and secondary conditions, injury severity, motor and sensory impairments, disability, handicap, recommended use and actual use of post-acute care services (so cost estimates can be generated), community integration, and demographic information.

4. Collect follow up data from a representative sample of the population of persons sustaining TBI. It is expected that a sample representing persons with mild, moderate, and severe TBI can be developed to adequately define the parameters in item three, above.

5. Analyze follow-up data.

6. Evaluate the usefulness of hospital emergency department data for TBI in a variety of hospital settings (e.g., urban public hospitals, rural hospitals, level I, II, and III trauma centers, large community hospitals, etc.). It is expected that ED records from a variety of hospital settings will be selected in

order to evaluate the accuracy—including sensitivity and predictive value positive—of ED data for TBI surveillance. Applicants are not expected to define the incidence of TBI treated in the ED, but are expected to evaluate the quality, and therefore the usefulness, of ED data for TBI surveillance.

7. In collaboration with the other funded project, convene two meetings of experts to address outcomes associated with TBI treated in EDs but not hospitalized. These meetings should address relevant public health outcome measures and methods to collect these data.

8. Produce yearly reports of analyses and of project progress; document the costs of maintaining the registry.

9. Evaluate project progress, and evaluate the completeness and accuracy of the data.

10. Develop a yearly work plan that includes measurable objectives with appropriate time lines and associated activities.

11. Collaborate with the other recipient of Part II funding.

12. Share project case level and summary data with CDC.

B. CDC Activities:

1. Provide ongoing consultation with funded recipients in areas outlined under Part II, Activities A.2., A.3., A.4., A.6., A.7., and A.9., above.

2. Provide technical assistance in establishing or endorsing criteria for completeness, timeliness, and accuracy of data, and monitor to ensure compliance with program (recipient) activities.

3. Analyze and provide technical assistance for analysis of TBI follow-up data, for the evaluation of ED data for TBI surveillance, and for convening meetings of experts to address outcomes associated with non-hospitalized TBI.

4. Conduct site visits to assess program progress and mutually resolve problems, as needed.

5. Facilitate the IRB review process at CDC.

6. Facilitate coordination between recipients of Part II funds.

Technical Reporting Requirements

An original and two copies of semi-annual progress reports are required of all grantees. Time lines for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, CDC. Semiannual progress reports should include:

A. A brief program description.

B. A Statement of the goals and objectives, followed by comparisons with the actual accomplishments for the period.

C. If established goals and objectives were not accomplished or were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

D. Other pertinent information, including the status of completeness, timeliness and quality of data, published reports from surveillance efforts, as well as other materials published by the project.

Application Content

A separate application must be submitted for each part (Part I and/or Part II) of this announcement for which funding is requested. Applicants are required to submit an original and two copies of their application. The application, including appendices, should not exceed 55 pages for Part I and 65 pages for Part II.

Competing continuation applicants (Parts I & II) may include up to five additional pages to describe outcomes from the previously funded program.

The first page of the application should contain the response to requirements as indicated in the **Application Requirements** section of this announcement.

Pages should be clearly numbered and a complete index to the application and any appendices included. The project narrative section must be double-spaced. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced where noted, with unredacted type (font size 10 point or greater) on 8-1/2" by 11" paper, with at least 1" margins, headers and footers, and printed on one side only.

The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities.

For TBI surveillance applications (Part I), the application must include:

A. Application Requirements Declaration (see **Application Requirements**).

B. Executive Summary (one page, may be single spaced): This section should include:

1. Type of federal assistance requested: Part I, support of an existing population-based TBI surveillance system.

2. Existing resources for the program.

3. Major objectives and components for the proposed program.

4. The amount of federal assistance requested.

C. Proposal Narrative (not to exceed 25 double-spaced pages excluding the budget narrative and appendices, 30 double-spaced pages for competing continuations): This section should include:

1. A brief description of the need for TBI surveillance within the jurisdiction applying for assistance.

2. A description of the existing TBI surveillance program within the jurisdiction, including the following:

a. Existing staff and brief summary of their qualifications.

b. A description of the applicant's capacity for data entry, data processing, and data analysis.

c. Methods of case ascertainment and data collection, including:

(1) Case definition.

(2) Data elements collected.

(3) Sources of data used to ascertain cases.

(4) Other sources of data used to provide additional information on cases.

d. Legal authority to conduct surveillance (e.g., TBI reporting legislation or regulation), and legal authority and methods to ensure data confidentiality.

e. A brief summary of any data analyses completed.

f. A brief summary of any evaluations of surveillance data quality or timeliness.

g. A progress narrative (not to exceed five pages) documenting project outcomes (competing continuations only).

3. A description of goals and specific, measurable, and time-linked objectives for the proposed surveillance program. A schedule of attainment should be included.

4. A description of methods to achieve the proposed surveillance program objectives. This must include at least the following:

a. Proposed methods of case ascertainment and data collection, including:

(1) The TBI case definition and its consistency with the CDC case definition.

(2) A listing of data elements proposed to be collected. This should include (but need not be limited to) data elements contained in the standard variables of the CDC Guidelines for Central Nervous System Injury Surveillance. At a minimum, data elements collected for every case should include birth date, age, sex, county (or zip code) of residence, ICD-9 or ICD-9-CM diagnostic codes, dates of hospital admission and discharge (if applicable) or dates of injury and death (if

applicable), and type of hospital discharge disposition (if applicable). It is also expected that in at least a representative sample of reported cases, additional data elements will be collected describing injury cause (using either E-codes or CDC etiology codes), severity, and outcome, as described in the CDC Guidelines. Data formats must be consistent with the CDC Guidelines.

(3) All sources of data that would be used to ascertain cases. At a minimum this should include vital records (death certificates) and hospital discharge data. Hospital discharge data may be obtained from Statewide hospital discharge data sets, or may be obtained directly from all individual hospitals within the jurisdiction that provide acute care for head injuries.

(4) All other sources of data that are used to provide additional information on cases. At a minimum this should include hospital medical records, which may be reviewed in a representative sample of cases.

(5) A detailed description of the population sampling methods used to obtain additional case information from medical records and other data sources (see previous section). This is important to validate case reports and collect additional data concerning injury risk factors, causes, severity, and outcome. Because of the time required to abstract such records and the large number of reported cases, it is not expected that all reported cases be abstracted. Sampling methods should ensure representativeness of the sample, but may involve more intensive sampling of some strata with fewer reported cases (e.g., moderate and severe cases). The qualifications of data abstractors and quality control of this data collection should also be addressed.

b. Evidence of legal authority to conduct all aspects of surveillance, including authority that gives the applicant access to and authority to collect all necessary vital records data, hospital discharge data, and medical records within the jurisdiction and protect the confidentiality of this data. A letter from the official State public health agency or other State agency or department, or from the State Attorney General's Office assuring that appropriate State authorities exist should be provided, which cites relevant language from State laws and/or regulations. Appropriate State authorities at a minimum must provide proof of the ability to collect and protect the confidentiality of essential data from State death certificates, hospital discharge data, and hospital medical records for all cases of traumatic brain injury occurring in the State.

c. A description of the applicant's capability for the entry, management, processing and analysis of data, including a description of computer hardware and software resources; a description of methods and time line to ensure timely delivery of edited case-level data to CDC.

d. Appropriate letters of commitment, such as letters from agencies that will provide the project with essential data or access to data.

5. A description of plans to evaluate the attainment of proposed objectives, including plans to evaluate the sensitivity and predictive value positive of case ascertainment and the completeness and quality of data.

6. A description of the schedule by which annual case-level data will be submitted to the CDC.

7. A brief description of the proposed use of data for injury prevention programs.

8. A detailed first-year budget and narrative justification with future annual projections. Budgets should include costs for travel for two project staff to attend one meeting in Atlanta with CDC staff.

9. Human Subjects: Indicate whether human subjects will be involved, and if so, how will they be protected, and describe the review process which will govern their participation (see also **Other Requirements** Section, **Human Subjects**).

For Population-Based Registries applications (Part II)—The application must include:

A. Application Requirements Declaration (see **Application Requirements**).

B. Executive Summary (one page, may be single spaced): This section should include:

1. Type of federal assistance requested: Part II, development of a TBI follow-up registry based on an existing population-based surveillance program.

2. Existing resources for the program.

3. Major objectives and components for the proposed program.

4. The amount of federal assistance requested.

C. Proposal Narrative (not to exceed 35 double-spaced pages excluding the budget narrative and appendices, 40 double-spaced pages for a competing continuation project). This Section should include:

1. A description of the need for a TBI registry and the objectives for the registry. Describe the purpose of the TBI registry data including:

a. A description of how the data will contribute to the applicant's public health mission and fit with other activities in the organization.

b. A description of how the data will contribute to current TBI prevention and service activities as well as a description of potential intervention activities.

2. A description of existing TBI surveillance capacity, including a summary of current surveillance data (i.e., 1995 or 1996).

3. A characterization of the target population including: a. A description of the target population under surveillance, including how it constitutes a discrete geopolitical jurisdiction; and the size and demographic features such as age, sex, and race/ethnicity. Demonstration of population characteristics that may reflect the disability status of the population, such as employment status, educational attainment, and income, is desirable. This includes the extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project, including:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. A description of the applicant's ability to track persons who have sustained TBI and collect health data. High follow-up rates are vital to the success of a registry. Describe the attributes enhancing and impeding follow-up of incident TBI cases, including: a. The applicant's legislative or regulatory authority to collect and maintain health data with identifying information for members of the target population who have had a TBI. This description should include the language currently in place which supports the legal authority of the health department to develop or enhance a central TBI registry.

b. Prior experience conducting follow-up studies or running other registries that would be pertinent to the applicant's capacity to develop or enhance a TBI registry. A discussion of the relevance of these prior endeavors to proposed efforts should be included.

c. Plans to locate registry participants, anticipated barriers to follow-up, and plans to address the barriers.

d. Legal authority and methods to maintain data confidentiality.

5. A description of the applicant's methodologic capacity—specifically, management capacity for planning and maintaining the registry, and scientific resources for data management and analysis of data collected through the TBI registry, including:

a. Organization chart(s) to establish relationships between the registry and support resources.

b. Experience with data management, analysis and use of registry-type (for example, follow-up) data.

c. If appropriate, describe plans for and evidence of collaborative relationships with agencies (including universities and non-governmental entities) that will provide needed expertise.

6. A description of planned data collection. For a newly funded project, sufficient time in the first budget year should be devoted to planning, establishing infrastructure, and developing data collection instruments in collaboration with CDC and the other recipient of Part II funds. Familiarity should be demonstrated with data needs and data collection issues of a TBI registry, including:

a. A demonstration of familiarity with concepts of impairment, disability, handicap, and secondary conditions.

b. A description of potentially useful public health outcome measures of disability, including relevant published data collection instruments.

c. A description of methods to be employed at follow up that will assess disability and handicap, and a description of methods to be employed to assess pre-TBI baseline function.

d. A description of other existing computerized health data systems that might be useful for the ongoing monitoring of registry participants, and a description of the applicant's authority and experience in linking such data systems.

e. A description of existing computer hardware and software resources and anticipated needs to maintain the registry, including for the purposes of data linkage, analysis and transmission to the CDC.

7. Describe the overall operational plan for development, implementation, and ongoing management of the TBI registry including:

a. A realistic time line with measurable milestones.

b. A management and staffing plan describing qualifications and experience of existing and proposed staff, and responsibilities of each position.

c. The methods for registry participant enrollment, for data collection (e.g.,

telephone versus in-person interview, record abstraction), and for confidentiality. A description of the TBI severity and care spectrum of registry participants to be enrolled and followed should be included.

d. A description of analysis plans for data collected through the registry.

e. If applicable, plans for and evidence of collaborative relationships with agencies (including universities and non-governmental entities) relevant to the surveillance of TBI and the monitoring of the health, service needs, and community integration of injured persons.

f. If the applicant has an established follow-up registry for TBI, a description of how methods will be shared and how technical support may be given to the other recipient of Part II funding.

g. Plans to share project case level and summary data with the CDC.

8. A description of methods to evaluate the usefulness of hospital emergency department data for surveillance of non-hospitalized TBI. This must include the following:

a. Proposed methods of case ascertainment, including case definition(s), data collected, and sources of data within the hospital to identify cases and to provide additional information about the TBI (e.g., administrative and clinical emergency department data sources, radiology reports, emergency medical service data).

b. A description of how ED cases will be selected, including a description of which hospitals will participate (or will be selected to participate), the characteristics of those hospitals, the proposed number of cases needed from each hospital, and the rationale for how cases will be identified.

c. A description of methods to evaluate sensitivity, predictive value positive and the quality of data collected in the ED.

9. In collaboration with CDC and the other funded project, an agreement to convene two meetings of experts to address outcomes associated with TBI treated in emergency departments but not hospitalized. These meetings should address relevant public health outcome measures for TBIs treated in emergency departments and methodologies to collect data among this group.

10. A description of plans to evaluate the attainment of proposed objectives, including (where applicable) plans to evaluate the quality of the registry and ED data collected (e.g., completeness and validity).

11. As applicable, a progress narrative (not to exceed five double-spaced pages)

to address progress and outcomes from the prior-funded project.

12. Human Subjects: Indicate how human subjects will be protected, and describe the review process which will govern their participation (see **Other Requirements** Section, **Human Subjects**).

Evaluation Criteria

Upon receipt, applications for Part I and Part II will be reviewed by CDC staff for completeness and affirmative responses as outlined under the previous heading, **Application Requirements**. Incomplete applications and applications which are not responsive will be returned to the applicant without further consideration.

An objective review of the applications which are successful in the preliminary review will then be conducted according to the following criteria:

Part I—Evaluation Criteria

Evaluation criteria are based on the responsiveness to and quality of specific information requested in section

Application Content.

1. Needs Assessment (5 points). The extent to which the applicant describes the impact of TBI in the applicant's jurisdiction and the need for TBI data for public health programs.

2. Existing Surveillance Program and Resources (40 points total). The status of the applicant's existing TBI surveillance program, and the degree to which it currently serves the requirements and purposes of this cooperative agreement. Priority will be given to:

a. programs including in this application a summary of current (i.e., 1995 or 1996) TBI morbidity and mortality data analyzed by age, sex, and cause, [5 points];

b. programs that have evaluated the quality of their data (e.g., predictive value positive, completeness, timeliness), [5 points];

c. programs that have abstracted records of a population-based sample to characterize the external cause, severity, and outcome of TBI (e.g., by abstracting data from medical records in a representative sample of reported cases), [10 points];

d. programs providing a progress report that details participation in CDC's multi-State TBI surveillance system, addressing progress and outcomes from the previous three-year funding period, [20 points].

3. Goals and Objectives (10 points). The extent to which objectives are specific, achievable, practical, measurable, time-linked, and consistent

with the overall purposes described in this announcement.

4. Methods and Activities (20 points). The application will be scored according to the extent that the proposed methods and activities can achieve the proposed objectives, consistent with the purposes of this announcement. The extent to which clear explanations of appropriate methods addressing case ascertainment and data collection, TBI case definition(s), data elements, sources and availability of data, sampling methods, legal authority for surveillance activities, protection of confidentiality, and data processing and analysis are provided. The applicant should also describe methods for sharing project data with the CDC.

5. Staffing and Management (15 points). The extent to which proposed staffing, organizational structure, staff qualifications and experience, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate the applicant's ability to carry out the objectives of the program.

6. Evaluation (10 points). The degree to which the applicant includes plans to evaluate the attainment of proposed objectives, including plans to evaluate the sensitivity and predictive value positive of case ascertainment and the completeness and quality of data.

7. Budget (not scored). The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities.

8. Human Subjects Review (not scored). The applicant must clearly state what precautions exist to protect human subjects.

Part II—Evaluation Criteria

Evaluation criteria are based on the responsiveness to, and quality of, specific information requested in this section. See also **Application Content** Section in this announcement.

1. Statement of Need for TBI Follow-up Data, and Registry Goals and Objectives: (5 points). The extent to which the applicant describes plans for using a TBI registry that respond to public health needs and are linked with prevention and service activities; the extent to which the project goals and objectives are specific, achievable, measurable, time-linked, and consistent with the overall purposes described in this announcement.

2. Existing TBI Surveillance Capacity: (10 points). The extent to which the applicant describes an effective incidence surveillance system for TBI and addresses the following issues: The objectives for incidence surveillance,

the case definitions for TBI, the sources of TBI case reporting, the timeliness of case ascertainment, the completeness of case ascertainment and other qualitative attributes of the system, a summary of current surveillance data (i.e., 1995 or 1996), and a description of the prior usefulness of the system.

3. Definition and Scope of the Target Population: (10 points). The extent to which a discrete, geopolitical jurisdiction can be established and the following issues are addressed: Demonstrated access to descriptive data concerning the target population, including measures relevant to the disability status of the target population, and a thorough justification and description of sampling or restricting the target population for participation in the registry. Breadth of socio-demographic representation in the target population and relevance to the national population will be scored favorably.

This includes the extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project including: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Ability to Track TBI Patients and Collect Health Data: (15 points). While authority to collect and maintain personal identifiers from TBI incidence surveillance is a requirement for Part II eligibility, the ability to track participants and collect follow-up information is so important to the success of the registry that scoring will reflect the extent to which the applicant demonstrates legislative and/or regulatory authority to conduct a TBI registry, shows prior successful experience following a population and collecting health information at prospective intervals, understands the barriers to locating registry participants for follow-up data collection and presents appropriate plans to overcome those barriers, and demonstrates proper authority and methods to maintain confidentiality of health information with personal identifiers.

5. Methodologic Capacity, Project Management and Staffing: (15 points). The extent to which the scientific

resources for planning and data management/analysis of a TBI registry are demonstrated within the applicant's organization or through collaboration with universities or other agencies. The extent to which proposed staffing, staff qualifications and experience, and project organization indicates ability to accomplish the objectives of the program.

6. Data Collection: (15 points). For a newly funded project, planning, establishing infrastructure, and developing data collection instruments are expected to occur during the first year. Under these circumstances the application will be scored according to the extent to which familiarity with data needs and data collection issues is demonstrated in the proposal, including the concepts of impairment, disability, handicap, and secondary conditions. Awareness of published data collection instruments used to measure outcome measures of disability and handicap and assess health status prior to injury should be demonstrated, as well as awareness of the technical resources necessary to conduct the registry.

Applicants with established TBI registry projects should describe experience with—and proposed changes involving—data collection instruments and methods.

All applicants should describe implemented or proposed methods to conduct follow-up interviews and link pertinent health data systems to enhance data collection.

7. Operational Plan: (10 points). The extent to which the registry methods and timetable are realistic, milestones are measurable, and proposed products are commensurate with the size of the cooperative agreement award. The spectrum of TBI severity addressed within the registry should be as broad as possible, and the data collection methods should be appropriate for the type of data proposed for collection.

8. Evaluation of Hospital Emergency Department Data for TBI Surveillance and Developing Outcome Measures for Non-hospitalized TBI: (10 points). The extent to which the applicant's proposed methods and activities will evaluate the quality of hospital ED data relevant to TBI surveillance. The extent to which clear explanations of appropriate, achievable methods are presented demonstrating access to hospital ED data, demonstrating access to other data sources within the hospital, and to evaluate sensitivity, predictive value positive, and the quality of ED data for TBI surveillance. In addition, the extent to which the applicant demonstrates a willingness to collaborate with CDC and the other

funded project to address outcomes issues among persons treated in EDs for TBI.

9. Evaluation Plan: (10 points). The degree to which the applicant includes plans to evaluate the attainment of proposed objectives, including plans to evaluate the quality of the data collected through the registry.

10. Budget (not scored). The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities described in this announcement.

11. Human Subjects (not scored). The applicant must clearly state what precautions are in place to protect human subjects. Activities under Part II of this announcement are subject to an IRB review at CDC. An IRB must also review this project at the State level. The State review should occur after the project has been reviewed at CDC (see also Human Subjects).

Funding Preferences: During the selection process CDC will attempt to ensure a balanced geographic distribution of funded TBI surveillance and registry projects.

Executive Order 12372 Review

Applications are subject to 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 send them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Mailstop E-13, Atlanta, GA 30305. The receipt date for SPOC comments will be 60 days after publication in the **Federal Register**. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" the State process 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 number is 93.136.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review 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 Regulations, 45 CFR part 46, regarding the protection of human subjects (see Application Contents, parts I and II). 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 and form(s) provided in the application kit. Applicants under Part II of this announcement are subject to an IRB review at CDC. The CDC IRB review should occur before an IRB reviews the project at the State level. Additional information and forms will be available as part of the application package mentioned under **Where to Obtain Additional Information** Section.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In

conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947-47951.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 (OMB Number 0937-0189) must be submitted to Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, GA 30305, on or before May 7, 1998.

1. Deadline: Applications shall 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. (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.)

2. 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 in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call 1-888-GRANTS4 (1-888-472-6874). You will be asked your name and address and will need to refer to Announcement 98022. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is (<http://www.cdc.gov>).

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention

(CDC), 255 East Paces Ferry Road, NE., Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6535, or Internet address jcw6@cdc.gov.

Programmatic technical assistance, including additional information developed by the existing registry project, may be obtained from Joseph Sniezek, M.D., Division of Acute Care, Rehabilitation Research and Disability Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F-41, Atlanta, GA 30341-3724, telephone (404) 488-4244 or Internet address jes6@cdc.gov.

Please refer to Announcement 98022 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the **Introduction** Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

Dated: February 25, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

TRAUMATIC BRAIN INJURY SURVEILLANCE REFERENCES

Methods and Key Resources

- Thurman DJ, Sniezek JE, Johnson D, Greenspan A, Smith SM. Guidelines for Surveillance of Central Nervous System Injury. Atlanta: Centers for Disease Control and Prevention, 1995.
- Klaucke DN, Buehler JW, Thacker SB, et al. Guidelines for evaluating surveillance systems. *MMWR* 1988;37(s-5):1-18.
- Health Care Financing Administration. International Classification of Diseases, 9th Revision, Clinical Modification, Third Edition. Washington, DC: U.S. Department of Health and Human Services, 1989.
- Brooks CA, Gabella B, Hoffman R, Sosin D, Whiteneck G. Traumatic brain injury: designing and implementing a population-based follow-up system. *Arch Phys Med Rehabil* 1997; 78:S26-S30.

Epidemiologic Studies and Reviews

- Centers for Disease Control and Prevention. Traumatic Brain Injury—Colorado, Missouri, Oklahoma, and Utah, 1990-93. *MMWR* 1997; 46(1):8-11.
- Kraus JF, McArthur DL. Epidemiologic aspects of brain injury. *Neurologic Clinics* 1996; 14(2):435-50.
- Sosin DM, Sniezek JE, Waxweiler RJ. Trends in death associated with traumatic brain injury, 1979 through 1992. *JAMA* 1995; 273:1778.

Published epidemiologic studies of TBI are also reviewed in the article "Epidemiology of Traumatic Brain Injury in the United States" located at the Internet website of the National Center for Injury Prevention and Control <<http://www.cdc.gov/ncipc/dacrrdp/tbi.htm>>.

How to Obtain a Copy of the CDC Guidelines for Surveillance of Central Nervous System Injury:

A copy of these Guidelines can be obtained either by calling 770-488-4031, by submitting the "NCIPC Publications Order Form" through the Internet website of the National Center for Injury Prevention and Control <<http://www.cdc.gov/ncipc/pub-res/pubsav.htm>>, or by writing to the Division of Acute Care, Rehabilitation Research, and Disability Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F-41, Atlanta, GA 30341-3724.

[FR Doc. 98-5389 Filed 3-2-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98029]

Grants for Violence-Related Injury Prevention Research; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces applications are being accepted for Violence-Related Injury Prevention Research Grants for fiscal year (FY) 1998.

The 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 area of Violent and Abusive Behavior (To order a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301, 391, 392 and 394 of the Public Health Service Act (42 U.S.C. 241, 280b, 280b-1 and 280b-2) as amended. Program regulations are set forth in Title 42 CFR, part 52.

Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus State and local health departments, State and local governmental agencies, universities,

colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, child care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately \$2.0 million is expected to be available for injury research grants in the areas of suicidal behavior, firearm-related injury, sexual violence, and intimate partner violence. The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, "Programmatic Priorities." It is expected that the awards will begin on or about September 1, 1998, and will be made for 12-month budget periods within the appropriate (see below) project period. Funding estimated may vary and is subject to change.

For research projects targeting the areas of suicidal behavior and firearm-related injury, approximately \$1,000,000 is available to fund 3-4 grants. Each grant will be supported for a maximum project period of three years at \$300,000 per year (including both direct and indirect costs).

For research projects targeting sexual violence or intimate partner violence, approximately \$1,000,000 is available to fund 3-4 grants. Each grant will be supported for a maximum project period of three years at \$300,000 per year (including both direct and indirect costs). Applicants who are awarded grants targeting sexual violence or intimate partner violence and who collect data will be required to archive the data (minus any personal identifiers) and secure a privacy certificate (see the following section, Other Requirements).

Grant applications that exceed the \$300,000 per year caps will be returned to the investigator as non-responsive.

Continuation awards within the project period will be made based on satisfactory progress demonstrated by

investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, if funds are available, continuation awards may be eligible for increased funding to offset inflationary costs.

Use of Funds—Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 HHS Appropriations Act expressly prohibits the use of 1998 appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before State legislatures. Section 503 of Public Law 105-78, provides as follows:

(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, or any State legislature, except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Use of Funds—Prohibition on Use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and

Related Agencies Appropriations Act, 1998, specifies that: "None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control."

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the new language in the CDC's 1998 Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Note: Grant funds will not be made available to support the provision of direct care services.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Background and Definitions

A. Background

Violence (intentional injury) ranks as one of the nation's most pressing health problems. Injuries sustained as a result of assaultive and suicidal behavior account for more than a third of the deaths from injuries, including an annual toll of more than 55,000 lives lost. Suicide was the ninth leading cause of death among Americans in 1995, and homicide is the leading cause of death among African-American men and women aged 15–24. Men are at approximately four times greater risk than women for death from suicide and homicide. Both homicide and suicide are still major causes of mortality among women, and they are in the top ten leading causes of death for women up to age 44.

Although men are at much greater risk of injury and death due to interpersonal violence, women are at much higher risk of nonfatal injuries due to sexual violence and intimate partner violence. The total extent and severity of violence-related non-fatal injuries are

unknown, but a substantial portion of the nation's health care and rehabilitation systems' resources are devoted to attending to victims of violence. Lifetime costs of non-fatal injuries resulting from assaultive behavior and sexual violence occurring from 1987–1990 are estimated to be at least \$106 billion.

A broad approach should be utilized to maximize opportunities for prevention that incorporate many disciplines that have not been an integral part of public health efforts. Many of these opportunities and research priorities are discussed in Healthy People 2000. Additional background information can be found in the following suggested readings: Violence and the Public's Health, Understanding and Preventing Violence, and Violence in America: A Public Health Approach. (To receive information on these reports see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**).

B. Definitions

1. *Injury* is defined as physical damage to an individual that occurs over a short period of time as a result of acute exposure to one of the forms of physical energy in the environment or to chemical agents or the acute lack of oxygen. *Violence* is the threatened or actual use of physical force or power against another person, against oneself, or against a group or community which either results in, or has a high likelihood of resulting in injury, death, or deprivation. The injuries or harm resulting from violence may be either physical or psychological. Violence encompasses suicidal behavior as well as interpersonal assaultive behavior, including sexual violence, intimate partner violence, child abuse and neglect, child sexual abuse, elder abuse, hate crimes, and assaults against or by HIV-infected persons. *Suicidal behavior* are actions that place an individual at high risk for self-destruction. Suicidal behaviors include suicide gestures, threats and attempts. *Intimate Partner Violence* is defined as threatened or actual use of physical force against an intimate partner that either results in or has the potential to result in injury, harm, or death. Intimate partner violence may be physical, sexual, or psychological. Types of behavior that fit within this definition are commonly referred to as domestic violence, spouse abuse, woman battering, courtship violence, sexual violence, date rape, and partner rape. *Sexual violence* is the use of physical force to compel a person to engage in a sexual act against their will, whether or not the act is completed.

Sexual violence also includes sexual acts with persons unable to appraise a situation, decline participation, or to communicate unwillingness to engage in a sex act.

2. *Violence-related injury prevention research projects* are defined as research designed to:

a. Elucidate the chain of causation—the etiology and mechanisms—of violence-related injuries; or

b. Yield results directly applicable to identifying interventions to prevent violence-related injury occurrence or minimize disability; or

c. Evaluate the effect of policies, programs, or interventions on violence-related injury morbidity, mortality, disability, and costs.

Purpose

The purposes of this program are to:

A. Build the scientific base for the prevention of injuries, disabilities, and deaths due to violence in the following four priority areas: Suicidal behavior, firearm-related injury, sexual violence, and intimate partner violence as delineated in Healthy People 2000.

B. Identify effective strategies to prevent violence-related injuries.

C. Expand the development and evaluation of current and new intervention methods and strategies for the primary prevention of violence-related injuries.

D. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, criminal justice, and behavioral and social sciences, to undertake research to prevent and control injuries from suicidal behavior, firearm-related injury, sexual violence, and intimate partner violence.

E. Encourage the training of pre-doctoral minority investigators to work in the area of violence research.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience in conducting, evaluating, and publishing in peer-reviewed journals injury control research pertaining to violence (as previously defined) on the applicant's project team.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. The ability to carry out injury control research projects as previously

defined under Background and Definitions, (B.2.a-c).

E. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading, "Programmatic Priorities."

Programmatic Priorities

Grant applicants should concentrate on the need to reduce morbidity, mortality, and disabilities caused by suicidal behavior, firearm-related injury, sexual violence, or intimate partner violence.

1. Injury prevention research addressing emerging issues in suicidal behavior

- Conduct research to develop and improve measurement instruments for the identification and study of suicides and suicide attempts in surveys, research studies, and surveillance systems.

- Conduct research designed to improve understanding of the nature of suicide risk among emerging high-risk populations such as young African American males.

- Conduct research that further illuminates understanding of the contribution of potential risk factors for suicide such as impulsivity, sexual orientation, and hopelessness.

2. Injury prevention research addressing firearm-related injuries among children and adolescents

- Conduct research to improve understanding of the motivations and deterrents for weapon carrying behavior among adolescents at high risk for firearm-related injuries.

- Conduct research that estimates injury risk associated with firearm storage or carriage practices.

- Conduct research that addresses the effects of firearm safety training and education programs on firearm storage and carriage practices.

3. Injury prevention research addressing sexual violence or intimate partner violence

- Conduct research to address the impact of welfare and welfare-to-work programs on women (and their children) who experience intimate partner violence.

- Conduct research to determine the effectiveness of prevention programs for adolescent males at risk for perpetration of sexual violence or intimate partner violence or intervention programs for perpetrators of sexual violence or intimate partner violence.

- Conduct research on risk factors for perpetration of sexual violence.

Reporting Requirements

An original and two copies of the financial status and progress reports are

due 90 days after the end of each budget period. Final financial status and progress reports are due 90 days after the end of the project period.

Application Content

Applications for injury control research grants should include:

A. The project's focus that justifies the research need and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability and economic losses. This focus should be based on recommendations in Healthy People 2000 and should seek creative approaches that will contribute to a national program for injury control.

B. Specific, measurable, and time-framed objectives.

C. A detailed plan describing the methods, by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

D. A description of the grant's principal investigator's role and responsibilities.

E. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

F. A description of the role, duties, and responsibilities of the project's pre-doctoral minority investigator(s) (a minimum of 15% of each pre-doctoral minority investigator's time should be reflected in the project's budget).

G. A description of those activities related to, but not supported by the grant.

H. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

I. A detailed first year budget for the grant with future annual projections, if relevant.

J. Applicants must identify in a cover letter one of the priority areas listed among the four areas of violence-related injury research previously outlined under the heading Programmatic Priorities, (i.e., suicidal behavior, firearm-related injury, sexual violence, or intimate partner violence), upon which their project is focused.

K. An explanation of how the research findings will lead to feasible, cost-effective injury interventions.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the

application which are made available to outside reviewing groups. To exercise this option: On the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS-398, completed in full, with the deleted amounts shown. This budget page will be reserved for internal CDC staff use only.

Evaluation Criteria

Upon receipt, applications will be screened by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A-E). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications that are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score ranking by the Injury Research Grants Review Committee (IRGRC), programmatic priorities and needs by the Advisory Committee for Injury Prevention and Control, and the availability of funds.

A. The first review following the preliminary review (triage) will be a peer review to be conducted on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested.

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. For competitive renewal applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plans, plans for inclusion of minorities and both sexes.

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives.

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities, including pre-doctoral minority investigator(s).

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

9. The reasonableness of the proposed budget to the proposed research and demonstration program.

10. Adequacy of existing and proposed facilities and resources.

11. An explanation of how the research findings will lead to feasible, cost-effective injury interventions.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.
2. The significance of the proposed activities in relation to the objectives outlined under the section, "Programmatic Priorities."
3. National needs.
4. Overall distribution among:
 - The priorities listed among the four areas of violence-related injury research: suicidal behavior, firearm-related injury, sexual violence, and intimate partner violence;
 - The major disciplines of violence-related injury prevention: social and behavioral science, biomechanics, and epidemiology;
 - Populations addressed (e.g., adolescents, racial and ethnic minorities, the elderly, children, urban, rural).
5. Budgetary considerations.
6. Additional consideration will be given to those applicants who provide evidence of substantial involvement for pre-doctoral minority investigators in the proposed project.

C. Continued Funding

Continuation awards made after FY 1998, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress has been demonstrated at work-in-progress monitoring workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by these grant awards will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 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 and forms provided in the application kit.

C. Certificate of Confidentiality

Research that examines individual traits and experiences plays a vital part in expanding our knowledge about

human behavior. It is essential, however, that researchers protect subjects from needless risk of harm or embarrassment and proceed with their willing and informed cooperation. CDC has established a policy and mechanism for issuance of certificates of confidentiality under section 301(d) of the Public Health Act. Certificates of confidentiality provide important protections for research subjects so that they will not be harmed as a result of their participation because of inappropriate disclosures, and in doing so serve the valuable function of encouraging people to participate in research. Specifically, the confidentiality certificate prevents study staff from being forced under a court order or other legal action to identify individuals who are participants in the study. Grant recipients who propose studies that link sensitive information with personal identifiers should consider applying for a certificate of confidentiality (To order an application for a certificate of confidentiality, see the section Where to Obtain Additional Information.)

D. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office of Protection from Research Risks at the National Institutes of Health.

E. Women and Minority Inclusion Policy

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaska Native, Asian, Native Hawaiian or other Pacific Islander, Black/African American and Hispanic or Latino. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exists that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and

assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

F. Publication and Dissemination

CDC and NIJ both support research and the dissemination of the results. It is, therefore, expected that at the completion of the project the grant recipient will submit a brief (2,500 to 4,000 words) summary highlighting the findings and their implications for research and policy. Specifically, grantees addressing sexual violence or intimate partner violence research will acknowledge the joint support by CDC and NIJ. CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

G. Data Archive

Grant recipients addressing sexual violence or intimate partner violence and who collect data are required to archive their data (minus all personal identifiers). CDC and NIJ support the need to archive research data in a public repository for several reasons. First, making these data more widely available to the research community will help to accelerate the development of knowledge for preventing and controlling intimate partner violence and sexual violence. Second, the availability of these data will help to validate and extend existing research by facilitating the conduct of studies to replicate existing findings and compare similar data across multiple data sets. Finally, CDC and NIJ believe that public confidence in federally-supported research will be enhanced by ensuring the public availability of research data.

NIJ established its Data Resources Program in 1984 to ensure the public availability of research data. Grantees with proposals addressing intimate partner violence or sexual violence and who collect data are required to submit a machine-readable copy of the data and appropriate documentation to NIJ no later than 12 months after the close of the project period. Submission of the grantee's data for archiving does not preclude further publications after the archival requirement has been satisfied. NIJ ensures that data and materials are complete and that users' guides and data are available for distribution. A variety of formats are acceptable;

however, the data and materials must conform with requirements detailed in "Depositing Data With the Data Resources Program of the National Institute of Justice: A Handbook." A copy of this handbook is sent to each principal investigator at the time of the award. The data archive is maintained by the Inter-university Consortium for Political and Social Research (ICPSR) at the University of Michigan. Applicants may consult the Guide to Social Science Data Preparation and Archiving, ICPSR, 1996 (this handbook can be found online at <http://www.icpsr.umich.edu/ICPSR/Archive/Deposit/dpm.html#preparing>).

H. Privacy Certificate

Grant recipients who have proposals addressing sexual violence or intimate partner violence and who collect data are also required to secure a privacy certificate prior to the award being made. Research that examines individual traits and experiences plays a vital part in expanding our knowledge. It is essential, however, that researchers protect subjects from needless risk of harm or embarrassment and proceed with their willing and informed cooperation. NIJ requires that investigators protect information identifiable to research participants. When information is safeguarded, it is protected by statute from being used in legal proceedings:

[S]uch information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings (42 U.S.C. 3789g).

Applicants should file their plans to protect sensitive information as part of their proposal. Applicants who do not intend to use data on individual subjects in their research should submit a statement to that effect. Applicants who are selected for funding will be contacted so that they can secure a privacy certificate prior to the initiation of the award.

Application Submission and Deadlines

A. 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 Specialist (whose address is reflected in section B, "Applications"). It should be postmarked no later than one month prior to the planned submission deadline, (e.g., March 27 for April 27

submission). The letter should identify the announcement number, name the principal investigator, and specify the priority area of violence-related injury research (i.e., suicidal behavior, firearm-related injury, sexual violence, and intimate partner violence) 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.

B. Applications

Applicants should use Form PHS-398 (OMB No. 0925-0001 Revised 5/95) and adhere to the ERRATA Instruction Sheet for Form PHS-398 contained in the Grant Application Kit. Please submit an original and five copies, on or before April 27, 1998 to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305.

C. Application Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications that do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

Application Packet

To receive additional written information call 1-888-GRANTS4 (1-888-472-6874). You will be asked to leave your name, organization, address, and phone number and will need Announcement Number 98029.

All application procedures and guidelines are contained within that package or can be found on the CDC Homepage. The address for the CDC homepage is [<http://www.cdc.gov>]. For your convenience, you may be able to retrieve a copy of the PHS Form 398 from [<http://www.nih.gov.grants/funding>].

Business Management Information

If you need further information after reviewing the contents of the document business management assistance may be obtained from Lisa T. Garbarino, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6796 or internet: lgt1@cdc.gov

Programmatic Technical Information

If you have programmatic questions assistance may be obtained from Ted Jones, Program Manager, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K-58, 4770 Buford Highway, NE., Atlanta, Georgia 30341-3724, telephone (770)488-4824 or internet: tmj1@cdc.gov

CDC will not send application kits by facsimile or express mail.

Please refer to Announcement Number 98029 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402-9325, telephone (202) 512-1800.

Information for obtaining the suggested readings, Violence and the Public's Health, Understanding and Preventing Violence, and Violence in America: A Public Health Approach, is included at the end of the announcement with the application kit.

Application instructions for certificates of confidentiality can be obtained by contacting Betsey Dunaway, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC), Mailstop E-11, 1600 Clifton Rd., NE., Atlanta, Georgia, 30333.

Telephone: 404/639-2942, Internet: BAS1@CDC.GOV

Dated: February 25, 1998.

Joseph R. Carter,

Acting Associate Director for Management And Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-5388 Filed 3-2-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****National Occupational Research Agenda (NORA) Musculoskeletal Team Focus Group Meeting**

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: National Occupational Research Agenda (NORA) Musculoskeletal Team Focus Group Meeting.

Time and Date: 9 a.m.-3 p.m., March 25, 1998.

Place: Clarion Hotel at O'Hare International, 6810B North Mannheim Road, Rosemont, Illinois 60018, telephone 847/297-8464.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The NORA Musculoskeletal Committee is hosting a series of meetings to gather information, from a large array of partners, regarding important needs and issues with respect to prevention of musculoskeletal disorders in industry. These meetings will use focus groups to elicit areas of concern as expressed by representatives of various industry sectors. The present meeting will address the following industry sectors: Heavy manufacturing, light manufacturing, transportation/warehousing, agriculture/food processing, office ergonomics, and health care.

The Committee will share with each specific sector a series of questions helpful in identifying potential research needs. Each sector will develop their own list of research needs. After the three regional meetings are completed, the NORA Musculoskeletal Team will combine the research needs into a consolidated list. The researchers will be asked to identify research activities which can address research needs identified by the regional meetings. A separate meeting of musculoskeletal researchers is proposed for summer 1998.

The goal of these meetings is to develop a research agenda that reflects the needs and information gaps identified by individuals who confront musculoskeletal disorders frequently, including managers, workers, industry, unions, and clinicians. Output from the meeting will consist of a research agenda for each industry, as well as transcripts. Meetings will be audio taped to develop the transcript of the meeting, and to describe the process as well as the final outcome. Once the research agenda has been established, work will begin on the implementation process.

The ultimate goal of this process is to expand and deepen the partnership concept that is fundamental to the NORA process, and to develop a research agenda that is responsive to the needs of NIOSH partners in business, labor, academia, and government with respect to the control of musculoskeletal

disorders. The goal is reflected in the motto of the NORA Musculoskeletal Committee: "Promote Health and Reduce Lost Work Time."

Contact Person for Additional Information: Sean Gallagher, NIOSH, CDC, Pittsburgh Research Laboratory, PO Box 18070, Pittsburgh, Pennsylvania 15236-0070, telephone 412/892-6445, e-mail address: sfg9@cdc.gov.

Dated: February 25, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-5386 Filed 3-2-98; 8:45 am]

BILLING CODE 4160-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****Arthritis Advisory Committee; Notice of Meeting**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 24 and 25, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn Gaithersburg, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research, (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 24, 1998, the committee will discuss safety issues, gastrointestinal tolerability, renal, bone and reproductive toxicity related to nonsteroidal anti-inflammatory drugs, for example, COX-2 and other agents. On March 25, 1998, the committee will discuss the pain claim structure for chronic and acute pain and onset of pain relief including appropriate study

design for prescription and nonprescription oral analgesics.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 18, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. on March 24 and 25, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 18, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 25, 1998.

Michael A. Friedman,

Deputy Commissioner of Operations.

[FR Doc. 98-5343 Filed 3-2-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA-179 and HCFA-R-53]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Transmittal and Notice of Approval of State Plan Material and Supporting Regulations in 42 CFR 430.10-430.20 and 440.167; *Form No.:* HCFA-179 (OMB# 0938-0193); *Use:* The HCFA-179 is used by State agencies to transmit State plan material to HCFA for approval prior to amending their State plan. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* On occasion; *Affected Public:* State, local and tribal government; *Number of Respondents:* 57; *Total Annual Responses:* 1,254; *Total Annual Hours:* 1,254.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Imposition of Cost Sharing Charges Under Medicaid and Supporting Regulations contained in 42 CFR 447.53; *Form No.:* HCFA-R-53 (OMB# 0938-0429); *Use:* The information collection requirements contained in 42 CFR 447.53 require the States to include in their Medicaid State Plan their cost sharing provisions for the medically and categorically needy. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 2,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 24, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98-5427 Filed 3-2-98; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA-2000-N]

RIN 0938-AI78

Medicaid Program; State Allotments for Additional Federal Funding of Emergency Health Services Furnished to Undocumented Aliens: Federal Fiscal Years 1998 Through 2001

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces Federal fiscal year allotments that are available to certain States to furnish emergency health services under Medicaid to undocumented aliens. The 12 States having the highest number of undocumented aliens residing in the State will receive limited Federal funds for fiscal years 1998 through 2001 as additional compensation for providing emergency health services to the undocumented alien population. This notice also describes the methodology used to determine each State's allotment.

This notice implements section 4723 of the Balanced Budget Act of 1997, Public Law 105-33.

DATES: The allotments specified in this notice are available for approved expenditures for services furnished in each Federal fiscal year 1998 through 2001 (beginning October 1, 1997).

ADDRESSES: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 or by faxing to (202) 512-2250. The cost for each copy is \$8.00. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as Federal Deposit Libraries and at

many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512-1661; type swais, then login as guest (no password required).

FOR FURTHER INFORMATION CONTACT:
Miles McDermott, (410) 786-3722.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4723 of the Balanced Budget Act of 1997, Public Law 105-33, enacted August 5, 1997, provides for making available to certain States, through State allotments, additional Federal funding for emergency health services furnished to undocumented aliens. For those States eligible for the allotments, payments may be made for emergency medical services furnished to undocumented aliens who, except for their alien status, would otherwise qualify for Medicaid and for amounts paid for services furnished to aliens who do not meet the Medicaid eligibility requirements.

The scope of emergency services under State Medicaid programs has been previously defined by the Social Security Act (the Act). Section 1903(v)(2) of the Act provides that payment may be made only if the services are necessary for the treatment of an emergency medical condition of the alien, and the care and services do not involve procedures related to an organ transplant. Section 1903(v)(3) of the Act defines the term "emergency medical services" as a medical condition (including emergency labor and delivery) accompanied with severe symptoms (including severe pain) that require immediate attention and that if not given could result in seriously jeopardizing the patient's health; seriously impairing bodily functions; or seriously damaging bodily organs or parts. Implementing regulations for these statutory provisions are set forth at 42 CFR Part 440.

Section 4723 of Public Law 105-33 provides for the distribution of additional Federal funding of \$25 million, for each Federal fiscal year 1998 through 2001, among the 12 States (which may include the District of Columbia) that are determined to have the greatest number of undocumented aliens. Section 4723 specifies that the number of undocumented aliens in a State will be determined based on estimates prepared by the Statistics Division of the Immigration and Naturalization Service (INS) as of October 1992 (or a later date if that date is at least one year before the beginning of the fiscal year involved). Section 4723 provides that the fiscal year allotments for each of these 12 States will also be determined based on the number of undocumented aliens in each specific State. In addition, any portion of an allotment to a State that is not paid out in a particular fiscal year will be available for payment during the next fiscal year.

II. Provisions of This Notice

We are issuing this notice to announce the allotments for Federal fiscal years 1998 through 2001 that are available to the 12 States that we have determined to have the highest number of undocumented aliens for the furnishing of emergency health services to undocumented aliens. These 12 States will receive Federal funds up to each State's allotment in the amount that the State (or political subdivision of the State) demonstrates it paid for approved emergency services furnished to undocumented aliens. Therefore, for those States eligible for the allotments, they can recover the State share of the cost of treatment of emergency health services furnished to undocumented aliens who, except for their alien status, would otherwise qualify for Medicaid and also amounts paid for services to undocumented aliens who do not meet the Medicaid eligibility requirements. Once a State exhausts its allotment for a given fiscal year, the State will continue to receive its usual reimbursement rate and Federal funding will be based on the Federal medical assistance percentage (FMAP) calculations in which the rate of reimbursement will be between 50 and 83 percent. Any remaining portion of the allotment that is not paid to a State during the fiscal year will be available to the State the following fiscal year.

Section 4723 of Public Law 105-33 sets forth the methodology for determining the allotment that each of the 12 States will receive. The amount of a State's allotment for a given fiscal

year is based upon the State's percentage of undocumented aliens compared to that of the other 11 eligible States. The undocumented alien population in a State is based on estimates calculated by the Statistics Division of the INS. The statute also indicates that more recent estimates could be used, if available, as long as these estimates are dated at least one year preceding the beginning of the fiscal year involved.

Additional resources, along with new data from the United States Census Bureau, have allowed the INS to review and modify its original methodology for estimating the undocumented alien population and to update these estimates to reflect this population as of October 1996. The INS estimates refer to the population of immigrants that has established residence in the United States by remaining in the country for more than 12 months in an illegal status. According to the updated estimates of the INS, the total number of undocumented alien residents in the United States as of October 1996 was 5.0 million. This number represents approximately 1.9 percent of the total U.S. population. We have identified the following 12 States as having the greatest number of undocumented alien residents: California, Texas, New York, Florida, Illinois, New Jersey, Arizona, Massachusetts, Virginia, Washington, Colorado, and Maryland.

The INS estimates of the undocumented alien population are updated approximately every 3 years. Thus, any new data may not be available until as early as October 1, 1999. Any updated data would have an impact on allotments in Federal fiscal year 2001, since the INS data must be compiled at least one year before the beginning of the fiscal year involved. Therefore, we have set forth in this notice, State allotments for Federal fiscal years 1998 through 2001. However, if the Statistics Branch of the INS generates updated estimates of the undocumented alien population by October 1, 1999, we will recalculate the State allotments for fiscal year 2001, and publish the new allotments in a **Federal Register** notice.

The table below lists the 12 States entitled to an allotment, the per State undocumented alien population, the percentage of undocumented alien population to the total population among the top 12 States, and each State's allotment for Federal fiscal years 1998 through 2001.

TABLE

[Allotments for State Emergency Health Services Furnished to Undocumented Aliens Under Section 4723 of the Balanced Budget Act of 1997: Federal Fiscal Years 1998 through 2001]

Ranking	State	Population ¹	Percent of Population	Allotment
1	California	2,000,000	45.34	\$11,335,298
2	Texas	700,000	15.87	3,967,354
3	New York	540,000	12.24	3,060,530
4	Florida	350,000	7.93	1,983,677
5	Illinois	290,000	6.57	1,643,618
6	New Jersey	135,000	3.06	765,133
7	Arizona	115,000	2.61	651,780
8	Massachusetts	85,000	1.93	481,750
9	Virginia	55,000	1.25	311,721
10	Washington	52,000	1.18	294,718
11	Colorado	45,000	1.02	255,044
12	Maryland	44,000	1.00	249,377
Total .....	.....	4,411,000	100.00	25,000,000

¹ Source: INS, Statistics Branch, Demographic Statistics Section Estimated Resident Undocumented Population by State October, 1996.

The following example illustrates the calculation of California's allotment:

Example: California, the leading State of alien residence, has an estimated population of 2.0 million undocumented aliens. This figure represents 45 percent of the total undocumented alien population of 4,411,000. Since California has 45 percent of all undocumented aliens among the 12 eligible States, it is entitled to funds equal to 45 percent of the total funds available for that fiscal year (that is, 45 percent of \$25,000,000). Thus California's total allotment is \$11,335,298 for Federal fiscal year 1998.

III. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered to be small entities.

This notice implements the recently enacted provision of the Balanced Budget Act of 1997 that provides additional funding to certain States furnishing emergency health services to undocumented aliens for fiscal years 1998 through 2001. During each of the four fiscal years, \$25 million is available to distribute among the 12 States having the highest number of undocumented aliens residing in their State. As specified in the law, we have used estimates of the undocumented alien

population per State, prepared by the Statistics Division of the INS to determine the 12 highest States and to calculate the allotment each of the 12 States will receive. Any portion of the allotment that is not distributed to a State during the fiscal year will be available for that State the following fiscal year. These States will continue at the usual rate of reimbursement once allotments have been exhausted.

This notice is expected to have a positive impact on States by providing additional payment to those 12 States determined to have the greatest number of undocumented aliens residing in the State. This funding will allow States to extend the emergency health services to a greater number of those undocumented aliens meeting the required criteria and providing some advantage over those States that are not entitled to these allotments.

Also, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined and certify that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1902(a)(62) and 1903(v) of the Social Security Act (42 U.S.C. 1396a(62) and 1396b(v)) and Section 4723 of Public Law 105-33.

Dated: January 26, 1998.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.

Dated: February 3, 1998.

Donna E. Shalala,
Secretary.

[FR Doc. 98-5385 Filed 3-2-98; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute

with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW, Washington, DC. 20005, (202) 219-9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on October 8, 1997, through December 23, 1997.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to

submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Jacqueline R. Labrie, Sarasota, Florida, Court of Federal Claims Number 97-0681V
2. Daniel Kevin O'Connell, San Diego, California, Court of Federal Claims Number 97-0682V
3. Kimberly M. Lagrand on behalf of Hayley Nicole Lagrand, Deceased, Charleston, South Carolina, Court of Federal Claims Number 97-0692V
4. Elizabeth and Robert Wojciechowski on behalf of Jonah Wojciechowski, Deceased, Glendale, Arizona, Court of Federal Claims Number 97-0696V
5. Constance Miranda on behalf of Anthony Mirando, Flushing, New York, Court of Federal Claims Number 97-0697V

6. Robin and Bobby Gerjes on behalf of Brandon Gerjes, Deceased, Edna, Texas, Court of Federal Claims Number 97-0698V
7. Chinyere Pat and Charles Ononibaku on behalf of Emmanuel Ononibaku, Amherst, Massachusetts, Court of Federal Claims Number 97-0715V
8. Mona and David A. Robinson on behalf of Mary A. Robinson, Frankfort, Kentucky, Court of Federal Claims Number 97-0729V
9. Krystal K. Dickey on behalf of Gina M. Dickey, Morrison, Illinois, Court of Federal Claims Number 97-0730V
10. Wendy and Andy Ellis on behalf of Andie Jo Ellis, Deceased, Salt Lake City, Utah, Court of Federal Claims Number 97-0738V
11. Anita Blocker Hammond on behalf of Ajee Hammond, Philadelphia, Pennsylvania, Court of Federal Claims Number 97-0745V
12. Marcy Nirschel on behalf of Michael Nirschel, Stamford, Connecticut, Court of Federal Claims Number 97-0748V
13. Nancy and Christopher Smith on behalf of Hillary Smith, Vero Beach, Florida, Court of Federal Claims Number 97-0752V
14. Jeannie and Robert Griffin on behalf of Elizabeth Griffin, Mill Creek, Washington, Court of Federal Claims Number 97-0753V
15. Deborah Burke on behalf of Emilee Burke, Norfolk, Virginia, Court of Federal Claims Number 97-0763V
16. Holly A. Butler on behalf of Eian Thomas Butler, Dayton, Ohio, Court of Federal Claims Number 97-0764V
17. Kimberly Justice on behalf of Joshua Allen Justice, Harriman, Tennessee, Court of Federal Claims Number 97-0765V
18. Shona Monique Baker on behalf of Sean Ray Baker, Deceased, Philadelphia, Pennsylvania, Court of Federal Claims Number 97-0796V
19. Karen Dobak on behalf of Corey Dobak, Cambridge, Massachusetts, Court of Federal Claims Number 97-0797V
20. Delores and Paul Saunders on behalf of Scott Saunders, Richmond, Virginia, Court of Federal Claims Number 97-0808V
21. Michelle Reed, Dayton, Ohio, Court of Federal Claims Number 97-0809V
22. Lacey and Mark Charlesworth on behalf of Jonathan Charlesworth, Provo, Utah, Court of Federal Claims Number 97-0814V
23. Robert Kolvoord and Holly Haney on behalf of Zachary Kolvoord, Harrisonburg, Virginia, Court of Federal Claims Number 97-0818V
24. Margaret and John Wallace on behalf of Amiee Rose Wallace, Allentown, Pennsylvania, Court of Federal Claims Number 97-0836V
25. Tera Jo Webb, Mesa, Arizona, Court of Federal Claims Number 97-0852V
26. Tammy Zimmer on behalf of Kyle Zimmer, Warren, Michigan, Court of Federal Claims Number 97-0861V.

Dated: February 25, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98-5458 Filed 3-2-98; 8:45 am]

BILLING CODE 4160-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of General Medical Sciences; Proposed Collection; Comment Request; Application for the Pharmacology Research Associate Program**

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of General Medical Sciences (NIGMS), the National

Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Application for the Pharmacology Research Associate Program. *Type of Information Collection Request:* Revision of a currently approved collection. *Need and Use of Information Collection:* The Pharmacology Research Associate (PRAT) Program will use the applicant and referee information to award opportunities for training and

experience in laboratory or clinical investigation to individuals with a Ph.D. degree in pharmacology or a related science, M.D., or other professional degree through appointments as PRAT Fellows at the National Institutes of Health or the Food and Drug Administration. The goal of the program is to develop leaders in pharmacological research for key positions in academic, industrial, and Federal research laboratories. *Frequency of Response:* Once a year. *Affected Public:* Individuals or households; businesses or other for-profit.

The annual reporting burden is as follows:

Type and number of respondents	Estimated number of responses per respondent	Estimated total responses	Average burden hours per responses	Estimated total annual burden hours requested
Applicants—50	1	50	2.00	100
Referees—150	1	150	0.167	25

Total Number of Respondents: 200.
Total Number of Responses: 200.
Total Hours: 125.

The annualized cost to respondents is estimated at:

Applicants: \$5,500.00.
Referees: \$1,250.00.

There are no Capital Costs to report.
There are no Operating or Maintenance Cost to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Sally Lee, NIGMS, NIH, Natcher Building, Room 3AS-13, 45 Center Drive, MSC 6200,

Bethesda, MD 20892-6200, or call non-toll-free number (301) 594-2749 or E-mail your request, including your address to: LeeS@nigms.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before May 4, 1998.

Dated: February 23, 1998.

Martha Pine,

Executive Officer, National Institute of General Medical Sciences.

[FR Doc. 98-5333 Filed 3-2-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Office of Loan Repayment and Scholarship; Proposed Collection; Comment Request; National Institutes of Health Loan Repayment Programs**

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Loan Repayment and Scholarship, the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: National Institutes of Health Loan Repayment Programs. *Type of Information Collection Request:* Revision of currently approved collection (OMB No. 0925-0361, expiration date 6/30/98). *Form Numbers:* NIH 2674-1, NIH 2674-2, and NIH 2674-3. *Need and Use of Information Collection:* The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., Ph.D., D.D.S., D.M.D., and D.V.M. degree holders, or the equivalent, who perform biomedical or biobehavioral research in NIH intramural laboratories for a minimum of 2 years in research areas supporting the mission and priorities of the NIH. The AIDS Research Loan Repayment Program (AIDS-LRP) is authorized by Section 487A of the Public Health Service Act (42 U.S.C. 288-1); the General Research Loan Repayment Program (General-LRP) is authorized by section 487C of the Public Health Service Act (42 U.S.C. 288-3); and the Clinical Research Loan Repayment Program (CR-LRP) is authorized by section 487E (42 U.S.C. 288-5). The loan repayment programs can repay a maximum of \$20,000 per year toward a participant's extant eligible educational loans, directly to lenders, in addition to NIH salary and benefits. Participants must have qualifying educational debt in excess of 20 percent of their annual NIH base salaries on the expected data of program eligibility. The information proposed for collection will be used by the Office of Loan Repayment and Scholarship to

determine an applicant's eligibility for participation in the program. *Frequency of Response:* Initial application and annual renewal application. *Affected*

Public: Applicants, financial institutions, recommenders. *Type of Respondents:* Physicians and other scientific or medical personnel.

The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Applicant	110	1.0	9.80	1,078
Recommenders	330	1.0	0.50	165
Financial Institutions	550	1.0	0.33	181
Totals	990	.....	.....	1,424

The annualized cost to respondents is estimated at \$33,575.46. There are no capital costs, operating costs, or maintenance costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Marc S. Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 7550 Wisconsin Avenue, Room 604, Bethesda, Maryland 20892-9121. Dr. Horowitz can be contacted via e-mail at mhl8k@nih.gov or by calling (301) 402-5666 (not a toll-free number).

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before May 4, 1998.

Dated: February 19, 1998.

Ruth L. Kirschstein,

Deputy Director, National Institutes of Health.

[FR Doc. 98-5334 Filed 3-2-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4263-N-88]

Notice of Proposed Information Collection: Comment Request

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: May 4, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9152, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Contact person, Ulyses Brinkley, telephone number 202-708-4162 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Annual Adjustment Factor (AAF) Rent Increase Requirements.

OMB Control Number, if applicable: 2502-0507.

Description of the need for the information and proposed use:

Agency form numbers, if applicable:

Review of the Annual Adjustment Factor under the overall limitation clause of the Section 8 Housing Assistance Payment (HAP) Contract applies to Parts 880 and 881 Section 8 properties where the Section 8 rent levels for a unit type exceed the published Fair Market Rents (FMRs). In cases where existing rent levels exceed the published FMR, project owners must submit a rent comparability study and unit occupancy data before any rent increase can be considered. For Section 8 properties under Parts 880 and 881 where rent levels for a particular unit type do not exceed the FMRs and for other Section 8 contract types, review under this method would not occur and the method of rent adjustment is by application of the published AAF.

Members of affected public: Business or other for-profits.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hour of response: An estimation of the total numbers of hours needs to prepare the information collection is 5,527, the

number of respondents is 10,000, frequency of response is annual, and the hours of response 1.81.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 25, 1998.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98-5420 Filed 3-2-98; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-1430-00; N-37113]

Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in T. 19 S., R. 60 E., section 31, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a city park.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
section 31 W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.
Containing 20.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

3. An easement along the north (50) fifty feet, the west thirty (30) feet, the

south thirty (30) feet, and the east thirty (30) feet of the west half (W $\frac{1}{2}$) of the northeast quarter (NE $\frac{1}{4}$) of the northwest quarter (NW $\frac{1}{4}$) of section 31, Township 19 South, Range 60 East, M.D.M., Clark County, Nevada, together with a spandrel area in the northwest corner thereof, concave southeasterly, having a radius of twenty-five (25) feet and being tangent to the south line of said north fifty (50) feet and tangent to the east line of said west thirty (30) feet, and together with a spandrel area in the southwest corner thereof, concave northeasterly, having a radius of fifteen (15) feet and being tangent to the east line of said west (30) feet and tangent to the north line of said south thirty (30) feet; together with a spandrel area in the southeast corner thereof, concave northwesterly, having a radius of fifteen (15) feet and being tangent to the north line of the south thirty (30) feet and tangent to the west line of the east fifty (30) feet, and together with a spandrel area in the northeast corner thereof, concave southwesterly, having a radius of twenty-five (25) feet and being tangent to the west line of the east thirty (30) feet and tangent to the south line of the north fifty (50) feet.

4. Those rights for right-of-way purposes which have been granted to the City of Las Vegas by Permit No. N-51823 as amended, and to Clark County and N-58560 to Clark County under the Act of October 21, 1976, (PL 94-579).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a city park for the City of Las Vegas. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the

land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site for the City of Las Vegas.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 15, 1998.

Cheryl A. Ruffridge,

Assistant District Manager, Non-Renewable Resources, Las Vegas, NV.

[FR Doc. 98-5515 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Arizona in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the American Museum of Natural History which meet the definition of "objects of cultural patrimony" under Section 2 of the Act.

The items are four San Carlos Apache *Gaan* painted wood and cloth headdresses and two associated sets of wooden wands.

In 1914, Pliny E. Goddard collected these cultural items on the San Carlos Apache Reservation on behalf of the American Museum of Natural History. The Museum accessioned them into its collection the same year (AMNH accession 1914-53).

The cultural affiliation of these items is San Carlos Apache as indicated through Museum records and consultation with representatives of the San Carlos Apache Tribe of the San Carlos Reservation. Consultation

evidence presented by representatives of the San Carlos Apache Tribe of the San Carlos Reservation indicates these items have ongoing historical, traditional, and cultural importance central to the tribe itself, and no individual had the right to alienate them. The Museum's review of this information indicates it is accurate.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(4), these eight cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the San Carlos Apache Tribe of the San Carlos Reservation.

This notice has been sent to officials of the San Carlos Apache Tribe of the San Carlos Reservation, the White Mountain Apache Tribe of the Fort Apache Reservation, the Tonto Apache Tribe of Arizona, the Yavapai-Apache Nation of the Camp Verde Reservation, and the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Martha Graham, Registrar of Cultural Resources, American Museum of Natural History, Department of Anthropology, Central Park West at 79th Street, New York, NY 10024-5192; telephone (212) 769-5846 before April 2, 1998. Repatriation of these objects to the San Carlos Apache Tribe of the San Carlos Reservation may begin after that date if no additional claimants come forward.

Dated: February 26, 1998.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 98-5406 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Heard Museum which meets the definition of "sacred object" under Section 2 of the Act.

The cultural items are two rattles consisting of painted hide and wooden handles.

In 1930, these rattles were collected by an unknown person from an unknown location and were donated in 1988 to the Heard Museum by an anonymous donor.

Consultation evidence presented by representatives of the Navajo Nation indicates these rattles are used in a number of Navajo ceremonies including the Night Way, Evil Way, Water Way, Lightning Way, and Life Way. Representatives of the Navajo Nation have further stated that these rattles are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by present-day adherents.

Based on the above-mentioned information, officials of the Heard Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), these two cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Heard Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Navajo Nation.

This notice has been sent to officials of the Navajo Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Martin Sullivan, Director, Heard Museum, 22 E. Monte Vista Rd, Phoenix, AZ 85004-1480; telephone (602) 252-8840 before April 2, 1998. Repatriation of these objects to the Navajo Nation may begin after that date if no additional claimants come forward.

Dated: February 25, 1998.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 98-5407 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Fort Drane, Florida in the Possession of the Peabody Museum of Archaeology & 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), 43 CFR 10.9, of the completion of an inventory of human remains from Fort Drane, Florida 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 & Ethnology professional staff in consultation with representatives of the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, Seminole Tribe of Florida, and the Independent Traditional Seminole Nation of Florida, a non-Federally recognized Indian group.

In 1878, human remains representing one individual were donated to the Peabody Museum of Archaeology and Ethnology by Clarence B. Moore. No known individual was identified. No associated funerary objects are present.

Based on cranial morphology, this individual has been determined to be Native American. Museum documentation indicates this individual was killed in 1836 at Fort Drane, FL by U.S. troops under the command of Lt. Col. F.K. Pearce, U.S. Army. Historical documents and Seminole oral tradition indicate that Fort Drane was part of Seminole traditional territory during the 1830s.

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 one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, and Seminole Tribe of Florida.

This notice has been sent to officials of the Miccosukee Tribe of Indians of

Florida, Seminole Nation of Oklahoma, and Seminole Tribe of Florida. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138; telephone: (617) 495-2254, before April 2, 1998. Repatriation of the human remains and associated funerary objects to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: February 25, 1998.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 98-5408 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-70-F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-360]

International Harmonization of Customs Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for public comment on draft proposal concerning certain goods of Chapters 82, 84, 85, and 90.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202-205-2595), Chapter 82—Lawrence A. DiRicco (202-205-2606), Chapters 84-85, 90—Craig Houser (202-205-2597). Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819).

Background

Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission instituted Investigation No. 332-360, International Harmonization of Customs Rules of Origin, under section 332(g) of the Tariff Act of 1930 (60 FR 19605, April 19, 1995).

The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO), under the General

Agreement on Tariffs and Trade (GATT) 1994 and adopted along with the Agreement Establishing the World Trade Organization (WTO).

The ARO is designed to harmonize and clarify nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; achieve discipline in the rules' administration; and provide a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known as the World Customs Organization or WCO), which must report on specified matters relating to such rules for further action by parties to the ARO.

Eventually, the WTO Ministerial Conference is to "establish the results of the harmonization work program in an annex as an integral part" of the ARO.

The ARO called for the establishment of a Committee on Rules of Origin of the WTO and a Technical Committee on Rules of Origin (TCRO) of the CCC. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is the harmonization of origin rules for the purpose of providing more certainty in the conduct of world trade. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop supplementary or exclusive origin criteria based on value, manufacturing or processing operations or on other standards.

In March, 1997 (62 F.R. 11464, March 12, 1997), the Commission solicited comments on its draft proposed rules of origin for Chapter 82 and Chapter 84. In July 1997 (62 F.R. 35834, July 2, 1997), the Commission solicited comments on its draft proposed rules of origin for Chapter 85 and Chapter 90.

During its review of the comments submitted in response to those notices, the Commission has identified certain cases where application of the proposed

general rules, i.e., those based on a change-of-classification of the goods, does not appear to satisfactorily attribute origin to the country in which the goods were substantially transformed. It was recognized at the outset of this investigation that situations would arise in which application of change-of-classification rules would cause anomalous or ambiguous origin determinations, and that supplementary or residual rules would need to be developed to account for those cases.

The Commission is therefore making available for public comment, the following draft proposed supplemental rules affecting certain goods of Chapter 82, e.g., tools of heading 82.04; Chapters 84, 85 and 90, e.g., goods of headings or subheadings which specifically provide for parts or parts and accessories and goods which undergo a change of classification which results merely from the form in which they are presented to Customs.

Draft Rules

Draft Supplemental Rule for Chapter 82

1. When the product specific rules provided in the matrix are not determinant of origin, the following shall apply:

A. Goods produced from blanks.—Where a goods is produced from a blank:

(1) Provided all the following criteria are met, the country of origin of the good shall be the country in which the blank was processed into a finished good:

(a) In its imported prefinished condition, the blank was not capable of functioning for its ultimate use and was not advanced beyond cleaning or working to remove flash, sprues, burrs or similar excess material, and

(b) In the country in which the goods is finished:

(i) The blank was configured to final shape by the removal of material (other than by honing or polishing), or by bending, hammering, pressing, stamping or similar forming process; and

(ii) The blank underwent one or more of the following processes:

1. Hardening to a minimum hardness of 38 degrees Rockwell C or equivalent standard of hardness; or

2. Assembly with five or more parts (other than parts of general use as defined in Note 2 to Section XV).

(2) If the criteria of subparagraph 1(A)(1) above are not satisfied, the country of origin of the good shall be the country of origin of the blank.

B. Other Goods of This Chapter.—When paragraph 1(A) is not applicable,

the country of origin shall be determined as follows:

(1) *Goods obtained by assembly of components.*—Goods obtained by assembly of components which are classified as parts of goods of this chapter (but not as unfinished goods), shall originate in the country in which the parts were assembled into the finished good, provided that the assembly used five or more parts (other than parts of general use as defined in Note 2 to Section XVI).

(2) *Other.*—If the requirements of subparagraph 1(B)(1) are not met, the country of origin of the goods shall be the country in which the working edge, working surface or working part underwent a change of classification to a heading of this chapter from any other chapter (e.g., from a bar or rod of Chapter 72 to a chisel of Heading 82.05).

Purpose of Draft Supplemental Rule for Chapter 82

The rule provides a determination of origin in situations in which the change of classification rules fail to confer origin because the processing of the one or more of the input goods did not result in a change classification even though there was a substantial transformation. This occurs when the input is an incomplete or unfinished article classifiable in the same heading or subheading as a blank. It can also occur when goods are assembled from parts classified in the same heading or subheading. Rule 1(A) applies in the former instance and Rule 1(B) applies in the latter.

Draft Supplemental Rules for Chapters 84 and 85

1. *Limitations on change of classification rules.*—Notwithstanding the product specific rules in the matrix, where a change of classification (i.e., change of heading, subheading, split heading or split subheading) results from one of the following circumstances, origin shall be determined as indicated:

A. *Disassembly.*—Where a change in classification results from disassembly of a previously assembled good, the origin of the good shall be the origin prior to disassembly.

B. *Packaging.*—Where a change in classification results from packaging or repackaging, the origin of the good shall be the origin prior to such packaging or repackaging.

C. *Collection of parts into kits.*—Where a change in classification results from the application of General Rule of Interpretation 2(a) with respect to collections of parts that are presented as unassembled articles of another heading

or subheading, the individual parts shall retain their origin prior to such collection.

D. *Multi-function machines and composite machines.*—Where a change in classification results from application of note 3 to Section XVI, the origin of the good shall be the origin of the machine or component which determines the classification of the good under note 3 to section XVI.

E. *Functional units.*—Where a change in classification results from the application of note 4 to Section XVI to separately packaged goods presented together in a single shipment, the separately packaged goods shall retain their origin prior to such presentation.

2. *Residual rules.*—When neither the product specific rules provided in the matrix nor legal note 1 above are determinant of origin, the following shall apply:

A. *Goods produced from incomplete or unfinished articles classifiable in the same heading or subheading by application of GRI 2(a).*—Where a good is produced from an incomplete or unfinished (other than unassembled or disassembled) article which had the essential character of the complete or finished good and was classifiable, by application of GRI 2(a), in the same heading or subheading as the complete or finished goods, origin of the presented good shall be determined as follows:

(1) *Goods produced from blanks.*—Where a good is produced from a blank:

(a) Provided all the following criteria are met, the country of origin of the good shall be the country in which the blank was processed into a finished good:

(i) In its imported prefinished condition, the blank was not capable of functioning for its ultimate use and was not advanced beyond cleaning or working to remove flash, sprues, burrs or similar excess material, and

(ii) In the country in which the good is finished:

1. The blank was configured to final shape by the removal of material (other than by honing or polishing), or by bending, hammering, pressing, stamping or similar forming process; and

2. The blank underwent one or more of the following processes:

A. Hardening to a minimum hardness of 38 degrees Rockwell C or equivalent standard of hardness; or

B. Assembly with five or more parts (other than parts of general use as defined in Note 1(g) to Section XVI).

(b) If the criteria of subparagraph (a) above are not satisfied, the country of origin of the good shall be the country of origin of the blank.

(2) *Goods produced from incomplete or unfinished articles, other than blanks.*—Where the good is produced from an incomplete or unfinished article, other than a blank, the origin of presented goods shall be the country of origin of the incomplete or unfinished article from which it was produced.

B. *Other rules for assembled goods.*—Where neither the product specific rules in the matrix nor the preceding legal notes are determinant of origin, the following shall apply:

(1) *Origin in the country of assembly.*—Provided the following criteria are met, the goods shall originate in the country of assembly:

(a) The assembly resulted in a device or apparatus capable of performing one or more new mechanical or electrical function(s), and either:

(i) The assembly involved 5 or more parts (other than parts of general use, as defined in Note 1(g) to Section XVI), or

(ii) The assembly involved less than 5 parts (other than parts of general use, as defined in Note 1(g) to Section XVI), and one or more of the parts (other than parts of general use, as defined in Note 1(g) to Section XVI), satisfies the product specific rules provided in the matrix as having origin in the country of assembly.

(b) For purposes of the subparagraph (a) above, the following shall not be considered assembly operations:

(i) The attachment of machinery to a base,

(ii) The installation of machinery or apparatus into cabinets or similar encasements,

(iii) The attachment of dials, knobs, hand cranks, and other consumer-operated controls,

(iv) The attachment of a power cord, or

(v) Installation of batteries, accumulators or other articles not designed to become a permanent part of the good.

(2) *Other.*—If the requirements of subparagraph (1) above are not met, the following shall apply:

(a) If the principal rule applicable to the goods in the product specific matrix includes an exception to a change of classification from a particular heading or subheading and a non-originating part classifiable in such heading or subheading was used in the assembly of the good, the country of origin of the good shall be the country of origin of such excepted part.

(b) In all other cases, the country of origin shall be the country in which the majority of the parts originated. If there is no majority, the country of origin shall be the country of origin of the part which appears last in the Nomenclature.

Purpose of Draft Supplemental Rules for Chapters 84 and 85

Rule 1 supercedes the change of classification rules for those situations in which a change of classification occurs, either by virtue of the presentation of the goods or by application of one of the legal notes to the Harmonized System, but the change of classification does not necessarily reflect a substantial transformation of the goods. For each of the situations specified, the change of classification rules are superseded by the rule provided therein. On the other hand, Rule 2 provides a determination of origin in situations in which the change of classification rules fail to confer origin because the processing of the one or more of the input goods did not result in a change classification even though there was a substantial transformation. This occurs when the input is an incomplete or unfinished article classifiable in the same heading or subheading as the complete or finished article, by application of General Rule of Interpretation 2(a). In particular, this applies to the processing of blanks into finished goods. It can also occur when "major" parts of goods, i.e. subassemblies, are assembled from "minor" parts classified in the same parts heading or subheading. Rule 2(A) applies in the former instance and Rule 2(A) applies in the latter.

Draft Supplemental Rules for Chapter 90

1. *Limitations on change of classification rules.*—Notwithstanding the product specific rules in the matrix, where a change of classification (i.e., change of heading, subheading, split heading or split subheading) results from one of the following circumstances, origin shall be determined as indicated:

A. *Disassembly.*—Where a change in classification results from disassembly of a previously assembled good, the origin of the good shall be the origin prior to disassembly.

B. *Packaging.*—Where a change in classification results from packaging or repackaging, the origin of the good shall be the origin prior to such packaging or repackaging.

C. *Collection of parts into kits.*—Where a change in classification results from the application of General Rule of Interpretation 2(a) with respect to collections of parts that are presented as unassembled articles of another heading or subheading, the individual parts shall retain their origin prior to such collection.

D. *Functional units.*—Where a change in classification results from the

application of note 4 to Section XVI to separately packaged goods presented together in a single shipment, the separately packaged goods shall retain their origin prior to such presentation.

2. *Residual rules.*—When neither the product specific rules provided in the matrix nor legal note 1 above are determinant of origin, the following shall apply:

A. *Goods produced from incomplete or unfinished articles classifiable in the same heading or subheading by application of GRI 2(a).*—Where a good is produced from an incomplete or unfinished (other than unassembled or disassembled) article which had the essential character of the complete or finished good and was classifiable, by application of GRI 2(a), in the same heading or subheading as the complete or finished goods, origin of the presented good shall be determined as follows:

(1) *Goods produced from blanks.*—Where a good is produced from a blank:

(a) Provided all the following criteria are met, the country of origin of the good shall be the country in which the blank was processed into a finished good:

(i) In its imported prefinished condition, the blank was not capable of functioning for its ultimate use and was not advanced beyond cleaning or working to remove flash, sprues, burrs or similar excess material, and

(ii) In the country in which the good is finished:

1. The blank was configured to final shape by the removal of material (other than by honing or polishing), or by bending, hammering, pressing, stamping or similar forming process; and

2. The blank underwent one or more of the following processes:

A. Hardening to a minimum hardness of 38 degrees Rockwell C or equivalent standard of hardness; or

B. Assembly with five or more parts (other than parts of general use as defined in Note 1(g) to Section XVI).

(b) If the criteria of subparagraph (a) above are not satisfied, the country of origin of the good shall be the country of origin of the blank.

(2) *Goods produced from incomplete or unfinished articles, other than blanks.*—Where a good is produced from an incomplete or unfinished article, other than a blank, the origin of presented goods shall be the country of origin of the incomplete or unfinished article from which it was produced.

B. *Other rules for assembled goods.*—Where neither the product specific rules in the matrix nor the preceding legal notes are determinant of origin, the following shall apply:

(1) *Origin in the country of assembly.*—Provided the following criteria are met, the good shall originate in the country of assembly:

(a) The assembly resulted in a device or apparatus capable of performing one or more new mechanical or electrical function(s), and either:

(i) The assembly involved 5 or more parts (other than parts of general use, as defined in Note 1(g) to Section XVI), or

(ii) The assembly involved less than 5 parts (other than parts of general use, as defined in Note 1(g) to Section XVI), and one or more of the parts (other than parts of general use, as defined in Note 1(g) to Section XVI), satisfies the product specific rules provided in the matrix as having origin in the country of assembly.

(b) For purposes of the subparagraph (a) above, the following shall not be considered assembly operations:

(i) The attachment of machinery to a base,

(ii) The installation of machinery or apparatus into cabinets or similar encasements,

(iii) The attachment of dials, knobs, hand cranks, and other consumer-operated controls,

(iv) The attachment of a power cord, or

(v) Installation of batteries, accumulators or other articles not designed to become a permanent part of the good.

(2) *Other.*—If the requirements of subparagraph (1) above are not met, the following shall apply:

(a) If the principal rule applicable to the goods in the product specific matrix includes an exception to a change of classification from a particular heading or subheading and a non-originating part classifiable in such heading or subheading was used in the assembly of the good, the country of origin of the good shall be the country of origin of such excepted part.

(b) In all other cases, the country of origin shall be the country in which the majority of the parts originated. If there is no majority, the country of origin shall be the country of origin of the part which appears last in the Nomenclature.

Purpose of Draft Supplemental Rules for Chapter 90

Rule 1 supercedes the change of classification rules for those situations in which a change of classification occurs, either by virtue of the presentation of the goods or by application of one of the legal notes to the Harmonized System, but the change of classification does not necessarily reflect a substantial transformation of the goods. For each of the situations

specified, the change of classification rules are superceded by the rule provided therein. On the other hand, Rule 2 provides a determination of origin in situations in which the change of classification rules fail to confer origin because the processing of the one or more of the input goods did not result in a change classification even though there was a substantial transformation. This occurs when the input is an incomplete or unfinished article classifiable in the same heading or subheading as the complete or finished article, by application of General Rule of Interpretation 2(a). In particular, this applies to the processing of blanks into finished goods. It can also occur when "major" parts of goods, i.e. subassemblies, are assembled from "minor" parts classified in the same parts heading or subheading. Rule 2(A) applies in the former instance and Rule 2(B) applies in the latter.

These proposals have been reviewed by interested government agencies and are intended to serve as the basis for the U.S. proposal to the Technical Committee on Rules of Origin of the World Customs Organization or to the Technical Committee of the World Trade Organization. The proposals do not necessarily reflect or restate existing Customs treatment with respect to country of origin applications for all current non-preferential purposes. Based upon a decision of the Trade Policy Staff Committee, the proposals are intended for future harmonization for the nonpreferential purposes indicated in the ARO for application on a global basis. They seek to take into account not only U.S. Customs current positions on substantial transformation but additionally seek to consider the views of the business community and practices of our major trading partners as well. As such they represent an attempt at reaching a basis for agreement among the contracting parties. The proposals may undergo change as proposals from other government administrations and the private sector are received and considered. Under the circumstances, the proposals should not be cited as authority for the application of current domestic law.

Written Submissions

Interested persons are invited to submit written statements concerning this phase of the Commission's investigation. Written statements should be submitted as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission by the close of business on March 18, 1998, in order to be

considered. The Commission notes that it is particularly interested in receiving input from the private sector on the effects of the various proposed rules and definitions on U.S. exports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons.

All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

World Wide Web Access: This notice may be obtained from the ITC Internet web server: <http://www.usitc.gov>.

Issued: February 25, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-5394 Filed 2-28-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-388]

Simplification of the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: January 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202-205-2592). The O/TA&TA fax number is: 202/205-2616. Mr. Rosengarden may also be reached via Internet e-mail at rosengarden@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810. Media representatives should contact Margaret O'Laughlin, Public Affairs Officer (202-205-1819). This notice, and any subsequent notices published pursuant to section 332(g) of the Tariff Act of 1930, may be obtained from the ITC Internet web server: <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission instituted investigation No. 332-388 on November 5, 1997. In the notice of institution, the Commission stated that the investigation would be completed by July 13, 2000.

The Commission's new schedule for the investigation is as follows:

Initial public comment deadline May 29, 1998

Publish draft HTS proposals for comment April 1, 1999

Deadline for public comment June 30, 1999

Final Commission report February 28, 2000

Issued: February 25, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-5396 Filed 3-2-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-776-779 (Preliminary)]

Certain Preserved Mushrooms From Chile, China, India, and Indonesia

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Chile, China, India, and Indonesia of certain preserved mushrooms,² provided for in subheadings 0711.90.40, 2003.10.27, 2003.10.31, 2003.10.37, 2003.10.43,

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² For purposes of these investigations, certain prepared mushrooms are of the species *Agaricus bisporus* and *Agaricus bitorquis*, whether imported whole, sliced, diced, or as stems and pieces. "Preserved mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers, including but not limited to cans or glass jars, in a suitable medium that may include, but is not limited to, water, brine, or butter (or butter sauce). Included within the scope of the investigations are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. Excluded from the scope of the investigations are: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched" mushrooms; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

2003.10.47, and 2003.10.53 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in any of the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of an affirmative final determination in any of the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On January 6, 1998, a petition was filed with the Commission and the Department of Commerce by the Coalition for Fair Preserved Mushroom Trade,³ alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain preserved mushrooms from Chile, China, India, and Indonesia. Accordingly, effective January 6, 1998, the Commission instituted antidumping investigations Nos. 731-TA-776-779 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by

posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 16, 1998 (63 FR 2693). The conference was held in Washington, DC, on January 27, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 20, 1998. The views of the Commission are contained in USITC Publication 3086 (February 1998), entitled "Certain Preserved Mushrooms from Chile, China, India, and Indonesia: Investigations Nos. 731-TA-776-779 (Preliminary)."

Issued: February 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-5398 Filed 3-2-98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP (NIJ)-1159]

RIN 1121-ZA96

National Institute of Justice Solicitation for Selection of Arrestee Drug Abuse Monitoring (ADAM) Site Management Teams

AGENCY: Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice Solicitation "Selection of Arrestee Drug Abuse Monitoring (ADAM) Site Management Teams."

DATES: Due date for receipt of proposals is close of business April 17, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT:

For a copy of the solicitation, please call NCJRS 1-800-851-3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1-800-421-6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201-03, as amended, 42 U.S.C. 3721-23 (1994).

Background

The National Institute of Justice is seeking applications for management teams interested in directing Arrestee Drug Abuse Monitoring (ADAM) sites, formerly known as the Drug Use Forecasting (DUF) system. Management of each of the original 23 DUF sites is being recomputed, thus all current site-management teams desiring to remain under ADAM must submit applications.

The scope of work required in directing the 23 ADAM sites will include, but not be limited to, quarterly data collection waves consisting of administering a short interview, collecting urine samples from recent arrestees, and occasionally administering supplemental questionnaires. Data collection targets are 250 adult male cases and 100 adult female cases and may include up to 100 juvenile male cases and 50 juvenile female cases.

All applications must provide: Discussion of qualifications of key personnel; narrative explaining the proposed technical approach to the scope of work; budget estimate (form provided); discussion of potential outreach activities; and inventory of lock-up facilities where interviewing may need to take place.

This solicitation applies only to the 23 sites that were part of the original DUF system; it does not apply to the 12 sites added to ADAM in FY 1998 or to other prospective sites. Applicants selected under this solicitation will enter in to subcontracts with the ADAM data and management contractor and these subcontracts will be renewable annually subject to performance.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420 to obtain a copy of "Selection of Arrestee Drug Abuse Monitoring (ADAM) Site Management Teams" (refer to document no. SL000258). For World Wide Web access, connect either to either NIJ at <http://www.ojp.usdoj.gov/nij/funding.htm>, or the NCJRS Justice Information Center at <http://www.ncjrs.org/fedgrant.htm#nij>.

John Schwarz,

Acting Director, National Institute of Justice.

[FR Doc. 98-5381 Filed 3-2-98; 8:45 am]

BILLING CODE 4410-18-P

³ The Coalition's member firms are L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH.

DEPARTMENT OF LABOR**Office of the Secretary****Submission for OMB Review;
Comment Request**

February 26, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ([202] 219-5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219-4720 between 1 p.m. and 4 p.m. Eastern time, Monday-Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ([202] 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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.

Agency: Employment and Training Administration.

Title: Planning Guidance and Instructions for Submission of Annual State Plans for Welfare-to-Work Formula Grants.

OMB Number: 1205-0385 (Extension).

Frequency: On Occasion.

Affected Public: State, Local or Tribal governments.

Number of Respondents: 56.

Estimated Time Per Respondent: 10 hours.

Total Burden Hours: 560 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Balanced Budget Act of 1997, signed by the President on August 5, 1997, authorizes the Department of Labor to provide Welfare-to-Work (WtW) grants to States and local communities to provide transitional employment assistance to move Temporary Assistance for needy Families (TANF) recipients with significant employment barriers into unsubsidized jobs providing long-term employment opportunities. WtW funds will be provided through formula grants to States, grants to Indian Tribes and competitive grants to public and private entities. This planning guidance addresses the requirements necessary for States' plans to receive the formula grant funds in Fiscal Year 1998. Separate guidance will be used for both the grants to Indian tribes and the competitive grants.

Agency: Employment Standard Administration.

Title: Information Collection Requirements, 29 CFR part 5.

OMB Number: 1215-0140 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit; Federal Government, State, Local, or Tribal Government.

Number of Respondents: 2,500 for Conformance Report; 6 for Unfunded Fringe Benefit Plans.

Estimated Time Per Respondent: .25 hours for Conformance Report; 1 hour for Unfunded Fringe Benefit Plans.

Total Burden Hours: 631.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): \$801.92.

Description: The subject regulation prescribes labor standards for federally financed and assisted construction contracts under Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA). Under DBRA, every contract subject to the Act must contain a provision (i.e wage determination) stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics employed on the contract. In order for the Wage and Hour Division of the Department of

Labor to establish minimum rates for classes of employees omitted from wage determinations, employers must submit a Report of Conformed Classifications and Wage Rates for review and approval. Further, the Act provides that "wages" may include "* * * costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers or mechanics * * *". Where a benefit plan is not of the conventional type described in the Act and/or common in the construction industry it is necessary to determine whether the benefit plans is a "bona fide" benefit under the Act. Therefore, contractors must request approval of such fringe benefit plans from the Wage and Hour Division.

Agency: Occupational Safety and Health Administration.

Title: Application for Training Grant.

OMB Number: 1218-ONEW (formerly 1218-0020) (reinstatement with change).

Frequency: Annually.

Affected Public: Nonprofit Organizations.

Number of Respondents: 200.

Estimated Time Per Respondent: 59 hours.

Total Burden Hours: 11,800.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): \$16,000.

Description: OSHA awards grants to nonprofit organizations to provide safety and health training to employees and employers. In order to evaluate applicants requests for grants, OSHA obtains information about the applicant and its proposed program through the training grant application.

Agency: Occupational Safety and Health Administration.

Title: Grantee Quarterly Progress Report.

OMB Number: 1218-ONEW (formerly 1218-0100) (reinstatement with change).

Frequency: Quarterly.

Affected Public: Nonprofit Organizations.

Number of Respondents: 36.

Estimated Time Per Respondent: 12 hours.

Total Burden Hours: 1,680.

Total Annualized capital/startup costs: \$0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: OSHA awards grants to nonprofit organizations to provide safety and health training to employees and employers. In order to see that

funds are being used in accordance with approved grants, OSHA requires grantees to report quarterly on their grant activities.

Agency: Occupational safety and Health Administration.

Title: Procedures for the Handling of Discrimination Complaints Under the Federal Employee Protection Statutes.

OMB Number: 1218-ONEW (formerly 1215-0183) (revised).

Frequency: One per complaint filed.

Affected Public: All public and private sector employers.

Number of Respondents: 200.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 200 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing service): 0.

Description: 29 CFR part 24 establishes procedures for the expeditious handling of complaints pursuant to the following statutes: clean Air Act, 42 U.S.C. 7622; Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9610; Energy Reorganization Act of 1974, 42 U.S.C. 5851; Federal Water Pollution Control Act, 33 U.S.C. 1367; Safe Drinking Water Act 42 U.S.C. 300j-9(i), Solid Waste Disposal Act, 42 U.S.C. 6971; and Toxic Substances Control Act, 15 U.S.C. 2622. These complaints are filed by employees, or persons acting on their behalf, of alleged discriminatory action by employers. The required employee records are necessary to conduct discrimination investigations under 29 CFR part 24.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98-5441 Filed 3-2-98; 8:45 am]

BILLING CODE 4510-23-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96-6 CARP NCBRA]

Adjustment of the Rates for the Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of the schedule for the proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the schedule for the 180-day arbitration period for the adjustment of the royalty rates for the noncommercial educational

broadcasting compulsory license, as required by the regulations governing this proceeding.

EFFECTIVE DATE: March 3, 1998.

ADDRESSES: All hearings and meetings for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license shall take place in the James Madison Building, Room LM-414, First and Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, or William R. Roberts, Senior Attorney, at: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: Section 251.11(b) of the regulations governing the Copyright Arbitration Royalty Panels, 37 CFR subchapter B, provides that:

At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills the requirements of § 251.11(b) for the proceeding to adjust the royalty rates for the noncommercial educational broadcasting compulsory license.

On October 18, 1996, the Library announced a voluntary negotiation period, the precontroversy discovery schedule, and an initiation date for a Copyright Arbitration Royalty Panel (CARP) for this docket. The Office also requested each interested party to file a Notice of Intent to Participate with the Office no later than December 13, 1996. 61 FR 54458 (October 18, 1996). On November 11, 1996, the National Public Radio (NPR), the Public Broadcasting Service (PBS), the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc., the National Music Publishers Association, Inc. (NMPA), and the Harry Fox Agency, Inc., filed notices of intent to participate. On June 19, 1997, the National Religious Broadcasters Music License Committee (NRBMLC) requested leave to file its notice of intent to participate after the deadline for making this filing had passed. The Register granted its motion and accepted the filing. Order in Docket

No. 96-6 CARP (NCBRA) (July 30, 1997). Two additional parties, The American Council on Education and The National Federation of Community Broadcasters, did not file notices of intent to participate, although they participated in the negotiations of certain rates and terms of interest to their members.

The October 18, 1996, order set January 10, 1997, as the commencement date for the precontroversy discovery period. See 61 FR 54458 (October 18, 1996). However, the parties requested that the schedule set forth in the October 18 order be vacated in order to give the parties additional time to negotiate voluntary agreements. The Office granted the parties' request for additional time, vacated the precontroversy discovery schedule, and instructed the parties to appear at the Library on May 1, 1997, for a status report on the progress of their settlement negotiations. Order in Docket No. 96-6 CARP NCBRA (December 23, 1996). At the May 1 status conference, the parties again requested additional time, which the Office granted, provided the parties updated the Office on the status of their negotiations in July 1997. At a status meeting on July 24, 1997, the parties identified a need for a CARP proceeding. On July 30, 1997, the Office announced a second schedule setting dates for the precontroversy discovery period and set December 31, 1997, as the date for the initiation of arbitration. Order in Docket No. 96-6 CARP NCBRA (July 30, 1997).

In accordance with the new schedule, NRBMLC, PBS, and NPR filed proposed rates and terms for the payment of royalty fees to unaffiliated copyright owners on September 2, 1997. Subsequently, on October 1, 1997, the parties filed additional joint proposals for further adjusting the rates and terms of the section 118 compulsory license and notices of settlement. The Office published all the proposed rates and terms in the **Federal Register** for public review and comment, pursuant to 37 CFR 251.63. 62 FR 51619 (October 2, 1997) and 62 FR 63502 (December 1, 1997). The December 1, 1997, notice announced that the proposed regulations would become final on January 1, 1998, unless an interested party filed a challenge to the proposed regulations and a Notice of Intent to Participate in a CARP proceeding, on or before December 29, 1997. 62 FR 63502 (December 1, 1997). See also 62 FR 65777 (December 16, 1997) (correction notice clarifying the filing dates). The Office received no comments or Notices of Intent to Participate in a CARP proceeding in response to its notices of

the proposed rates and terms, and on January 14, 1998, the Office announced its adoption of the proposed rates and terms as final regulations, pursuant to 37 CFR 251.63(b). 63 FR 2142 (January 14, 1998).

A controversy remained, however, regarding the rates to be paid by PBS and NPR for the use of musical works licensed by ASCAP and BMI. The parties filed several motions to compel document production on November 7, 1997, in accordance with the July 30,

1997, order. The parties requested a large volume of document production in these motions. With such a large volume of document production still to be completed, the Office recognized that the 180-day period could not commence on December 31, 1997. Accordingly in its order ruling on the motions to compel, the Office granted additional time for the completion of document production and reset the date for initiation of the 180-day period to January 30, 1998. Order in Docket No.

96-6 CARP NCBRA (December 30, 1997). On February 2, 1998, the Library announced the initiation of the CARP proceeding to resolve this controversy. 63 FR 5405 (February 2, 1998).

On February 3, 1998, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule for this proceeding. At that meeting, the parties and the arbitrators agreed to the following schedule:

Opening Statements for all parties	February 26, 1998.	
Presentation of Direct Cases:		
American Society of Composers, Authors and Publishers (ASCAP)	February 26, 1998	Mary Rodgers.
ASCAP	March 9, 1998	Richard H. Reimer.
		Bennett M. Lincoff.
		Jon A. Baumgarten.
ASCAP	March 12, 1998	James Ledbetter.
		Carol Grajeda.
		Horace Anderson.
		Ray Schwind.
ASCAP	March 13, 1998	Seth Saltzman.
		James Day.
		Robert Unmacht.
		Ed Bergstein.
		David Bander.
Broadcast Music, Inc. (BMI)	March 16, 1998	Lauren Iossa.
		Alison Smith.
BMI	March 17, 1998	Fredric J. Willms.
		Bruce M. Owen.
BMI	March 18, 1998	Bruce M. Owen.
		Michael Bacon.
ASCAP	March 19, 1998	Michael Bacon.
Public Broadcasting Service (PBS) and National Public Radio (NPR) (did not provide breakdown of dates for witnesses).	March 20, 1998	Janet R. McFadden.
		Roy J. Epstein.
		Dr. Peter Boyle.
		Peter Downey.
		Peter Jablow.
		Paula Jameson.
PBS/NPR	March 30, 1998	Adam Jaffe.
		Peter Downey.
		Peter Jablow.
		Paula Jameson.
		Adam Jaffe.
Continuation of Presentation of Direct Cases	March 31, 1998,	
	April 1-3 ¹ , 1998	
Filing Deadline for Written Rebuttal Cases	April 15, 1998	
Presentation of Rebuttal Cases	April 27-30, 1998	
Filing Deadline for Proposed Findings of Fact and Conclusions of Law	May 22, 1998	
Filing Deadline for Replies to Proposed Findings of Fact and Conclusions of Law ..	June 1, 1998	
Oral argument	June 16, 1998	
Close of 180-day period	July 28, 1998	

All hearings will begin at 10 a.m. and end at 5 p.m.

¹ This date may have to be rescheduled.

The regulations require that the Copyright Office publish the original schedule for the CARP proceeding in the **Federal Register** at least seven calendar days in advance of the first meeting. 37 CFR 251.11(b). Pursuant to 37 CFR 251.11(d), however, the arbitrators voted to publish the schedule on shorter notice than the required seven days in order to allow the parties an opportunity to finalize the witness list for their direct cases before publication of the schedule. The results of the vote on the question, whether the

requirement for a seven calendar day notice should be waived, are:

The Hon. Lewis Hall Griffith,
Chairperson: Yes
The Hon. Edward Dreyfus: Yes
The Hon. Jeffrey S. Gulin: Yes

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the

proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

Dated: February 25, 1998.

David O. Carson,

General Counsel.

[FR Doc. 98-5440 Filed 3-2-98; 8:45 am]

BILLING CODE 1410-33-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**[Notice (98-029)]****NASA Advisory Council; Meeting.****AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Wednesday, March 18, 1998, 8:30 a.m. to 3 p.m.; and Thursday, March 19, 1998, 9:30 a.m. to 2:30 p.m.

ADDRESSES: George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Building 4200, Room P-110, Marshall Space Flight Center, AL 35812-0001.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-2096.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Challenges and Changes at Marshall Space Flight Center
- Space Transportation Strategy
- Aeronautics and Space Transportation Technology Development
- Next Generation Launch Systems
- Committee Reports
- Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Non-NASA attendees must register at the desk in the lobby of Building 4200 to obtain a visitor's badge.

Dated: February 25, 1998.

Matthew M. Crouch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 98-5342 Filed 3-2-98; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**[Notice (98-028)]****NASA Advisory Council (NAC), Earth System Science and Applications Advisory Committee; Meeting****AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

DATES: Tuesday, April 7, 1998, 8:30 a.m. to 5 p.m.; and Wednesday, April 8, 1998, 8:30 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, Room MIC7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Robert A. Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1876.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- ESE Status Update
- New Directions
- NRC Pathways Report Overview
- Status Reports
- SOMO/Science Information Sciences Overview
- Grants Processing Update
- ESSAAC Assessment of ESE Performance

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 25, 1998.

Matthew M. Crouch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 98-5341 Filed 3-2-98; 8:45 am]

BILLING CODE 7570-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**[Notice (98-027)]****NASA Advisory Council, Advisory Committee on the International Space Station, Cost Assessment and Validation Task Force (CAV) on the International Space Station; Meeting****AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the Cost Assessment and Validation Task Force on the International Space Station.

DATE: Tuesday, March 10, from 9 a.m. to 11 a.m..

ADDRESS: National Aeronautics and Space Administration, Room 5H46, 300 E Street, SW., Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: M. Daniel L. Hedin, Code ML, National Aeronautics and Space Administration, Washington, DC 20546-0001, 202/358-1691.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room, from 9 a.m. until 11 a.m. on Tuesday, March 10, 1998. The Agenda for the meeting is as follows:

- Review Team Process
- Address Remaining Schedule
- Draft Major Findings

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 25, 1998.

Matthew M. Crouch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 98-5340 Filed 3-2-98; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CREDIT UNION ADMINISTRATION**Agency Information Collection Activities: Submission to OMB for Review; Comment Request****AGENCY:** National Credit Union Administration (NCUA).**ACTION:** Request for comment.

SUMMARY: The NCUA has submitted the following final rule information collection reinstatement with changes to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was published as a proposed rule on August 1, 1997. No comments relating to the information collection were received within the 60 day comment period.

DATES: Comments will be accepted until April 2, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518-6411, National Credit Union

Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-518-6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518-6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 33-0147.

Form Number: 3133-0147.

Type of Review: Extension of currently approved collection.

Title: Year 2000 Quarterly Credit Union Report.

Description: The purpose of the form is to obtain information to track credit unions' progress toward "year 2000" compliance in order to ensure the safety and soundness of individual credit unions and the industry and to provide specifically required monitoring reports to respond to on-going congressional and other inquiries.

Respondents: Federally insured credit unions.

Estimated No. of Respondents/

Recordkeepers: 11,335.

Estimated Burden Hours Per

Response: 3.5 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Hours: 39,673.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 25, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98-5453 Filed 3-2-98; 8:45 am]

BILLING CODE 7535-01-U

**NATIONAL CREDIT UNION
ADMINISTRATION**

**Agency Information Collection
Activities: Submission to OMB for
Review; Comment Request**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following final rule information collection reinstatement with changes to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35).

This information collection is published to obtain comments from the public. It was published as a proposed rule on August 1, 1997. No comments relating to the information collection were received within the 60 day comment period.

DATES: Comments will be accepted until April 2, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen, (703) 518-6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-518-6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518-6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133-0101.

Form Number: Final rule.

Type of Review: Final rule—reinstatement with change.

Title: 12 CFR 723.5—Develop written loan policies—and 723.11—Provide waiver requests.

Description: The general purpose of the requirements imposed by the rule is to ensure that loans are made, documented, and accounted for properly and for the ultimate protection of the National Credit Union Share Insurance Fund.

Respondents: Federally insured credit unions that make member business loans.

Estimated No. of Respondents/

Recordkeepers: 50.

Estimated Burden Hours Per

Response: 2 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 25, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98-5454 Filed 3-2-98; 8:45 am]

BILLING CODE 7535-01-U

**NUCLEAR REGULATORY
COMMISSION**

Sunshine Act Meeting

DATES: Weeks of March 2, 9, 16, and 23, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 2

Wednesday, March 4

2 p.m. Discussion of Management Issues (Closed—Ex. 2)

Friday, March 6

10:30 a.m. Briefing by the Executive Branch (Closed—Ex. 1)

11:55 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 9—Tentative

There are no meetings the week of March 9.

Week of March 16—Tentative

Thursday, March 19

2:30 p.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 23—Tentative

Monday, March 23

2:30 p.m. Briefing on MOX Fuel Fabrication Facility Licensing (PUBLIC MEETING) (Contact: Ted Sherr, 301-415-7218)

Wednesday, March 25

10 a.m. Briefing on Improvements to the Senior Management Meeting Process (PUBLIC MEETING) (Contact: Bill Borchard, 301-415-1257)

Thursday, March 26

11 a.m. Briefing by Executive Branch (Closed—Ex. 1)

2 p.m. Briefing on Recent Research Program Results (PUBLIC MEETING)

3:30 Affirmation Session (PUBLIC MEETING) (if needed)

*The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 4-0 on February 19, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Affirmation of 21st CENTURY TECHNOLOGIES, INC.: Revised Draft Adjudicatory Order (1)

Declining to Take SUA SPONTE Review of a Licensing Board's Approval of a Settlement (LBP-98-1), and (2) Terminating a Proceeding on Licensee's Challenge to Confirmatory Order" be held on February 19, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

<http://www.nrc.gov/SECY/smj/schedule.htm>

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98-5609 Filed 2-27-98; 3:00 pm]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Notice of Termination for Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Notice of Termination for Multiemployer Plans (29 CFR Part 4041A Subpart B) (OMB control number 1212-0020). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by April 2, 1998.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit

Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC 20005-4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: Section 4041A(f)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA") gives the PBGC authority to prescribe reporting requirements for terminated multiemployer pension plans covered by Title IV of ERISA.

The PBGC's regulation on Notice of Termination for Multiemployer Plans (29 CFR Part 4041A Subpart B) requires the filing of a notice of termination with the PBGC by a multiemployer plan that has terminated either by plan amendment or by mass withdrawal. The notice must contain certain basic information such as the plan's identity, the date of termination, and the plan's most recent Form 5500. In addition, a plan that has terminated by mass withdrawal must supply certain financial information to enable the PBGC to assess the likelihood of benefit reductions or suspensions under the plan and the need for PBGC financial assistance to the plan. More information is required with respect to mass withdrawal terminations because the risk of plan insolvency is greater in these cases. (The regulation may be accessed on the PBGC's home page at <http://www.pbgc.gov>.)

The collection of information under the regulation has been approved by OMB under control number 1212-0020. The PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The PBGC estimates that it receives 20 notices of termination from sponsors of multiemployer pension plans annually; that virtually all submissions are prepared by outside consultants; that the total annual hour burden of the regulation is one hour; and that the total annual cost burden is \$34,125.

Issued in Washington, DC, this 25th day of February 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98-5460 Filed 3-2-98; 8:45 am]

BILLING CODE 7708-01-P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Extension of Special Withdrawal Liability Rules

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB control number 1212-0023). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by April 2, 1998.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC, 20005-4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Deborah C. Murphy, Attorney, office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: Sections 4203(f) and 4208(e)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") provide for the PBGC's issuance of regulations under which the PBGC may approve a multiemployer pension plan's adoption of special rules for determining whether a complete or

partial withdrawal from the plan has occurred. Section 4203(f) also sets standards for the approval of such special rules.

The PBGC's regulation on Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) requires the plan sponsor of a plan that adopts special rules to submit information about the rules, the plan, and the industry in which the plan operates with its request for PBGC approval of the rules. The PBGC uses that information in determining whether the plan's special withdrawal liability rules meet the requirements of ERISA. (The regulation may be accessed on the PBGC's home page at <http://www.pbgc.gov>.)

The collection of information under the regulation has been approved by OMB under control number 1212-0023. The PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The PBGC estimates that it receives at most one submission from a plan sponsor annually under the regulation; that virtually all submissions are prepared by outside consultants; that the total annual hour burden of engaging the services of such consultants is one hour; and that the total annual cost burden of having the submissions prepared is \$2,400.

Issued in Washington, DC, this 25th day of February, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98-5461 Filed 3-2-98; 8:45 am]

BILLING CODE 7708-01-P

POSTAL SERVICE

Information Based Indicia Program (IBIP) Product Definition

AGENCY: Postal Service.

ACTION: Notice of USPS potential IBIP PC Postage product classification with request for comments.

SUMMARY: The Postal Service has published a set of draft specifications for the Information Based Indicia Program (IBIP). Current versions of the draft specifications are:

IBIP Interim Product Submission Procedures dated January 7, 1997

IBIP Open System Indicia Specification dated July 23, 1997

IBIP Open System PSD Specification dated July 23, 1997

IBIP Open System Host Specification dated October 9, 1996

IBIP Key Management Plan dated April 25, 1997

As a result of comments received on the above draft specifications, and previous versions, in addition to other inquiries, the following information is provided regarding various design approaches for proposed IBIP PC Postage products:

The Postal Service recognizes that while the current IBIP specifications define a relatively specific implementation of an IBIP PC Postage product in regard to the physical location of the PSD, there are potential alternative approaches that may offer equally or greater secure solutions. As such, the Postal Service envisions potential IBIP PC Postage products being classified into four major categories:

- (1) Standalone system products.
- (2) Local Area Network (LAN) system products.
- (3) Wide Area Network (WAN) system products.
- (4) Hybrid system products.

A "Standalone" system PC Postage product is one which is designed upon the current IBIP specifications approach, particularly as it relates to the location of the IBIP PSD relative to the IBIP Host system. A "LAN" system PC Postage product operates on a local area network, and a "WAN" system PC Postage product operates across wide area networks with potential alternative approaches to IBIP PSD locations relative to the IBIP Host system. A "Hybrid" system is any proposed PC Postage product approach that substantially departs from the approach implied in the IBIP PSD specification in regard to location(s) of cryptography based functions. The Postal Service intends to classify IBIP Concepts of Operations (CONOPs) and products submitted for consideration or evaluation into these four categories. PC Postage CONOPs or products classified as LAN, WAN, or Hybrid may be subject to measurement against additional baseline specifications as deemed appropriate to ensure that overall product security is equal to or greater than that envisioned with the Standalone product approach.

The Postal Service also seeks comments on intellectual property issues raised by IBIP specifications, policy, and procedures if adopted in present form. If an intellectual property issue includes patents or patent applications covering any implementations of the specifications, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

ADDRESSES: Copies of the specifications noted above may be obtained from Edmund Zelickman, United States Postal Service, 475 L'Enfant Plaza, SW., Room 1P-801, Washington, DC 20260-2444. Copies of all written comments may be inspected, by appointment, between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

DATES: All written comments must be received on or before May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Edmund Zelickman at (202) 268-3940.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98-5355 Filed 3-2-98; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice to Application to Withdraw From Listing and Registration; (Barr Laboratories, Inc., Common Stock, \$0.01 Par Value) File No. 1-9860

February 25, 1998.

Barr Laboratories, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the New York Stock Exchange, Inc. ("NYSE") pursuant to a Registration Statement on Form 8A that became effective February 6, 1998. Trading in the security on the NYSE commenced on February 10, 1998.

The Board of Directors of the Company previously determined that it was in the best interests of the Company to list its Security on the NYSE. The Company seeks to avoid the costs and the division of the market that may result from listing the Security on the Amex and the NYSE. The Board unanimously approved a resolution on January 16, 1998, to take all actions necessary to withdraw the Company's Security from listing and registration on the Amex.

The Company has complied with Amex Rule 18 by notifying the Exchange of its intention to withdraw the Security from listing and registration

on the Exchange, and by providing the Exchange with the resolutions that set forth the facts and reasons supporting the proposed withdrawal.

By letter dated February 4, 1998, the Exchange informed the Company that it would not object to the withdrawal of the Security from listing and registration on the Exchange.

Any interested person may, on or before March 18, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-5399 Filed 3-2-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 2, 1998.

A closed meeting will be held on Thursday, March 5, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 5, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: February 26, 1998.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-5487 Filed 2-26-98; 4:02 p.m.]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39695; File No. SR-PCX-98-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Elimination of Transaction Fees and Recording and Comparison Fees in AMEX Issues, Waiver of Independent Broker Charge, and Badge Replacement Fee

February 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 13, 1998,³ the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to make the following changes to its fee structure: (1) To eliminate its transaction fees and its recording and comparison fees for transactions in equity issues listed on

the American Stock Exchange ("AMEX") and traded on the PCX; (2) to waive its current Independent Broker Charge of \$0.02 per option contract executed by Independent Floor Brokers⁴ on the Options Trading Floor; and (3) to establish a badge replacement fee of \$100 for Options Floor Members and employees of Member Firms.

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 PCX 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 PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The PCX is proposing to make three changes to its current fee structure, as listed below:

(a) *Elimination of Transaction Fees and Recording and Comparison Fees in AMEX Issues.* The exchange is proposing to eliminate its transaction fees⁵ and its recording and comparison fees⁶ for transactions in equity issues listed on the AMEX and traded at the PCX. Initially, the Exchange will accomplish this by applying a credit to all Member Firms based on their *pro rata* share of volume in AMEX-listed equity issues. Accordingly if 10 percent of a Member Firm's monthly share volume is conducted in AMEX-listed equity issues, the Exchange would credit that Member Firm 10 percent of its transaction fees and its recording and

⁴ The Exchange defines an "Independent Floor Broker" as a Floor Member who executes orders primarily for Market Makers and other Floor Brokers.

⁵ The Exchange calculates transaction fees using an incremental scale based on a member's cumulative billable trade value per month, ranging from a rate of \$0.13 per \$1000 of trade value for the member's first \$50 million of monthly business, down to a rate of \$0.01 per \$1000 of trade value for the member's monthly business above \$800 million. Those rates are subject to a discount for automated trades, and block trades of 5000 or more shares are subject to a minimum charge of \$15 per trade side and a maximum charge of \$75 per trade side. A member's aggregate monthly transaction charges are subject to a cap of \$0.45 per 100 shares.

⁶ The Exchange charges equity recording and comparison fees of \$0.05 per 100 shares, with a maximum of \$10 per trade side.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange previously filed a substantially similar proposed rule change in File No. SR-PCX-98-07 (filed January 29, 1998). The Exchange withdrew that filing on February 13, 1998. See Letter from Michael Pierson, Senior Attorney, PCX, to Karl Varner, Attorney, Division of Market Regulation ("Division"), Commission, dated February 12, 1998.

comparison fees for the trade month.⁷ After the Exchange has adjusted each member's account to reflect the reconciliation, then members will no longer be required to pay transaction fees and recording and comparison fees associated with transactions in AMEX-listed issues.⁸ The changes to the transaction fee schedule and the recording and comparison fee schedule will be effective as of the January 1998 trade month.

The fee change is intended to make the Exchange more competitive by reducing the costs incurred by customers in executing transactions on the Exchange, thus making the Exchange a more cost-effective market center to which to send order flow.

(b) *Waiver of Independent Broker Charge.* The Exchange currently charges Independent Floor Brokers a fee of \$0.02 per option contract executed by the Independent Floor Broker. The Exchange is proposing to waive its current Independent Broker Charge until further notice.⁹ The changes to the Independent Broker Charge will be effective as of the January 1998 trade month.

The Exchange is waiving this charge to help offset the high cost that Independent Floor Brokers incur while conducting business on the Options Floor. The Exchange notes that Independent Floor Brokers perform an important function on the Options Floor, particularly when a large influx of orders needs to be executed. The fee change will help stabilize the number of Independent Floor Brokers on the Options Floor.

(c) *Options Floor Badge Replacement Fee.* The Exchange is proposing to establish an Options Floor Badge Replacement Fee of \$100. Currently, all Options Floor Members and all employees of Member Firms who need to enter the Options Trading Floor are provided, for an initial issuance fee of

\$30, a floor security badge. The badge includes a photograph of the Member or employee of a Member Firm. The badge also includes an electronic code that allows the holder to pass through the turnstiles leading to the Options Floor. The Exchange is proposing to establish a one-time replacement fee of \$100 for these badges. The fee is designed to cover the Exchange's cost of replacing lost, stolen or damaged badges.

(2) Statutory Basis

These proposals are consistent with Section 6(b) of the Act,¹⁰ in general, and Section 6(b)(4),¹¹ in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (e)(2) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.¹⁴

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(e)(2).

¹⁴ In reviewing these rules, the Commission has considered the proposed rule change's impact on

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-98-09 and should be submitted by March 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-5400 Filed 3-2-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards; Notice of Termination of Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of termination of waiver of the Nonmanufacturer Rule for pineapple juice.

SUMMARY: The Small Business Administration (SBA) is terminating the waiver of the Nonmanufacturer Rule for pineapple juice. The class of products of pineapple juice is identified under Product and Service Code (PSC) 8915 and Standard Industrial Classification (SIC) Code 2033. SBA announced the waiver for pineapple juice in the **Federal Register** on October 2, 1991 (56 FR 49841). This decision to terminate the waiver of the Nonmanufacturer Rule is based on our recent discovery of a small business manufacturer for this class of products. Terminating the waiver will require recipients of contracts set-aside for small or 8(a) businesses to provide the products of small business manufacturers or processors.

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

⁷ The Exchange currently cannot match a member's transactions in AMEX-listed securities with the exact amount of the associated transaction fees. To determine the transaction fee credit, the Exchange initially will calculate the blended per share transaction fee rate for all of a member's equity transactions in a trade month, and multiply that blended rate by the total volume of AMEX-listed shares the member transacted that month. Once the Exchange is able to exactly match transactions with the associated credits, the Exchange will reconcile prior discrepancies between the fees and the credits associated with transactions in AMEX-listed shares. The Exchange anticipates that it will reconcile such prior discrepancies no later than April 1, 1998.

⁸ See Telephone conversation between Michael Pierson, PCX, and Joshua Kans, Attorney, Division, Commission February 23, 1998.

⁹ Before reinstating the Independent Broker Charge, the Exchange would be required to submit a proposed rule change to the Commission.

DATES: Submit comments and sources on or before March 10, 1998.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street S.W., Washington, DC 20416, Tel: (202) 205-6475.

FOR FURTHER INFORMATION CONTACT:

David Wm. Loines, Procurement Analyst, (202) 205-6475, FAX (202) 205-7324.

SUPPLEMENTARY INFORMATION: Public law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or SBA 8(a) Program procurements must provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule.

The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget's *Standard Industrial Classification Manual (SIC)*. The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The SBA has recently been advised of the existence of a small business manufacturer for pineapple juice. Thus, the waiver previously granted for pineapple juice under PSC 8915 and SIC 2033 is terminated.

Dated: February 13, 1998.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 98-5330 Filed 3-2-98; 8:45 am]

BILLING CODE 8025-01-P

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

Generalized System of Preferences (GSP); Initiation of a Review To Consider the Designation of State of Eritrea as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of the State of Eritrea for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of the State of Eritrea as a beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria by March 31, 1998.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. The telephone number is (202) 395-6971.

SUPPLEMENTARY INFORMATION: The government of the State of Eritrea has requested that it be granted eligibility for beneficiary status under the GSP program. The Trade Policy Staff Committee (TPSC) has initiated a review to determine if Eritrea should be designated as a beneficiary developing country under the GSP program. A country may not be designated a beneficiary developing country, absent a finding that such designation would be in the economic interests of the United States, if any one of several elements are found, including: the participation by the country in a commodity cartel that causes serious disruption to the world economy; the provision by the country of preferential treatment to products of other developed countries which has a significant adverse effect on U.S. commerce; the expropriation by the country of U.S.-owned property without compensation; a failure by the country to enforce arbitral awards in favor of U.S. persons; the support by the country of international terrorism; or a failure by the country to take steps to protect internationally recognized worker rights. Other factors taken into account in determining whether a country will be designated a beneficiary developing country include: the extent to which the country has assured the United States that it will provide market access for U.S. goods; the extent to which the country has taken action to reduce trade-distorting investment practices

and policies; and the extent to which the country is providing adequate and effective protection of intellectual property rights. The criteria for designation are set forth in full in section 502 of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et. seq.*).

Interested parties are invited to submit comments regarding the eligibility of Eritrea for designation as a GSP beneficiary developing country. Submission of comments must be made in English in 14 copies to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, and be received in Room 518 at 600 17th Street, N.W., Washington, D.C. 20508, no later than 5 p.m. on Tuesday, March 31, 1998. Except for submissions granted "business confidential" status pursuant to 15 CFR 2003.6, information and comments submitted regarding Eritrea will be subject to public inspection by appointment with the staff of the USTR Public Reading Room. For an appointment, please call Ms. Brenda Webb at 202/395-6186. If the document contains business confidential information, 14 copies of a nonconfidential version of the submission along with 14 copies of the confidential version must be submitted. In addition, the submission should be clearly marked "confidential" at the top and bottom of each page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "non-confidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98-5430 Filed 3-2-98; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1998 3559]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will conduct two meetings to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification and fitness of seamen serving in the U.S. merchant

marine. Both meetings will be open to the public.

DATES: MERPAC will conduct a working group meeting of the full committee on Monday, March 30, 1998, from 8 a.m. to 4 p.m. and will conduct an official full committee meeting on Tuesday, March 31, 1998, from 8 a.m. to 3:30 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before March 16, 1998.

ADDRESSES: MERPAC will meet on both days in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. Send written material and requests to make oral presentations to Commander Steven J. Boyle, Commandant (G-MSO-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202-267-0229, fax 202-267-4570, or e-mail mgould@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of March 31, 1998, Public Meeting

Merchant Marine Personnel Advisory Committee (MERPAC)

The agenda includes the following:

- (1) Introduction.
- (2) Progress report from the working group on the International Convention on the Standards of Training, Certification and Watchkeeping (STCW).
- (3) Progress report from the working group on the National Maritime Center.
- (4) Other items to be discussed:
 - (a) Standing Committee—Prevention Through People
 - (b) Regional Examination Center activities
 - (c) National Maritime Center activities
 - (d) STCW developments
 - (e) One person bridge watchstanding proposal-report from subcommittee on meeting held March 7, 1998.

Procedural

Both meetings are open to the public. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than March 16, 1998.

Written material for distribution at a meeting should also reach the Coast Guard no later than March 16, 1998. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than March 16, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: February 24, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98-5449 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1998-3551]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety. The meeting will be open to the public.

DATES: The meeting of NOSAC will be held on Wednesday, April 22, 1998 from 8:30 a.m. to 2:30 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before April 8, 1998.

ADDRESSES: The NOSAC meeting will be held in Rooms 6332-6336, of the NASSIF Building, 400 7th Street, SW, Washington, DC. Written material and requests to make oral presentations should be sent to Captain R.L. Skewes, Commandant (G-MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Captain R. L. Skewes, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone (202) 267-0214, fax (202) 267-4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2.

Agenda of Meeting

National Offshore Safety Advisory Committee (NOSAC). The agenda includes the following:

(1) Introduction and swearing-in of new members.

(2) Progress report from the Prevention Through People Subcommittee.

(3) Progress report from the Subcommittee on Pipeline-Free Anchorages for Mobile Offshore Drilling Units, Lifeboats and Vessels.

(4) Status report on revision of 33 CFR Subchapter "N", Outer Continental Shelf Regulations.

(5) Report on the new regulations for large offshore supply vessels and crewboats, (supplementary 46 CFR Subchapter "L")

(6) Report on issues concerning the International Maritime Organization (IMO) and the International Organization of Standardization ((ISO).

(7) Status report from Safety Regulatory Reform Subcommittee.

(8) Report from Platform/Ship collision Avoidance subcommittee.

Procedural

The meeting is open to the public. Due to new security procedures at government buildings, visitors should have a current picture ID to enter the NASSIF building. At the Chairperson's discretion, members of the public may make oral presentation during the meeting. Persons wishing to make oral presentations at the meeting should notify the Executive Director no later than April 8, 1998. Written material for distribution at the meeting should reach the Coast Guard no later than April 8, 1998. If a person submitting material would like a copy distributed to each member of the Committee or Subcommittee in advance of the meeting, that person should submit 25 copies to the Executive Director no later than April 1, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant to the Executive Director as soon as possible.

Dated: February 24, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98-5448 Filed 3-2-98; 8:45 am]

BILLING CODE 4310-14-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Summary Notice No. PE-98-1]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, these aspects of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 23, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267-9783 or Angela Anderson (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on February 25, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 29069.

Petitioner: AMR Eagle, Inc.

Sections of the FAR Affected: 14 CFR 121.434, 121.440, 121.441, and 121.683.

Description of Relief Sought: To permit pilots trained and qualified under one certificate holder's approved program to act as pilot for another certificate holder without being qualified under the latter certificate holder's approved program.

Docket No.: 29041.

Petitioner: Estumkeda, Ltd.

Sections of the FAR Affected: 14 CFR 47.65.

Description of Relief Sought: To permit the issuance of a Dealer's Aircraft registration Certificate to Estumkeda, Ltd.

Docket No.: 29061.

Petitioner: Prairie Cardiovascular Center, Ltd.

Sections of the FAR Affected: 14 CFR 91.9 and 91.531.

Description of Relief Sought: To permit certain qualified pilots of Dassault Mystere-Falcon 10 airplanes to operate those airplanes without a pilot who is designated as second in command.

Dispositions of Petitions

Docket No.: 26656.

Petitioner: Missouri Department of Transportation.

Sections of the FAR Affected: 14 CFR 156.5(b).

Description of Relief Sought/

Disposition: To permit the petitioner to use up to \$75,000 of Airport Improvement Program State Block Grant Pilot Program annual funds issued during fiscal years 1997 and 1998 for program administrative costs. *GRANT, January 21, 1998, Exemption No. 5364B.*

Docket No.: 29093.

Petitioner: Grand Aire Express, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/

Disposition: To permit the petitioner to operate its Dassault/Sud Falcon 20D (Falcon 20) (Registration No. N618GA, Serial No. 211), Falcon 20 (Registration No. N619GA, Serial No. 215), and Hamburger Flugzeugbau HFB-320 (Registration No. N171GA, Serial No. 1039) aircraft without a TSO-C112 Mode S transponder installed. *GRANT, January 21, 1998, Exemption No. 6723.*

Docket No.: 26533.

Petitioner: Jump Shack.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/

Disposition: To permit the petitioner to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direct supervision and control to make intentional tandem parachute jumps and permits pilots in command of aircraft involved in these operations to allow such persons to make parachute jumps wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary (reserve) parachute packed in accordance with 14 CFR part 105.43(a). *GRANT, January 22, 1998, Exemption No. 5448C.*

Docket No.: 26063.

Petitioner: Reflection Training Center-Dulles.

Sections of the FAR Affected: 14 CFR 121.411(a)(2), (a)(3), and (b)(2); and 121.413(b), (c), and (d); appendix H to part 121; and 135.337(a)(2), (a)(3), and (b)(2); and 135.339(a)(2), (b), and (c).

Description of Relief Sought/

Disposition: To permit the petitioner to use its qualified instructor pilots and check airmen to conduct training and checking for certain part 121 and 135 certificate holders' pilots and flight engineers in airplanes manufactured by British Aerospace, Inc., or in FAA-approved Level C simulators without those instructors and check airmen meeting all the applicable training requirements of parts 121 and 135 and without the petitioner holding an air carrier operating certificate. *GRANT, January 30, 1998, Exemption No. 5190D.*

Docket No.: 26183.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR part 121, appendix H.

Description of Relief Sought/

Disposition: To permit member airlines of the Air Transport Association of America and other similarly situated part 121 certificate holders to continue to use Level C simulators for pilot-in-command initial and upgrade training and checking. *GRANT, January 30, 1998, Exemption No. 5400C.*

Docket No.: 25286.

Petitioner: United States Parachute Association.

Sections of the FAR Affected: 14 CFR 91.607 and 105.43(a).

Description of Relief Sought/

Disposition: To permit the petitioner to allow parachutists who are foreign nationals to participate in U.S. National Skydiving Championship events sponsored by the USPA without meeting the parachute equipment and

packing requirements of 14 CFR part 105.43(a). In addition, that exemption allows the carriage of up to 40 parachutists in Douglas DC-3/C-47 aircraft during sport parachuting activities sponsored by the petitioner provided certain conditions and limitations are met. *GRANT, January 30, 1998, Exemption No. 4946F.*

Docket No: 25336.

Petitioner: United Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.697(a)(3)(b)(c), and (d); and 121.709(b)(3).

Description of Relief Sought/

Disposition: To permit the petitioner to use computerized signatures to satisfy the airworthiness release signature requirements of part 121 in lieu of physical signatures. *GRANT, February 3, 1998, Exemption No. 5121E.*

Docket No.: 28422.

Petitioner: Broward County, Florida Public Works Department.

Sections of the FAR Affected: 14 CFR 137.53(c)(2).

Description of Relief Sought/

Disposition: To permit the petitioner to conduct aerial applications of insecticide materials from a Beechcraft C-45H aircraft without the aircraft being equipped with a device that is capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operating over a congested area. *GRANT, February 4, 1998, Exemption No. 6470A.*

Docket No: 20049.

Petitioner: T.B.M., Inc.

Sections of the FAR Affected: 14 CFR 91.529(a)(1).

Description of Relief Sought/

Disposition: To permit the petitioner to operate McDonnell Douglas DC-6 and DC-7 aircraft without a flight engineer during flightcrew training, ferry operations, and test flights that are conducted to prepare for firefighting operations conducted under 14 CFR part 137. *GRANT, February 4, 1998, Exemption No. 2956J.*

Docket No: 29084.

Petitioner: American Trans Air, Inc.

Sections of the FAR Affected: 14 CFR 121.310(m).

Description of Relief Sought/

Disposition: To permit the petitioner to operate five foreign-registered Lockheed L-1011-385-3 aircraft that have more than 60 feet between emergency exits. *GRANT, February 5, 1998, Exemption No. 6725.*

Petition For Exemption

Docket No.: 29129.

Petitioner: Hyushin Aviation Complex, Russia.

Regulations Affected: 25.1435(b)(1).

Description of Petition: In lieu of the requirements of 14 CFR 25.143(b)(1) for a complete hydraulic system proof pressure test on the airplane Ilyushin proposes to conduct a combination of the following tests: (i) Test of the complete hydraulic system at relief valve opening pressure 24 +/-5 atmospheres (atm), (ii) Test of the hydraulic system components at 1.5 times operating pressure (315 atm) per § 25.143(a)(2), and (iii) Test of the complete hydraulic system during flight and ground tests at operating pressure.

[FR Doc. 98-5456 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-98-2]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 23, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Tawana Matthews, (202) 267-9783 or Angela Anderson, (202) 267-9681, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 25, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29110.

Petitioner: Era Aviation, Inc.

Sections of the FAR Affected: 14 CFR 119.2(a).

Description of Relief Sought: To permit the petitioner to operate its Douglas DC-3 aircraft under 14 CFR part 121 without those aircraft being equipped with an approved traffic alert and collision avoidance system.

Docket No.: 29151.

Petitioner: Aramco Association Company.

Sections of the FAR Affected: 14 CFR 91.609(c).

Description of Relief Sought: To permit the petitioner to operate its four Bell model 212 helicopters in seating capabilities that exceed ten seats, excluding pilot seats, without those helicopters being equipped with digital flight data recorders.

Docket No.: 29130.

Petitioner: Trans-Exec Air Service, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought: To permit the petitioner to operate its Gulfstream III aircraft under part 135 without it being equipped with an approved digital flight data recorder.

[FR Doc. 98-5457 Filed 3-2-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33527]

Providence and Worcester Railroad Company—Acquisition and Operation Exemption—Connecticut Central Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, Providence and Worcester's acquisition, via a stock exchange, and operation of Connecticut Central Railroad Company.

DATES: The exemption will be effective April 2, 1998. Petitions to stay must be filed by March 18, 1998. Petitions to reopen must be filed by March 30, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33527 must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001; a copy of all pleadings must be served on petitioner's representative: James E. Howard, 90 Canal Street, Boston, MA 02114.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600 [TDD for the hearing impaired on (202) 565-1695.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289-4357. [Assistance for the hearing impaired is available through TDD services (202) 565-1695.]

Decided: February 23, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

[FR Doc. 98-5302 Filed 3-2-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Customs Service

FBI Fingerprint Fee

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces that the fee collected by Customs regarding the submission of fingerprints for those applying for certain positions or requesting various identification cards which necessitate a fingerprint records check, will be raised to a total of \$20.70 to offset the fee being charged Customs by the Federal Bureau of Investigation.

EFFECTIVE DATES: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: John Porter, Customs Service, Trade Compliance, Broker Licensing, Room 5.2C, 1300 Pennsylvania Avenue, NW, Washington, DC, 20229, Tel. (202) 927-0051.

SUPPLEMENTARY INFORMATION:**Background**

The Federal Bureau of Investigation (FBI) is authorized to charge a fee for processing fingerprint identification records for non-law enforcement employment and licensing purposes. See, Note to 28 U.S.C. 534.

Customs has traditionally used the FBI fingerprinting services. The Customs Regulations were amended by T.D. 93-18 (58 FR 15770, dated March 24, 1993) to provide that Customs will charge a fee to recover the FBI fingerprinting costs, plus an additional 15% of that amount to cover Customs administrative processing. The authority for Customs to assess such a fee is 31 U.S.C. 9701. The port director advises those required to submit the fee of the correct amount.

The current user fee charged by the FBI is \$18.00. Accordingly, in this document, notice is hereby given that the fee charged by Customs will be raised to a total of \$20.70: \$18 representing the FBI portion of the fee, and \$2.70 representing the 15%

Customs charges to cover administrative processing.

Dated: February 25, 1998.

Lou Samenfink,

Acting Director, Trade Compliance.

[FR Doc. 98-5423 Filed 3-2-98; 8:45 am]

BILLING CODE 4820-02-P

UNITED STATES INFORMATION AGENCY**Culturally Significant Objects Imported For Exhibition; Determinations**

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Degas at the Races" (See list¹), imported from aboard for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The National Gallery of Art from on or about April 12, 1998, through July 12, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: February 25, 1998.

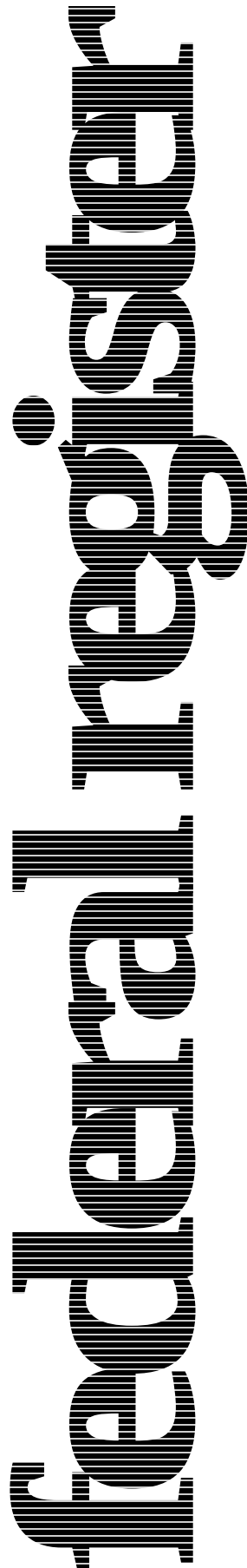
Les Jin,

General Counsel.

[FR Doc. 98-5442 Filed 3-2-98; 8:45 am]

BILLING CODE 8230-01-M

¹ A copy of this list may be obtained by contacting Ms. Carol Epstein, Assistant General Counsel, at 202/619-6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547-0001



Tuesday
March 3, 1998

Part II

**Department of
Education**

National Institute on Disability and
Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal years 1998–1999 for certain centers.

SUMMARY: The Secretary proposes funding priorities for three Rehabilitation Research and Training Centers (RRTC) and four Rehabilitation Engineering Research Centers (RERCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before April 2, 1998.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, DC 20202–2645. Comments may also be sent through the Internet: comments@ed.gov

You must include the term “Disability and Rehabilitation Research Projects and Centers” in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers Program for three RRTCs related to: aging with a disability, arthritis rehabilitation, and stroke rehabilitation. The notice also contains proposed priorities for four RERCs related to: Prosthetics and orthotics, wheeled mobility, technology transfer, and telerehabilitation.

These proposed priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving

funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Rehabilitation Research and Training Centers

The authority for RRTCs is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program, the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations, for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with

disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed General RRTC Requirements

The Secretary proposes that the following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process. The Secretary is interested in receiving comments on these proposed requirements:

The RRTC must provide: (1) Applied research experience; (2) training on research methodology; and (3) training to persons with disabilities and their families, service providers, and other appropriate parties in accessible formats on knowledge gained from the Center's research activities.

The RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

The RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Proposed Priority 1: Aging With a Disability

Background

Advances in medical care, rehabilitation technology, and rehabilitative treatment have made aging a routine event for persons with a disability. The rapid increase in the number of people with a physical disability who are growing older has been well documented (McNeil, J., "Americans With Disabilities," U.S. Bureau of the Census, Statistical Brief, SB/94-1, 1994). Many persons aging with a disability face significant new challenges to their health, daily functioning, and independence. These challenges may come from onset of chronic conditions such as hypertension or from secondary conditions such as post-polio. For example, approximately 70 percent of people with polio experience some form of "post-polio syndrome," a condition that impairs functioning (Halstead, L., "Assessment Differential Diagnosis for Post-Polio Syndrome," *Orthopedics*, 14, pgs. 1209-1222, 1991).

The problems resulting from aging with a disability can be grouped into

four areas: (1) Decline in health status due to onset of new chronic conditions or development of secondary conditions; (2) decline in functional abilities due to changed health status; (3) difficulty maintaining psychological well-being and life satisfaction; and (4) diminished capacity of family and community support networks to accommodate changes associated with aging with a disability.

Aging with a disability is a complex phenomenon, influenced by both normal and injury-related biological processes, by medical and rehabilitative developments, and by changing social, cultural and physical environments (De Vivo, M., *et al.*, "Causes of Death During the First 12 Years After Spinal Cord Injury," *Archives of Physical Medicine and Rehabilitation*, 74, pgs. 248-254, 1991). Although some progress has been made in systematically assessing the "natural course" of aging with a physical disability, (Whiteneck, G., "Learning from Empirical Investigations," *Perspectives on Aging with Spinal Cord Injury*, pgs. 23-27, 1992), this work is not complete.

Persons aging with a disability face significant health problems because of the onset of new conditions associated with the aging process itself and potentially complicated by the disability condition. Research suggests that chronic diseases such as cardiovascular illnesses and diabetes occur at earlier than expected ages and in substantially higher percentages among persons who acquired a disability in early life (Pope, A. and Flemming, C., *Disability in America: Toward a National Agenda for Prevention*, pg. 191, 1991). Significant bone loss (osteoporosis) is higher in people with complete spinal cord lesions than in age-matched controls (Garland, D., *et al.*, "Osteoporosis After Spinal Cord Injury," *Journal of Orthopedic Research*, 10, pgs. 371-378, 1992). Other age-related health problems may be impairment-specific secondary conditions such as hip dislocations in people with cerebral palsy or respiratory problems for persons with post-polio syndrome. One study found that 50 percent of people with a 40-year history of cerebral palsy had severe joint, back or neck pain (Murphy, K., "Medical and Social Issues in Adults with Cerebral Palsy, The California Study," *Developmental Medicine and Child Neurology*, Vol. 37, pgs. 1075-1084, 1995).

Fatigue, loss of strength, increased pain, and other health-related changes associated with aging may affect function so that capacity to perform activities of daily living (ADL) (e.g., mobility, bathing, and transfers), is

diminished. Fatigue and weakness may affect 60 to 70 percent of people with spinal cord injury (SCI) or post-polio (Gerhart, K., *et al.*, "Long-term Spinal Cord Injury: Functional Changes Over Time," *Archives of Physical Medicine and Rehabilitation*, 74, pgs. 1030-1035, 1993).

In addition to facing new physical challenges, some people aging with a disability also develop psychological conditions. In the general aging population, depression is often an unrecognized corollary of the aging process (Lebowitz, B., *et al.*, "Diagnosis and Treatment of Depression in Late Life," *Journal of the American Medical Association*, 278 (14), pgs. 1186-1190, 1997). At least one study has found that between 25 and 40 percent of persons aging with a disability show high distress, especially as expressed in symptoms of depression (Fuhrer, M., *et al.*, "The Relationship of Life Satisfaction to Impairment, Disability and Handicap Among Persons with Spinal Cord Injury Living in the Community," *Archives of Physical Medicine and Rehabilitation*, 73, pgs. 552-557, 1992). Treatment of depression for persons aging with a disability is difficult to obtain because of the failure of health professionals to recognize depression in persons aging with a disability (Krause, J. and Crewe, N., "Chronological Age Time Since Injury and Time of Measurement: Effect on Adjustment After Spinal Cord Injury," *Archives of Physical Medicine and Rehabilitation*, 72, pgs. 91-100, 1991).

Families may experience new stresses because of age-related conditions acquired by their family members with disabilities. In addition, aging of family caregivers may affect their ability to continue caregiving roles, thus reducing the ability of a person aging with a disability to remain in the family setting. The importance of this issue is reinforced by the fact that family caregivers provide most of the personal assistance to persons with disabilities (Nosek, M., "Life Satisfaction of People with Physical Disabilities: Relationship to Personal Assistance, Disability Status and Handicap," *Rehabilitation Psychology*, 40, pgs. 191-197, 1995). Helping families cope can include options like expanding respite care or training related to age-related changes.

The increase in the numbers of persons aging with a disability has increased the need for rehabilitation personnel trained in providing services to this population. Serving an aging population may also require new treatment and other service delivery models. Research on effective

accommodations, including the use of assistive technology, for this aging population has been limited.

The Secretary proposes to establish an RRTC on Aging with a Disability to promote the health, functional abilities, psychological well-being, and independence of persons aging with a disability. The RRTC shall:

(1) Investigate the natural course of aging with a disability;

(2) Identify, develop, and evaluate methods to reduce aging's impact on health status, including onset of new chronic conditions and secondary conditions associated with the primary disability;

(3) Identify, develop, and evaluate rehabilitation techniques, including the effective use of assistive technology, to maintain functional independence;

(4) Investigate and evaluate methods to improve psychosocial adjustment; and

(5) Conduct studies to identify the extent to which aging affects the ability of families to support persons aging with a disability in family and community settings and evaluate strategies that will enhance the ability of families to cope.

In carrying out these priorities, the RRTC must coordinate with aging with a disability research and demonstration activities sponsored by the National Center on Medical Rehabilitation Research, the Department of Veteran Affairs, the Social Security Administration, the Health Care Financing Administration, and the RRTCs on Health Care for Individuals with Disabilities—Issues in Managed Health Care, Aging with Spinal Cord Injury, and Aging with Mental Retardation, and the RERC on Assistive Technology for Older Persons with Disabilities.

Proposed Priority 2: Arthritis Rehabilitation

Background

"Arthritis" means joint inflammation and encompasses a large family of more than 100 so-called rheumatic diseases that can affect people of all ages. The prevalence of many of these diseases tends to increase with age and several occur predominantly in women; others are more common in men. These diseases can affect joints, muscles, tendons, ligaments, and the protective coverings of some internal organs. Onset is usually in middle age, and arthritis and musculoskeletal conditions typically present a cluster of chief complaints including, but not limited to, pain, muscle impairments, and joint impairments. Arthritis and

musculoskeletal conditions typically result in functional limitations in ADL. While individuals with arthritis experience most of their limitations in physical functional activities, the concept of function has psychological and social dimensions as well (Guccione, A. A., "Arthritis and the Process of Disablement," *Physical Therapy*, Vol. 74, No. 5, May, 1994). For the purpose of this proposed priority, arthritis and musculoskeletal diseases must include, but are not limited, to rheumatoid arthritis (RA), osteoarthritis (OA), juvenile rheumatoid arthritis (JRA), osteoporosis, and fibromyalgia syndrome.

Physical activity may provide significant physical and mental health benefits for persons with arthritis and musculoskeletal diseases. In recognizing that regular physical activity can help control joint swelling and pain, the U.S. Surgeon General's 1996 Report on Physical Activity and Health, urges people with arthritis to exercise. The Center for Disease Control and Prevention has indicated that most persons with arthritis and other rheumatic conditions should engage in physical activity because exercise helps people with arthritis maintain normal muscle strength and joint function and reduces the risk of premature death, heart disease, diabetes, high blood pressure, colon cancer, depression, and anxiety (Krucoff, C., "Taking Action Against Arthritis," *The Washington Post Health Section*, October 21, 1997). Maintenance of health and wellness is important when dealing with the problems of arthritis and musculoskeletal diseases. A number of factors, such as understanding and managing fatigue and conserving energy, developing relaxation techniques, participating in exercise programs, learning about weight control and proper nutrition, aid in the goal of achieving a quality of life for individuals who cope with the various problems encountered.

Pain is a major concern for individuals with arthritis and musculoskeletal diseases. Pain can affect the ability to work or function independently in the home or community. The increased dependency encountered, the thoughts of progressive deformities, and feelings of frustration through loss of control often lead to psychosocial difficulties. Rehabilitation interventions can reduce pain, depression and improve functional abilities.

Musculoskeletal conditions are among the top-ranked conditions causing limitations in the ability to perform work and reported as causes of actual

work loss. Estimates for prevalence of work disability, defined as ceasing to work, ranges from 51 percent to 59 percent. Clinical studies have indicated that when RA is in a severe form, this rate could be as high as 60 percent a decade after diagnosis (Felts, W. and Yelin, E., "The Economic Impact of the Rheumatic Diseases in the United States," *Journal of Rheumatology*, 16, pgs. 867–884, 1989). Decreased work satisfaction has been reported by persons with RA; 59 percent are unable to maintain gainful employment. In addition, patients with RA are significantly more likely to have lost their job or to have retired early due to their illness, and are the most likely to have reduced their work hours or stopped working entirely due to their illness (Gabriel, S.E., et al., "Indirect and Nonmedical Costs Among People With RA and OA Compared With Nonarthritic Controls," *Journal of Rheumatology*, 24(1), pgs. 43–48, January 1997). Reasonable job accommodations for people with arthritis and musculoskeletal diseases to manage fatigue, stress, job performance issues, allowances for medical treatments and individual-related modifications are areas for employers to consider.

More than 200,000 children in the U.S. are affected with some form of arthritis (Cassidy, J.T., et al., "Juvenile Rheumatoid Arthritis," *Textbook of Pediatric Rheumatology*, pgs. 133–233, 1995). JRA is the most common childhood connective tissue disease (Chaney, J. and Peterson, L., *Journal of Pediatric Psychology*, Vol. 14, No. 3, 1989). JRA affects the physical, psychological and social development of children and adolescents. Assessing needs and developing strategies to aid in the promotion of improved medical, educational, psychosocial, and vocational services are essential with this population.

Proposed Priority 2

The Secretary proposes to establish an RRTC on Arthritis Rehabilitation to improve the functional abilities and promote the independence for individuals with arthritis and musculoskeletal diseases. The RRTC shall:

(1) Identify, develop, and evaluate exercise and fitness programs;

(2) Identify, develop, and evaluate rehabilitation interventions to increase psychological well-being and reduce pain;

(3) Identify, develop, and evaluate job accommodations to maintain employment; and

(4) Identify, develop, and evaluate programs to maintain health and wellness.

In carrying out the purposes of the priority, the RRTC must:

- Address the needs of children and youth; and
- Coordinate with arthritis activities sponsored by the National Institute on Arthritis and Musculoskeletal and Skin Diseases, and the National Center for Medical Rehabilitation Research.

Proposed Priority 3: Stroke Rehabilitation

Background

In the U.S., there are approximately three million stroke survivors and 400,000 to 500,000 new or recurrent stroke cases annually (Gorelick, P., "Stroke Prevention," *Archives of Neurology*, 52(4), pgs. 347–355, 1995). Stroke survivors are the largest population in rehabilitation hospitals, and an estimated \$30 billion is spent on stroke treatment each year (Alberts, M., et al., "Hospital Charges for Stroke Patients," *Stroke*, 27(10), pgs. 1825–1828, 1996). Previous NIDRR-funded stroke rehabilitation research has focused on prevention and treatment of secondary conditions of stroke; enhancing functional capacity following stroke; improving social and community functioning; and studying the natural history of impairment, disability, and quality of life after stroke.

Rehabilitation goals for stroke patients focus on maximizing physical and psychological function, teaching patients about prevention of recurrent stroke, and working with family members to facilitate integration of the person recovering from stroke back into family and community settings. Stroke patients potentially face a number of functional problems resulting from the paralysis, dysphagia, neurological, and other health-related sequelae of stroke.

Higher order cognitive deficits, such as incomprehension and short-term memory loss, have been shown to have a primary role in predicting rehabilitation length of stay, functional outcome and long-term care needs of stroke survivors. Early, comprehensive assessment of cognitive deficits has been shown to play a significant role in effecting better rehabilitation outcomes (Galski, T., et al., "Predicting Length of Stay, Functional Outcome, and Aftercare in the Rehabilitation of Stroke Patients. The Dominant Role of Higher-Order Cognition," *Stroke*, 24 (12), pgs. 1794–1800, December 1993).

Endurance exercise is recognized as an important component of rehabilitation for stroke patient recovery

of sensorimotor function. The ability of stroke patients to participate in exercise is compromised because they have lowered motor functional ability as a result of both reduced oxidative capacity and reduced availability of motor units. Traditional methods of measuring aerobic capacity are not appropriate for this population, nor are exercise training protocols that do not reflect stroke patient capacity for exercise (Potempa, K., et al., "Benefits of Aerobic Exercise After Stroke," *Sports Medicine*, 21(5), pgs. 337–46, 1996).

Changes in personality, mood, and temperament can be confusing and distressing for stroke survivors and their caregivers. Depression can be a significant problem for both survivors and caregivers (Kumar, A., et al., "Quantitative Anatomic Measures and Comorbid Medical Illness in Late-life Major Depression," *American Journal of Geriatrics Psychiatry*, 5(1), pgs. 15–25, 1997). Effective treatment of psychological and behavioral problems may require more standardized approaches that incorporate psychopharmacological, behavioral, and psychological interventions.

Although stroke is predominantly a phenomenon that strikes persons aged 65 and over, five percent occurs in persons under age 45. Individuals in this age cohort are generally employed, have a longer life expectancy than older stroke patients, and generally have better underlying health status and incur less brain injury related to the stroke (Ferro, J. and Crespo, M., "Prognosis After Transient Ischemic Attack and Ischemic Stroke in Young Adults," *Stroke*, (8), pgs. 1611–1616, August 1994). Rehabilitation for younger patients may emphasize vocational options, sexuality, and social functioning (Roth, E., "From the Editor," *Topics in Stroke Rehabilitation—The Young Stroke Survivor*, Vol. 1, pg. vi, Spring, 1994). In addition, complications such as drug use or pregnancy may complicate rehabilitation strategies (Meyer, J., et al., "Etiology and Diagnosis of Stroke in the Young Adult," *Topics in Stroke Rehabilitation—The Young Stroke Survivor*, Vol. 1, pgs. 1–14, Spring, 1994).

Persons at the other end of the age spectrum, those over age 75 who comprise 41.8 percent of stroke rehabilitation patients (Personal communication with Samuel J. Markello, Ph.D. and Carl V. Granger, M.D., Director, National Rehabilitation Outcomes Database, maintained by the Uniform Data System for Medical Rehabilitation, University of Buffalo,

January 1998), are at risk for poor rehabilitation outcomes possibly because of the effects of frailty and comorbid disease (Falconer, J., et al., "Stroke Inpatient Rehabilitation: A Comparison Across Age Groups," *Journal of the American Geriatric Society*, 42(1), pgs. 39–44, January 1994). In this population, presence of a healthy and caring spouse, bladder and bowel continence, and ability to feed oneself have predicted better outcomes (Reddy, M. and Reddy, V., "After a Stroke: Strategies to Restore Function and Prevent Complications," *Geriatrics*, 52(9), pgs. 59–62, September 1997).

Prevention of stroke recurrence is increasingly a goal of medical rehabilitation stroke treatment programs (Gorelick, P., "Stroke Prevention," *Archives of Neurology*, 52(4), pgs. 347–355, April 1995). Prevention methods include teaching individuals to monitor their blood pressure, raising awareness of the importance of nutrition and exercise, and educating family members about stroke.

Medical research shows promise for dramatically improving the diagnosis and treatment of stroke in acute care settings. New drug therapies may significantly limit the impact of the initial stroke. Better diagnostic tools, such as using magnetic resonance imaging (MRI) to determine stroke type, size, and location, will result in earlier diagnosis and treatment (Centofanti, M., "Fighting Back Against Brain Attack," *Johns Hopkins Magazine*, pgs. 18–24, November 1997). The consequences of improved initial stroke treatment for rehabilitation treatment and service delivery mechanisms are unknown.

Changes in financing and service delivery models of stroke rehabilitation have created different rehabilitation treatment setting options for stroke patients. Increasingly stroke patients are receiving rehabilitation in post-acute service settings (e.g., nursing-home based rehabilitation programs). As a consequence of these changes, there are questions about the impact on outcomes of stroke patients. For instance, how does treatment intensity vary across settings; does treatment intensity affect outcomes across settings; do population characteristics differ across settings? Initial research indicates that outcomes may not differ dramatically when comparing acute to post-acute rehabilitation settings (Cramer A., et al., "Outcomes and Costs After Hip Fracture and Stroke—A Comparison of Rehabilitation Settings," *JAMA*, Vol. 277, pgs. 396–404, 1997); however, knowledge about long-term outcomes of treatment in these different settings is still inconclusive.

Another development affecting stroke rehabilitation is implementation of practice guidelines. In 1996, the Agency for Health Care Policy and Research published stroke treatment guidelines (Post-Stroke Rehabilitation: A Quick Reference Guide for Clinicians, Pub. 95-0663, 1996). These guidelines aim to minimize variation in treatment across acute care and rehabilitation settings (Ringel, S. and Hughes, R., "Evidence-based Medicine, Critical Pathways, Practice Guidelines, and Managed Care. Reflections on the Prevention and Care of Stroke," Archives of Neurology, 53(9), pgs. 867-871, 1996). The rate of adoption of these guidelines and their impact on rehabilitation service and outcomes is not yet known.

The Secretary proposes to establish an RRTC for Stroke Rehabilitation to develop and evaluate rehabilitation approaches to improve stroke rehabilitation treatment for all patients. The RRTC shall:

- (1) Identify, develop, and evaluate rehabilitation techniques to improve outcomes for all stroke patients, giving specific emphases to rehabilitation needs of older and younger patient groups and to methods that incorporate cognition in the treatment protocols;
- (2) Develop and evaluate standard aerobic exercise protocols; and
- (3) Identify and evaluate methods to identify and treat depression and other psychological problems associated with stroke;

- (4) Determine the effectiveness of stroke prevention education provided in medical rehabilitation settings;

- (5) Evaluate the impact of changes in diagnosis and medical treatment of stroke on rehabilitation needs;

- (6) Evaluate long-range outcomes for stroke rehabilitation across different treatment settings;

- (7) Evaluate the impact of stroke practice guidelines on delivery and outcomes of rehabilitation services.

In carrying out the purposes of the priority, the RRTC must:

- Collaborate with RRTCs on Health Care for Individuals with Disabilities—Issues in Managed Health Care, and Aging with a Disability; and
- Coordinate with stroke activities sponsored by the National Center for Medical Rehabilitation Research and the National Institute on Neurological Disorders and Stroke.

Rehabilitation Engineering Research Centers

The authority for RERCs is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3)). The Secretary may make awards for up to 60 months through

grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by

- (a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

- (b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

- (c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) other scientific research to assist in meeting the employment and independent needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RERC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34

CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed General RERC Requirements

The Secretary proposes that the following requirements apply to these RERCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process. The Secretary is interested in receiving comments on these proposed requirements:

The RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must disseminate research results and other knowledge gained from the Center's research and development activities to persons with disabilities, their representatives, disability organizations, businesses, manufacturers, professional journals, service providers, and other interested parties.

The RERC must develop and carry out utilization activities to successfully transfer all new and improved technologies developed by the RERC to the marketplace.

The RERC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, development, training, and dissemination activities, and in evaluating the Center.

The RERC must conduct a state-of-the-science conference in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Proposed Priority 4: Prosthetics and Orthotics

Background

Prosthetic limbs (also called artificial or replacement limbs) perform functions previously performed by lost, absent, or portions of limbs. Orthoses (also called braces or anatomical technology

devices) are devices applied to limbs or other parts of the body that have either lost or impaired function to compensate for certain differences in anatomical shape or size, muscle weakness or paralysis. Appropriately fitted prosthetic and orthotic (P&O) devices improve functional abilities for work and ADL.

The National Health Interview Survey of 1992 reported a prevalence in the United States of 102,000 individuals with upper extremity loss or absence, and 256,000 individuals with lower extremity loss or absence (LaPlante, M. and Carlson, D., "Disability in the United States: Prevalence and Causes, 1992" Disability Statistics Report No. 7, NIDRR, pg. 29, 1996). The majority of these individuals use or need prosthetic limbs. It is more difficult to estimate the prevalence of individuals who use or need orthotic devices because orthoses are used in a wide variety of disabilities, and unlike loss or absence of a limb, have not historically been a specific category in national surveys. However, the National Health Interview Survey on Assistive Devices (NHIS-AD) of 1990 reported that 3,514,000 individuals in the United States used anatomical technology devices, categorized as braces for either the leg, foot, arm, hand, neck, back or other (LaPlante, M. P., *et al.*, "Assistive Technology Devices and Home Accessibility Features: Prevalence, Payment, Need, and Trends," Advance Data from Vital and Health Statistics, National Center for Health Statistics, No. 217, pg. 6, 1992).

According to the Institute of Medicine, there is a lack of a complete and widely accepted base of scientific and engineering data to support the process of individuals obtaining the optimum device for their particular need. The lack of an effective scientific and theoretical foundation for human gait inhibits the engineering design of technology to aid ambulation. More work is also needed in research and development directed to the problems of arm and hand replacement (Enabling America: Assessing the Role of Rehabilitation Science and Engineering, Institute of Medicine Report, pgs. 111-117, 1997).

The enormous diversity of P&O devices to address many different muscular, neuromuscular, and skeletal issues, adds to the complexity of this field and supports the need for quantitative documentation to improve the process by which individuals obtain the most appropriate P&O device for their need (Esquenazi, A. and Meier, R. H., "Rehabilitation in Limb Deficiency. 4. Limb Amputation," Archives of Physical Medicine and Rehabilitation,

Vol. 77, pgs. s18-s28, 1996). For example, there are approximately 100 commercially available prosthetic knees capable of being used in transfemoral prostheses (Michael, J. W., "Prosthetic Knee Mechanisms," Physical Medicine and Rehabilitation: State of the Art Reviews, Vol. 8, pgs. 147-164, 1994), making it difficult to evaluate all possible options. The trend in health care toward evidence-based decision making will require the collection and analysis of data that may not have occurred in the past (Guyatt, G., *et al.*, "Evidence-Based Medicine: A New Approach to Teaching the Practice of Medicine," JAMA, Vol. 268, pgs. 2420-2425, 1992).

Evaluations will play a key role in shaping the services available in the future (Hailey, D. M., "Orthoses and Prostheses," International Journal of Technology Assessment in Health Care, Vol. 11, pgs. 214-234, 1995). As more quantitative measurements are being made at the individual level with respect to device selection, there is a need to collect data on use of devices by individuals in a uniform format for archival reference and research purposes. A database that could be used to evaluate the outcomes of individuals using P&O devices does not exist. Such a database might include, but would not be limited to: technical specifications and details of the device; appropriate performance and outcome measures; relevant anthropometric measurements of the wearer; appropriate medical and demographic data, and payment information.

The increased attention to prosthetic technology in developing nations (Day, H. J. B., "A Review of the Consensus Conference on Appropriate Prosthetic Technology in Developing Countries," Prosthetics and Orthotics International, Vol. 20, pgs. 15-23, 1996) along with the advanced state of science in many European nations, provides opportunity and impetus for the development of international standards in P&O. In addition, increased international exchanges of both information and technology, as a result of comparative work, are highly likely to be beneficial to both the United States and other countries.

Proposed Priority 4

The Secretary proposes to establish an RERC on Prosthetics and Orthotics to strengthen and expand the scientific and engineering basis for the field, and develop new ways to use information technology that will ultimately result in delivery of improved service to individuals who can benefit from

prosthetic and orthotic devices. The RERC shall:

(1) Increase the understanding of the scientific and engineering principles for human locomotion, reaching, prehension, and manipulation, and incorporate these principles into the design of P&O devices;

(2) Develop and evaluate a prototype computer-based system to select the most appropriate P&O device (or combination of devices), and fit the device to an individual;

(3) Develop a prototype database of individuals using P&O devices in collaboration with industry including, but not limited to, technical details of the device, appropriate performance and outcome measures, relevant anthropometric measurements of the wearer, appropriate medical and demographic data, and cost and payment information; and

(4) Maintain an international exchange of scientific information and participate in the development of international standards.

In carrying out these purposes, the RERC must coordinate on activities of mutual interest with the RERC on Land Mines.

Proposed Priority 5: Wheeled Mobility Background

Approximately 1.4 million Americans use a wheelchair as their primary source of mobility (Kraus, L., *et al.*, Chartbook on Disability in the United States, InfoUse, Berkeley, CA, 1996), including approximately 600,000 Americans who live in skilled nursing facilities and are over the age of 65 (Shaw, G. and Taylor, S. J., "A Survey of Wheelchair Seating Problems of the Institutionalized Elderly," Assistive Technology, Vol. 3, RESNA Press, pgs. 5-10, 1991). The number of Americans who use wheelchairs nearly doubled between 1980 and 1990 while the general population increased by 13 percent during that same period (LaPlante, M. P., *et al.*, "Assistive Technology Devices and Home Accessibility Features: Prevalence, Payment, Need, and Trends," Advance Data from Vital and Health Statistics, No. 217, U.S. Department of Health and Human Services, September, 1992). The number of wheelchair users increases as a population ages (Ohlin, P., *et al.*, "Technology Assisting Disabled and the Older People in Europe," The Swedish Handicap Institute, Stockholm, 1995). As the American population continues to grow older, the number of individuals who will require the use of a wheelchair for mobility is expected to increase.

Wheelchairs and wheelchair seating systems have dramatically improved over the past decade due in part to advances in lightweight, high-strength materials, improved mechanical designs, and improved microprocessor control technologies, and more efficient drive train systems for powered chairs. There are virtually hundreds of options available to wheelchair users (e.g., frame sizes and designs, castors, hand rims, seat sizes, and seat backs). Selecting the appropriate options when either prescribing or purchasing a wheelchair or wheelchair seating system can be complicated and difficult for therapists and consumers.

Individuals who use powered wheelchairs often rely on external devices (e.g., ventilators, augmentative communication devices, and environmental control systems) for respiratory support or to help them function during the day. Improvements in electronic technologies have led to the development of sophisticated wheelchair controllers with built-in flexibility and adjustability. Typical controllers are based on microcomputers and allow for the adjustment of parameters (e.g., acceleration and deceleration control, speed control, and tremor dampening) to improve the user's ability to control the wheelchair safely (Cook, A. M. and Hussey, S. M., *Assistive Technologies: Principles and Practice*, pg. 549, 1995). These controllers are also capable of directly controlling external devices. Most external devices are made by companies other than wheelchair manufacturers. As a result, compatibility between external devices and powered wheelchairs is often problematic.

Wheelchairs and wheelchair seating systems combine to provide mobility, pressure relief, postural support, deformity management, and increased comfort, function and tolerance (Hobson, D. A., "Seating and Mobility for the Severely Disabled," *Rehabilitation Engineering*, pgs. 193–252, 1990). Most wheelchair users are candidates for seating and positioning interventions. Typical seating systems statically control an individual's posture by constraining the individual to a fixed position using modular or custom fit devices and systems such as foam wedges, hand-shaped foams, "foam-in-place," vacuum consolidation, and CAD-CAM (Cook, A. M. and Hussey, S. M., *op. cit.*, pgs. 237–239). For individuals who have a high degree of muscle tone or spasticity, staying in a fixed position can be uncomfortable and cause pressure sores. An alternative to static seating is dynamic seating. A

recent case study in this area of research looked at the benefits of a dynamic seating system for an adolescent with cerebral palsy with a high degree of extensor tone. This system allowed the individual to extend during spasms, then returned the individual to a functional seating posture upon relaxation resulting in a reduction of generalized tone and improved posture (Ault, H. K., *et al.*, "Design of a Dynamic Seating System for Clients with Extensor Spasms," *Proceedings of the RESNA 1997 Annual Conference*, pgs. 187–189, 1997).

Pressure relief is critical for individuals who have little or no sensation in weight bearing areas, such as persons with spinal cord injury and some elderly, or those who are unable to shift their weight to relieve pressure (Bergen, A., *et al.*, *Positioning for Function: Wheelchairs and Other Assistive Technologies*, pg. 4, 1990). Without proper pressure relief, individuals are prone to develop pressure sores (decubitus ulcers) that can result in tremendous costs for treatment and in time lost from work (Ditunno, J. F., Jr. and Formal, C. S., "Chronic Spinal Cord Injury," *New England Journal of Medicine*, Vol. 330, pgs. 550–556, 1994). The incidence for pressure sores has remained fairly static (Stover, S. L., *et al.*, *Spinal Cord Injury: Clinical Outcomes from the Model Systems*, pgs. 109–113, 1995). There are many factors that contribute to the development of pressure sores. External forces (i.e., tension, compression, and shear) applied to localized areas are the primary causes of pressure sores. Other factors affecting pressure sore development include, but are not limited to, stress, friction, body size, posture, nutrition, age, blood circulation, and the microclimate between one's body and the seating surface (Cook, A. M. and Hussey, S. M., *op. cit.*, pgs. 282–285). Understanding the interactions between these factors is paramount to improving seating and positioning systems.

Decisions made during seating evaluations are often subjective in nature and are based upon observational analyses and past experience of the therapists involved. There are over 300 commercially available cushions on the market (HyperABLEDATA, 1997), as well as a myriad of wheelchair options. Understanding these options and knowing when to use them is difficult for therapists and consumers. Voluntary performance standards for seating and clinical measurement devices would allow for objective comparison of products based upon standardized test results from each manufacturer.

A number of outcome measurement tools may be used to measure functional outcomes of individuals during the rehabilitation process. However, many of these tools do not consider assistive technology interventions, including seating and mobility, when rating an individual's overall performance.

For example, in order to get a maximum score using the Functional Independence Measure, the individual cannot rely on assistive technology; thereby implying that a person cannot be totally functionally independent if he or she uses assistive technology devices (Scherer, M. J. and Galvin, J. C., "An Outcomes Perspective of Quality Pathways to the Most Appropriate Technology," *Evaluating, Selecting, and Using Appropriate Assistive Technology*, pg. 21, 1996). A number of clinical measurement devices (e.g., pressure monitoring devices, and seating simulators) may be used in seating and mobility clinic environments, however, they do not systematically measure and record outcomes of wheelchair and seating interventions.

Proposed Priority 5

The Secretary proposes to establish an RERC on Wheeled Mobility to improve the efficiency and selection of wheelchairs and wheelchair seating systems and investigate new seating system strategies including dynamic seating systems and pressure sore prevention. The RERC shall:

- (1) Develop and evaluate strategies that can be used to aid therapists and consumers in making informed decisions when prescribing or purchasing new wheelchairs and wheelchair seating systems;
- (2) Develop and evaluate strategies in collaboration with industry to promote the integration of external devices with powered wheelchairs and ensuring their compatibility and usability;
- (3) Investigate the viability of dynamic seating systems;
- (4) Investigate the factors that contribute to the development of pressure sores and develop and evaluate tools, devices and strategies to prevent them from occurring;
- (5) Investigate the use of voluntary performance standards for wheelchair seating devices and clinical measurement devices and, if appropriate, develop in collaboration with industry strategies to facilitate the implementation of those standards; and
- (6) Develop and evaluate outcome measurement tools for quantifying seating clinic intervention results.

In carrying out the purposes of the priority, the RERC must coordinate on

activities of mutual interest with all the RRTC's addressing Spinal Cord Injury and the RRTC on Aging with a Disability.

Proposed Priority 6: Technology Transfer

Background

Technology transfer is a means of capitalizing on and increasing the value of an initial investment in research of a particular technology through new applications. Technology transfer also involves moving conceptualizations and new inventions from a potential application into a working prototype and, ultimately, into a commercial product. There has been an increased interest in developing assistive technology in recent years. Basic research has yielded innovations developed with the disability population in mind and more generic applied research has resulted in new ways to transfer existing technologies initially developed for different purposes into assistive technology products. In addition, there are an increasing number of entrepreneurs and inventors developing devices specifically for persons with disabilities.

Approximately 13 million people with disabilities use assistive technology devices to assist them with major life activities (Kraus, L., *et al.*, Chartbook on Disability in the United States, InfoUse, Berkeley, CA, 1996). Understanding the functional needs of persons with disabilities, translating those needs into technical solutions, identifying the markets and determining which technologies may be successfully transferred into usable assistive technology products is critical to the technology transfer process (Spaepen, A.J., "Technology Transfer and Service Delivery in Rehabilitation Technology," *Journal of Rehabilitation Sciences*, Vol. 4, pgs. 84-87, 1991). The assistive technology market is expected to grow dramatically over the next two decades as the American population ages and as the survival rate of accident victims continues to climb (Federal Laboratory Consortium, "Federal Laboratory Technologies Enable the Disabled," *Technology Transfer Business*, Vol. 4, pg. 11, 1997).

There are models of technology transfer that are routinely utilized by government, small businesses, nonprofit organizations, universities and industry (Rouse, D., "Technology Identification and Partnership Development," *Research Triangle Institute*, 1997). These models assume a market that is identifiable and definable, somewhat homogeneous, visible, and well-

financed. Transferring promising technologies and new inventions to the assistive technology arena presents unique challenges. Devices that either have the potential for use by persons with disabilities, or were invented for consumers with disabilities often are not successfully commercialized because of the limited number of potential users or the developer's inexperience and limited understanding of disabilities and the assistive technology marketplace (Gilden, D., "Moving from Naive to Knowledgeable on the Road to Technology Transfer," *Technology and Disability*, Vol. 7, pgs. 115-125, 1997).

Frequently, inventions and prototypes of devices require considerable engineering, modification and redesign. The vast majority of assistive technology companies are very small and have limited access to knowledge, resources, markets, funds, skills and finance (Swanson, D., "Determining the Government's Responsibilities in Technology," *Journal of Technology Transfer*, Vol. 20 (2), pgs. 3-4, 1995). Companies and entrepreneurs interested in transferring inventions and existing technologies into new products for persons with disabilities require technical assistance to make sound and profitable decisions and to do a better job of analyzing the viability of potential products.

Proper screening of devices is critical to the assistive technology transfer process and requires a feasibility study to be performed for each device prior to any significant investment of time and financial resources. Typical questions to ask include: Does the device already exist in some other form? Do consumers have alternate and satisfactory ways to perform the same function that would negate the need for another device? Would the required investment justify the development of the new device? Is the market too small? Are consumers interested in using the device? (Newroe, B.N. and Oskardottir, A.Y., "Identification and Networking of Assistive Technology-Related Transfer Resources Through the Consumer Assistive Technology Network (CATN)," *Technology and Disability*, Vol. 7, pgs. 31-45, 1997).

Assistive technology evaluation involves activities beyond the initial screening of new products and innovations. It is important to identify and include all other stakeholders in the evaluation process including, but not limited to, technology experts, engineers, developers, manufacturers, corporations, community organizations, providers and potential purchasers. In addition to evaluation studies, it is

necessary to provide an estimate of the resources required and of the product's readiness for commercialization in order to attract a developer or manufacturer. Safety, reliability, cost, customer satisfaction and durability must also be measured (Sheredos, S., *et al.*, "The Department of Veterans Affairs Rehabilitation Research and Development Service's Technology Process," *Technology and Disability*, Vol. 7, pgs. 25-30, 1997).

Most assistive technology devices are considered orphan products (devices used by very small populations and having limited market appeal). In anticipation of a products' low volume and unproven market demand, potential manufacturers and suppliers must be offered a well researched device prospectus that will act as an incentive for production. Products incorporating the principles of universal design are developed with built-in flexibility so they are usable by all people, regardless of age and ability, at no additional cost (Mace, R., *et al.*, "Accessible Environments: Toward Universal Design," *Design Interventions: Toward Universal Design*, pg. 156, 1991). The evaluation phase should include an assessment of whether a product may have universal application, thereby increasing its marketability.

Proposed Priority 6

The Secretary proposes to establish an RERC on technology transfer to facilitate and improve the process of moving new, useful and better assistive technology inventions and applications of existing technologies from the prototype phase to the marketplace to benefit persons with disabilities. The RERC shall:

(1) Identify and evaluate models of technology transfer that are applicable to assistive technology;

(2) Identify the needs and provide technical assistance, including engineering design and support, to inventors, entrepreneurs, small companies, research laboratories, and industry and university labs to facilitate the transfer of assistive technology with particular emphasis on orphan products;

(3) Develop and implement methodologies to screen promising assistive technology and to evaluate the potential for commercialization, including an assessment of principles of universal design of prototypes developed by individual inventors, small businesses and public or private research laboratories for use by persons with disabilities; and

(4) Design and disseminate protocols for technical, user and market

evaluations of promising inventions and new uses for existing technologies.

In carrying out the purposes of the priority, the RERC must:

- Conduct activities in consultation with industry, public and private research facilities, small businesses, entrepreneurs, university-based research laboratories and consumers; and
- Provide technical assistance and support to all RERC's on issues pertaining to technology evaluation and transfer.

Proposed Priority 7: Telerehabilitation

Background

One of the most notable changes in the nation's health care system is a dramatic downward shift in the average length of stay for patients admitted to rehabilitation hospitals. According to the National Spinal Cord Injury Statistical Center, the average length of stay for patients admitted into the Model SCI Care System dropped from 115 days in 1974 to 49 days in 1995 ("Spinal Cord Injury: Facts and Figures at a Glance," National Spinal Cord Injury Statistical Center, University of Alabama at Birmingham, August, 1997). Individuals living in rural areas may have less of an opportunity to continue their rehabilitation than do individuals living in urban settings due to a lack of rehabilitation outpatient centers in rural regions. Given that individuals are being discharged earlier in the rehabilitation process, there is tremendous need for new and innovative therapeutic devices and strategies that can be used to continue therapy for individuals living in remote settings who may not have access to outpatient therapy.

For more than 30 years, clinicians, researchers, and others have been investigating the use of advanced telecommunications and information technologies to improve health care, resulting in the advent of telemedicine. Telemedicine has a variety of applications including patient care, education, research, administration and public health (Telemedicine: A Guide to Assessing Telecommunications in Health Care, Institute of Medicine Report, National Academy Press, pg. 16, 1996). At least 10 States have established Medicaid payment mechanisms for medical services provided through telemedicine (U.S. Department of Commerce, "Telemedicine Report to Congress," January 31, 1997). Technological advances in medicine, sensor technologies, telecommunications and information technologies provide unique opportunities for expanding upon the field of telemedicine to further

develop the field of telerehabilitation. By using technology, telerehabilitation enables rehabilitation professionals to provide rehabilitation services to individuals when distance separates the participants (Temkin, A.J., *et al.*, "Telerehab: A Perspective of the Way Technology is Going to Change the Future of Patient Treatment," REHAB Management, pg. 28, February/March, 1996). Telecommunication and information technologies used in telemedicine are modernizing medical rehabilitation services and are beginning to be used in other aspects of the rehabilitation process. For example, ongoing experiments to provide effective delivery of therapeutic counseling from the offices of professional psychologists to clients physically located elsewhere, using modified video-conferencing techniques, are under study by the American Psychological Association (Sleek, S., "Providing Therapy from a Distance," APA Monitor, American Psychological Association, Vol. 28, No. 8, August, 1997).

Two very important aspects of comprehensive rehabilitation are education and training. Rehabilitation practitioners work closely with individuals and family members to enhance their functional abilities, assist them in adjusting to their disability (Haas, J., "Ethical Issues in Rehabilitation Medicine," Rehabilitation Medicine: Principles and Practice, Second Edition, pg. 34, 1993), and lessen the likelihood of secondary complications (Stover, S., *et al.*, Spinal Cord Injury: Clinical Outcomes from the Model Systems, pg. 322, 1995). Secondary complications from acute trauma, such as spinal cord injury, stroke, and traumatic brain injury, are a leading cause for re-hospitalization. One way of reducing the likelihood of contracting secondary complications is through education, training, and monitoring. This can be achieved using portable, low-cost communication devices capable of providing video and audio connection between comprehensive rehabilitation facilities and individuals living in rural communities. Those devices can enable individuals to communicate with rehabilitation professionals while at home or in remote clinical settings, and to continue with the educational and training components of the rehabilitation process. These devices also allow physicians and other clinicians to monitor the progress of these individuals and offer clinical diagnoses and interventions when appropriate.

Traditional therapeutic interventions include the use of heat, cold, light, friction, and pressure to facilitate healing and relieve pain in affected areas. Many of these therapy techniques require costly equipment and can be used only by trained therapists. Given that individuals are being discharged earlier in the rehabilitation process, there is tremendous need for new, innovative and cost-effective therapeutic devices and strategies that can be used to safely continue therapy for individuals living in remote settings who may not have access to comprehensive outpatient rehabilitation therapy.

Virtual reality is an interactive computer-based technology capable of simulating complex three-dimensional (3-D) environments. The number of virtual reality applications has risen dramatically over this past decade and includes flight simulators, 3-D medical imaging technologies, and entertainment systems (Hayward, T., Adventures in Virtual Reality, pgs. 41-48, 1993). The benefits of combining virtual reality with rehabilitation interventions are potentially extensive. Virtual reality technologies are being used to convert sign language into speech and to develop barrier-free designs for people with physical disabilities. Biosensors that provide qualitative and quantitative data about muscle activity, pressure and movements are also capable of being integrated into virtual reality systems for use in rehabilitation.

Proposed Priority 7

The Secretary proposes to establish an RERC on telerehabilitation to identify and develop technologies capable of supporting rehabilitation services for individuals who do not have access to comprehensive outpatient rehabilitation services. The RERC shall:

- (1) Identify and evaluate communication systems capable of connecting comprehensive rehabilitation facilities with therapists, individuals and family members living in remote settings to provide ongoing rehabilitation education and training services;
- (2) Develop and evaluate monitoring and diagnostic tools that can be used in the provision of rehabilitation services through telerehabilitation;
- (3) Develop and evaluate strategies and devices to provide and monitor therapeutic interventions in remote settings; and
- (4) Investigate the use of virtual reality in rehabilitation including, but not limited to, education, monitoring, diagnosing, and therapy.

In carrying out the purposes of the priority, the RERC must coordinate on activities of mutual interest with the RERCs on Telecommunications and Information Technologies Access and the RRTC on Rural Rehabilitation Services.

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Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this

notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street SW, Washington, D.C., between the hours of 9 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays. Applicable Program Regulations: 34 CFR Parts 350 and 353. Program Authority: 29 U.S.C. 760-762.

Dated: February 25, 1998.

(Catalog of Federal Domestic Assistance Numbers 84.133B, Rehabilitation Research and Training Centers, and 84.133E Rehabilitation Engineering Research Centers)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98-5379 Filed 3-2-98; 8:45 am]

BILLING CODE 4000-01-P

Research
Development
Test
Evaluation
Production

Tuesday
March 3, 1998

Part III

Office of Personnel Management

Laboratory Personnel Management
Demonstration Project; Department of the
Army, U.S. Army Medical Research and
Materiel Command, Fort Detrick,
Frederick, Maryland; Notice

OFFICE OF PERSONNEL MANAGEMENT

Laboratory Personnel Management Demonstration Project; Department of the Army, U.S. Army Medical Research and Materiel Command, Fort Detrick, Frederick, Maryland

AGENCY: Office of Personnel
Management.

ACTION: Notice of approval of
demonstration project final plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995 authorizes the Secretary of Defense, with Office of Personnel Management (OPM) approval, to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology Reinvention Laboratories. 5 U.S.C. 4703 authorizes OPM to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

DATES: This demonstration project may be implemented at the U.S. Army Medical Research and Materiel Command (MRMC) beginning June 3, 1998.

FOR FURTHER INFORMATION CONTACT:
MRMC: Carol Dick, US Army Medical Research and Materiel Command, ATTN: MCHD-CP, 810 Schreider Street, Suite 120, Fort Detrick, Maryland 21702-5000, phone 301-619-2247.
OPM: Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, phone 202-606-1138.

SUPPLEMENTARY INFORMATION:

1. Overview

On March 12, 1997, [62 FR 11676] OPM published this proposed demonstration plan and received 125 comments (one letter had 62 signatures and another had 35 signatures). Seven individuals commented on the **Federal Register** notice at the Public Hearings. These comments brought new and different perspectives to the attention of those responsible for implementing, overseeing, and evaluating the project. The comments highlighted instances of either miscommunication and/or misunderstanding of the present system as well as the project interventions. Further, the comments underscored the importance of providing training to employees and supervisors on the demonstration project. In consideration of the comments received, the demonstration project has been

modified to remove the annual general increase from the performance pay pool. This change required modification, clarification, and/or expanded text in the plan to address technical provisions. A summary of comments received, along with accompanied responses, is provided below:

A. Pay-for-Performance

1. *Comment:* There were 120 comments (one letter had 62 signatures and another had 35 signatures) that expressed concern over the inclusion of the annual general increase (often referred to as "cost-of-living allowance" (COLA) by many commentors) in the performance pay pool. Several indicated they believed it was inappropriate and may be illegal to deny their annual general increase, which they believed was provided to them by Congress to off-set inflation. Several stated that the annual general increase is not tied to performance, therefore, it should not be included in a pay-for-performance experimental program. One commentor stated this will be the first time a demonstration project will include the annual general increase in its "merit pay pool," and another stated neither China Lake nor the National Institute of Standards and Technology included the annual general increase in their demonstrations, and that the China Lake demonstration had ended because of problems with the experimental personnel system. Several commentors stated they were never informed prior to the proposed plan that the annual general increase/COLA would be part of the performance pay pool, while others claimed they had raised objections to the annual general increase/COLA being part of the performance pay pool prior to the publication of the **Federal Register**, yet their objections were ignored. Many expressed concern that without sufficient safeguards to prevent favoritism and abuse of power, inclusion of the annual general increase in the performance pay pool will result in supervisors denying increases to employees' base pay and/or bonuses and will reduce teamwork, i.e., pit employee against employee, and destroy morale. One employee suggested that because employees have no control over inflation, but do control their performance, that the awards budget should be increased to reward performance. Some commentors, however, did agree with the pay-for-performance concept.

Response: The comments on the annual general increase demonstrated both miscommunication and misunderstanding of both the present and proposed personnel systems.

Briefings were provided to all employees at each subordinate activity which included the fact that the "annual general increase" would be included in the performance pay pool. During the 2½ years of project development and design, many changes occurred. Periodic updates were provided to the activity Commanders and Directors for dissemination to the workforce. Commentors believed the term "annual general increase" was a cost of living allowance. For clarification purposes, the General Schedule (GS) pay adjustments authorized under 5 U.S.C. 5303 are based on the cost of labor, not the cost of living. Pay adjustments are linked to changes in the Employment Cost Index (ECI). The ECI measures the overall rate of change in employer's compensation costs in the private and public sectors, excluding the Federal Government. The ECI does not measure the cost of consumer goods and services. Additionally, the Department of Navy's "China Lake" demonstration project did include the annual general increase in its incentive pay pool for the purposes of rewarding employees based on performance. This compensation mechanism was designed to send a clear message that top performers are valued in the organization. The evaluations showed that a higher retention rate among top performers resulted under the China Lake demonstration project. Based on its success, Congress made permanent the China Lake demonstration project under the same authority that granted authorization of the DoD laboratory demonstration projects. We acknowledge concerns expressed by employees and have attempted to build a number of checks and balances in the new personnel system to ensure an equitably administered program. The awards program is separate from pay for performance and does not impact the performance pay pool. In light of the comments received, the annual general increase was removed from the performance pay pool. This change necessitated modification/revision in various parts of the plan. These changes are in Section III. C (Pay for Performance Management System), (Pay for Performance), and (Performance Pay Increases and/or Performance Bonus).

2. *Comment:* Two commentors were concerned that any type of performance bonus, rather than an increase in base pay, will have a negative effect on their retirement (e.g., determination of high-three salaries/matching funds for Thrift Savings Plan).

Response: Employees will have the potential for higher salaries (base pay

and performance bonus) than currently afforded in the GS system, based on their performance. The demonstration proposal clearly changes the methods of providing incentives to employees, including the provision of individual incentive bonuses or pay. Changing the method of determining base pay increases does not change any provision of the retirement system or any other benefit program. Under demonstration authority, retirement provisions cannot be changed.

B. Performance Pay Pool

1. *Comment:* Two comments received asked why employees rated at the "C" level in the lower half of the pay band receive an increase to their basic rate of pay while employees whose salary is beyond the mid-point with the same rating, will receive no increase to their basic rate of pay. They concluded that an employee who continues to perform at the "C" level could also end up in a lower pay band. Further, they felt that those employees who perform at the "A" or "B" level and have reached the top of their pay band may not move into the next pay band, and that the most these employees may receive is a performance bonus, which defeats the whole concept of rewarding outstanding performance.

Response: References to the mid-point of the pay bands (lower and upper half) no longer apply throughout the text of the proposed plan because of the change to remove the annual general increase from the performance pay pool (reference A1). Employees who are rated "C" will receive the annual general increase and locality adjustment, but will not be eligible for a performance based increase to their basic rate of pay or a performance bonus. Employees who perform at the "A" or "B" level will receive an adjustment in their basic rate of pay, a performance bonus, or a combination of both to reward them for performance, in addition to the annual general increase and locality adjustment. These changes are in Section III. C (Pay for Performance). Employees who have reached the top of their pay band may not move into the next pay band without a promotion. Movement into the next higher pay band constitutes a "promotion" which requires the employee to perform "higher level duties," not just continue to perform their current duties at the "A" or "B" level in their current pay band.

2. *Comment:* Two comments received requested clarification on the upper versus lower half of the pay bands and questioned why employees were compensated differently depending on

their performance and location within the pay band. A single comment was received on the size of the Engineers and Scientists (E&S) Pay Band II, specifically why it contains 8 pay bands when the proposed plan stated: "Each occupational family will be divided into three to five pay bands * * *"

Response: The decision to withdraw the annual general increase from the performance pay pool and continue granting the annual general increase to employees rated "A," "B," or "C" eliminates the need to determine upper and lower half of each pay band. The size of Pay Band II of the E&S Occupational Family encompasses 8 grades (not pay bands) under the current General Schedule (GS) system and was designed to allow progression from entry level to full-performance level of those positions. As illustrated in the proposed plan, the E&S Occupational Family is divided into 5 pay bands. The elimination of the distinctions between the upper and lower halves of the pay band and the mid-point principle have been removed in Section III. C (Performance Pay Pool).

C. Supervisory Bonus

Comment: Three commentors were concerned that no guidelines were established to avoid supervisory/managerial misuse of power, and one expressed concern that supervisors would be rewarded via supervisory bonuses, prior to demonstration of performance and that payment of the supervisory bonus from the performance pay pool was inappropriate.

Response: The supervisory bonus may be granted to recognize supervisory responsibilities required most often of those in the same pay band as non-supervisory subordinates. The Personnel Demonstration Project Standard Operating Procedures will delineate the criteria Commanders/Directors are to use when making a decision to grant these bonuses, which must be negotiated annually, and will not be treated as basic pay. The funds to pay supervisory bonuses are not a part of the pay-for-performance pool. It is anticipated that situations warranting supervisory bonuses will be minimal. Clarification has been added to Section III. C (Supervisory Bonus).

D. Revised Reduction-in-Force (RIF) Procedures

Comment: Five commentors expressed concerns about the proposed RIF procedures. Two were concerned that their rights during a RIF have been withdrawn or limited. One expressed concern that length of service was the last retention factor considered. Another

individual requested an explanation of the order of the retention factors and the definition of tenure. One individual requested a comparison of current versus proposed RIF procedures.

Response: The RIF rights and protections afforded to employees have not been removed. Current RIF procedures are covered under 5 CFR 351 and are complicated, costly, and relatively unresponsive to the needs of the organization. MRMC believes that flexible and responsive alternatives are needed that will place greater emphasis on performance rather than length of service. Only four elements in the RIF procedures have been modified: competitive areas, assignment rights, credit for performance ratings, and service computation date, as outlined below:

(1) Competitive areas have been modified to make each of the four occupational families a separate competitive area within each activity.

(2) Assignment rights have been modified to restrict bumping and retreating to positions within the employee's current occupational family, one pay band below the employee's current pay band. A preference eligible veteran with a compensable service-connected disability of 30% or more may retreat to positions, within the employee's current occupational family, two bands (or the equivalent of five (5) grades) below his/her current band.

(3) Credit for performance has been modified to be cumulative rather than averaged, and the number of years applied to specific ratings have been changed to A-10, B-7, C-3, and F-0. Cumulative performance ratings will serve as a stand alone retention determination in the RIF process after consideration of tenure and veterans preference.

(4) The service computation date (as determined by length of service) includes all creditable service (civilian and military) and will be used in situations where credit for performance results in equal standing of two or more individuals in a RIF situation. Tenure is the employee's type of appointment, i.e., career, career-conditional, temporary, term, excepted service, etc. Clarification has been provided in Section III. F (*Revised Reduction-in-Force (RIF) Procedures*) to explain when service computation date (length of service) will be applied.

E. Conversion

1. *Comment:* One comment concerned employees being adversely affected by receiving a lump sum bonus instead of an increase in their basic rate of pay if

the demonstration project ends or if employees transfer out of the project.

Response: The lump-sum bonus referred to by the commentor is the prorated within-grade increase (WGI) buyout as described in the conversion procedures in the project plan. However, the inclusion of pay banding, as outlined in the demonstration project, provides the potential for higher pay (base pay and performance bonus) than currently afforded in the GS system. Basic rates of pay attained during participation in the demonstration project will continue upon lateral conversion from the demonstration project to a GS position or if the demonstration project ends. (Except for Pay Band V positions in certain circumstances).

2. *Comment:* Two commentors asked exactly when the WGI buyout would be paid (either at the beginning of the demonstration project or on the one year anniversary date). Another commentor expressed concern over the fiscal burden of the lump-sum payment of the prorated WGIs.

Response: Clarification is provided under Part V of this plan. The funding required to pay employees for time served towards their WGI will be calculated/documented prior to implementation of the project and those funds will be set aside to be paid in a lump-sum at the one year anniversary of the demonstration project. These funds will be separate and apart from the performance pay pool for this one time payment.

F. Evaluation Plan

Comment: One commentor stated he did not see anything which listed an employee's increased satisfaction with pay, pay equity or performance awards or with the agency's understanding of personal or family issues as an expected or desired benefit.

Response: Part VII of the proposed plan provided information on the Evaluation Plan. Employee attitudes and feedback using surveys, structured interviews and focus groups, will be included in the evaluation methods used to assess the impact of the project and will be ongoing for the duration of the project. The personnel demonstration project will not be evaluating personal or family issues. Because these current policies and practices are not changed, these issues will not be evaluated by the proposal.

G. Personnel Management Board

Comment: Four comments expressed concerns regarding the Personnel Management Board (Board). Specifically, will the selection

procedures provide for a true representation of the civilian workforce, what are the qualifications to be on the board, and will there be checks and balances to ensure equitable treatment?

Response: The composition of the Personnel Management Board will be determined by the Commander, MRMC. We are sensitive to the concerns raised as to the composition of the Personnel Management Board. These concerns will be considered as the Commander, MRMC appoints members to the Personnel Management Board. The Personnel Management Board will be particularly sensitive to issues of fairness and equity, and is charged with the responsibility of providing oversight, policy, guidelines, and corrective action. Section II. H (Personnel Management Board) of the proposed plan spelled out the Board responsibilities which are delegated to the subordinate activity Commanders/Directors.

H. Miscellaneous Comments

1. *Comment:* A single comment stated that the proposed system violated the first principle of personnel management in that the people (i.e., military supervisors) administering the demonstration plan will not be subject to its provisions.

Response: It is true that military supervisors will not be covered by the demonstration project. However, it is also true that all supervisors (military and civilian) must comply with the rules and regulations set forth by the project. Project oversight will be provided by the Personnel Management Board and an executive steering committee made up of top level executives within the Department of Army.

2. *Comment:* A single commentor wanted to know why employees in the Senior Executive Service (SES), the Civilian Intelligence Personnel Management System (CIPMS), and the Federal Wage System (FWS) were not covered by the MRMC demonstration project.

Response: The SES, CIPMS, and FWS employees are all covered by personnel regulations, separate and apart from those governing General Schedule employees. The number of employees covered by these personnel systems were too small to attempt proposing changes and to realize any meaningful results at this time.

3. *Comment:* One commentor requested the demonstration project plan be written in terms that everyone understands.

Response: The comment is a good suggestion; however, the project plan

replaces many of the existing title 5 provisions, thus it must contain technical language. Wherever possible, we have tried to use language as simple as possible throughout the project plan.

4. *Comment:* One employee expressed concern that the Defense Finance and Accounting System (DFAS) can't handle formula driven payroll now, therefore, how can DFAS be expected to handle the new payroll system under the demo?

Response: Management from DFAS has been involved as DoD Research and Development Laboratories have moved towards implementing demonstration projects. Every effort is being made to allow for a smooth transition.

2. Demonstration Project System Changes

The following summarizes the changes and clarifications to the project plan that were of paramount interest to employees:

(1) Section II. E (Participating Employees). Deleted reference to ST employees following performance appraisal and awards provisions of the demonstration project.

(2) Section III. C (Pay for Performance Management System). Deleted the annual general increase from the funding for performance pay increases and/or bonuses, and to correct the computation in the example from "1,750,000" to "750,000"; adjusted shares to the following: "A"=2 shares, "B"=1 share, "C"=0; and reflected modifications required due to the withdrawal of the annual general increase from the performance pay pool funding. In addition, references to mid-point (upper/lower pay band) within a pay band have been deleted since they no longer apply.

(3) Section III. C (Pay for Performance Management System). Clarified the reason for granting a supervisory bonus and that funding for such will not be part of the performance pay pool.

(4) Section III. F (Revised Reduction in Force (RIF) Procedures). Clarified when service computation date (length of service) will be used in RIF procedures.

(5) Section V (Conversion). Provided for certain pay increases for non-competitive promotion equivalents during the first 12 months following conversion.

Dated: February 26, 1998.
Office of Personnel Management.

Janice R. Lachance,
Director.

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I. Executive Summary

This project was designed by the Department of the Army (DA), with participation of and review by the Department of Defense (DoD) and the Office of Personnel Management (OPM). The purpose of the project is to achieve the best workforce for the Medical Research & Materiel Command (MRMC) mission, adjust the workforce for change, and improve workforce quality.

The MRMC strives to exceed the greatest expectations of its many customers. To achieve this, the MRMC must be able to balance customer requirements for near-term technical and scientific products and information with the evolving capabilities of the workforce. These purposes will be significantly enhanced by interventions such as expanded developmental opportunities, the contingent employee appointment authority, broadbanding, pay for performance, etc.

The foundations of this project are based on the concept of linking performance to pay for all covered positions; simplifying paperwork and the processing of classification and other personnel actions; emphasizing partnerships among management, employees and unions representing covered employees; and delegating classification and other authorities to line managers. Additionally, the research intellect of the MRMC workforce will be revitalized through the use of expanded developmental opportunities. The use of these expanded opportunities will

reinvigorate the creative intellect of the research and development community.

Development and execution of this project will be in-house budget neutral, based on a baseline of September 1996 in-house costs and consistent with the DA plan to downsize laboratories. Army managers at the DoD S&T Reinvention Laboratory sites will manage and control their personnel costs to remain within established in-house budgets. An in-house budget is a compilation of costs of the many diverse components required to fund the day-to-day operations of a laboratory. These components generally include pay of people (labor, benefits, overtime, awards), training, travel, supplies, non-capital equipment, and other costs depending on the specific function of the activity.

This project will be under the joint sponsorship of the Assistant Secretary of the Army for Research, Development and Acquisition and the Assistant Secretary of the Army for Manpower and Reserve Affairs. The Commander, U.S. Army Medical Command (MEDCOM), will execute and manage the project. External project oversight within the Army will be achieved by an executive steering committee made up of top-level executives, co-chaired by the Deputy Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army (Civilian Personnel Policy). Oversight external to the Army will be provided by DoD and OPM.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. The quality of DoD laboratories, their people, and products has been under intense scrutiny in recent years. The perceived deterioration of quality is due, in substantial part, to the erosion of control which line managers have over their human resources. This demonstration, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products.

B. Problems with the Present System

The MRMC provides medical solutions for military requirements to protect and sustain the force. To do this, its management must acquire and retain

an enthusiastic, innovative, and highly educated/trained workforce. The MRMC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees. Today, industry laboratories can make an offer of employment to a promising new hire before the government can prepare the paperwork necessary to begin the recruitment process.

Currently, jobs are described using a classification system that is overly complex and specialized. This hampers a manager's ability to shape the workforce and match the positions while making best use of the employees. Managers must be given local control of positions and their classification to move both their employees and vacancies freely within their organization to other lines of the business activities to match the life cycle needs of supported customers.

These issues work together to hamper supervisors in all areas of human resource management. Hiring restrictions and overly complex job classifications, coupled with poor tools for rewarding and motivating employees and a system that does not assist managers in removing poor performers, builds stagnation in the workforce and wastes valuable time.

C. Changes Required/Expected Benefits

This project is expected to demonstrate that a human resource system tailored to the mission and requirements of the MRMC will result in: (a) Increased quality in the total workforce and the products they produce; (b) increased timeliness of key personnel processes; (c) increased retention of high quality employees and increased non-retention of poor quality employees; and (d) increased satisfaction with the MRMC and its products by all customers served.

The MRMC demonstration project builds on the successful features of demonstration projects at China Lake and the National Institute of Standards and Technology (NIST). These demonstration projects have produced impressive statistics on the job satisfaction for their employees versus that for the federal workforce in general. Therefore, in addition to expected benefits mentioned above, the MRMC demonstration project expects to find more satisfied employees on many aspects of the demonstration project including pay equity, classification accuracy, and fairness of performance management. A full range of measures

will be collected during Project Evaluation (Section VII).

D. Participating Organization

This demonstration project will cover approximately 1,000 MRMC civilian employees at all geographic sites within the United States. It should be noted that many sites currently employ fewer than 10 people and that the sites may change as the MRMC reorganizes, realigns, and complies with Base Realignment and Closure Act requirements. Successor organizations will continue coverage in the demonstration project. Approximately 46 percent of covered employees are located at Fort Detrick, Frederick, Maryland. The remaining employees are located at the following sites: Aberdeen Proving Ground, Maryland; Falls Church, Virginia; Fort Rucker, Alabama; Fort Sam Houston, Texas; Natick, Massachusetts; Washington, DC; Tobyhanna Army Depot, Pennsylvania; Fort Lee, Virginia; Tracy, California; Ogden, Utah; Brooks Air Force Base, Texas; Dayton, Ohio; Tripler Army Medical Center, Hawaii; and Fort Bragg, North Carolina. Additionally, the MRMC has some employees participating in the Flexiplace Program who are geographically located at Fort Collins, Colorado; Clarksville, Tennessee; and Jefferson, Maryland.

E. Participating Employees

The demonstration project includes appropriated funded civilian employees in the competitive and excepted service (to include non-citizens hired in the absence of qualified citizens) paid under the General Schedule (GS) pay system and DA Interns. The project plan does not cover Senior Executive Service (SES) employees, Scientific and Professional (ST) employees, Federal Wage System employees, and employees assigned to the GS-080 series and presently covered by the Civilian Intelligence Personnel Management System (CIPMS). Employees on temporary appointments will not be covered in the demonstration project. Personnel added to the MRMC in like positions, either through appointment, promotion, reassignment, change to lower grade or where their functions and positions have been transferred into the MRMC, will be converted to the demonstration project.

F. Labor Participation

The National Federation of Federal Employees (NFFE) and the American Federation of Government Employees (AFGE), represent professional and nonprofessional GS employees at some

sites within the MRMC. The MRMC will fulfill its obligations to consult and/or negotiate with the NFFE and AFGE, as appropriate, in accordance with 5 U.S.C. 4703(f) and 7117. The participation with the NFFE, and AFGE is within the spirit and intent of Executive Order 12871. The bargaining units of MRMC not endorsing the demonstration project will not participate.

G. Project Design

In October 1994, the MRMC began development of the specifics of this personnel demonstration proposal. A Personnel Demonstration Project Office was established and administrative support added in April 1995. Briefings of the proposal were initially conducted for the workforce at every participating subordinate activity with subsequent briefings provided upon request by Commanders/Directors.

Status of the project was provided to subordinate activity Commanders/Directors for dissemination to all employees. An electronic mail address was established in the Fall of 1994 and made available to all employees and managers for the purpose of expressing opinions and/or obtaining specific information about the project.

Review of the proposal and input by the MEDCOM, MRMC workforce, as well as critical and extensive reviews by Headquarters DA, the Office of the Secretary of Defense, and OPM since April 1995, led to the publication of the proposal in the March 12, 1997 **Federal Register**. Subsequently, Public Hearings were held, and comments from interested parties and the workforce were reviewed and considered, culminating in the publication of the final MRMC demonstration project plan.

H. Personnel Management Board

The MRMC intends to establish an appropriate balance between the personnel management authority/accountability delegated to subordinate activity Commanders/Directors and MRMC management/oversight responsibilities by establishing a Personnel Management Board (PMB). The Chairperson and members will be appointed by the Commander MRMC. The PMB will serve to provide oversight, policy, guidelines, corrective action, and evaluation as subordinate activity Commanders/Directors execute the following:

1. formulate and execute the civilian pay budget;
2. determine the composition of the pay-for-performance pay pools in accordance with the guidelines of this proposal and internal procedures;

3. administer funds allocation to pay pool managers;

4. determine hiring and promotion salaries as well as exceptions to pay-for-performance salary increases;

5. provide guidance to pay pool managers;

6. manage the awards pools;

7. select participants for the Expanded Developmental Opportunities Program, long term training, and any special developmental assignments;

8. adhere to guidelines concerning the promotion of employees into salary ranges designated "high grades";

9. ensure in-house budget neutrality to include tracking of average salaries, FTEs, etc.;

10. contact the PMB designee for problem resolution, recommending changes in policy/procedure, etc.; and

11. ensure that all employees are treated in a fair and equitable manner in accordance with all policies, regulations, and guidelines covering this demonstration project.

III. Personnel System Changes

A. Broadbanding

Occupational Families

Occupations at the MRMC will be grouped into occupational families. Occupations will be grouped according to similarities in type of work and customary requirements for formal training or credentials. The common patterns of advancement within the occupations as practiced at DoD Laboratories and in the private sector will also be considered. The current occupations and grades have been examined, and their characteristics and distribution have served as guidelines in the development of the four occupational families described below. Positions included in each occupational family are listed in Appendix A.

1. **Engineers and Scientists.** This occupational family includes all technical professional positions, such as positions in the biological, physical and social sciences, medical, veterinary, mathematical, and engineering fields. Ordinarily, specific course work or educational degrees are required for these occupations.

2. **E&S Technicians.** This occupational family contains specialized functions in fields that provide direct technical support to the scientific/engineering effort. Positions in these occupations may or may not require completion of formal college course work. However, training and skills in the various specialties are generally required.

3. **Administrative.** This occupational family contains specialized functions in

such fields as management analysis, accounting, budgeting, contracting, purchasing, legal, business and industry, library, quality assurance, and supply. Special skills in administrative fields or special degrees are required.

4. General Support. This occupational family is composed of positions requiring special skills and knowledge, such as typing, shorthand, or office automation skills, and job related experience. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Support functions include positions such as secretary, mail clerk, medical clerk, accounting technician and supply technician.

Pay Bands

Each occupational family will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all occupational families. Each occupational family will be divided into three to five pay bands, each pay band covering the same pay range now covered by one or more grades. A salary overlap, similar to the current overlap between GS grades, will be maintained.

Ordinarily, an individual will be hired at the lowest salary in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance level within a band.

The MRMC broadbanding plan expands the broadbanding concept used at China Lake and NIST by creating Pay Band V of the Engineers and Scientists Occupational Family. This pay band is designed for Senior Scientific Technical Managers.

Current OPM guidelines of Senior Executive Service (SES) and Scientific and Professional (ST) positions do not fully meet the needs of MRMC. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS-15 grade level. The primary knowledges and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are reserved for bench research scientists and engineers; these positions require a very high level of technical expertise and they have little or no supervisory responsibility.

MRMC currently has many positions, typically division/directorate chiefs, that have characteristics of both SES and ST classifications. Most division/directorate chiefs in MRMC are

responsible for supervising other GS-15 positions, including branch chiefs, non-supervisory researcher scientists and engineers, and possibly ST positions. Most division/directorate chief positions are classified at the GS-15 level, although their technical expertise warrants classification beyond GS-15. Because of their management responsibilities, these individuals are excluded from the ST system. Because of management considerations, they cannot be placed in the SES. Management considers the primary requirement for division/directorate chiefs to be knowledge of, and expertise in, the specific scientific and technology areas related to the mission of their divisions/directorates. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders, who possess primarily scientific/engineering credentials and are considered experts in their field. However, they must also possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as STs is not an option, because the managerial and supervisory responsibilities inherent in the positions cannot be ignored.

The purpose of Pay Band V (which will reinforce the equal pay for equal work principle) is to solve a critical classification problem. It will also contribute to an SES "corporate culture" by excluding from the SES positions for which technical expertise is paramount. Pay Band V proposes to overcome the difficulties identified above by creating a new category of positions, the Senior Scientific Technical Manager, which has both scientific/technical expertise and full managerial and supervisory authority.

Current GS-15 division/directorate chiefs will convert into the demonstration project at Pay Band IV. After conversion, they will be reviewed against established criteria to determine if they should be reclassified to Pay Band V. Other positions possibly meeting criteria for classification to Pay Band V will be reviewed on a case-by-case basis. The proposed salary range is a minimum of 120% of the minimum rate of basic pay for GS-15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (ES-4). Vacant positions in Pay Band V will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial

managerial and supervisory abilities. MRMC will capitalize on the efficiencies that can accrue from central recruiting by continuing to use the expertise of the Army Materiel Command SES Office as the recruitment agent. Panels will be created to assist in filling Pay Band V positions. Panel members will be selected from a pool of current MRMC senior military and SES members, ST employees, and later those in Pay Band V, and an equal number of individuals of equivalent stature from outside the activity to ensure impartiality, diversity, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS-15 level.

DoD will test the establishment of Pay Band V for a five-year period. Positions established in Pay Band V will be subject to limitations imposed by OPM and DoD. Pay Band V positions will be established only in an S&T Reinvention Laboratory which employs scientists, engineers, or both. Incumbents of Pay Band V positions will work primarily in their professional capacity on basic or applied research and secondarily perform managerial or supervisory duties. The number of Pay Band V positions within the DoD will not exceed 40. These 40 positions will be allocated by ASD (FMP), DoD, and administered by the respective Services. The number of Pay Band V positions will be reviewed periodically to determine appropriate position requirements. Pay Band V position allocations will be managed separately from SES, ST, and SL positions. An evaluation of the Pay Band V concept will be performed during the fifth year of the demonstration project.

The final component of Pay Band V is the management of all Pay Band V assets. Specifically, this authority will be exercised at the DA level, and includes the following: authority to classify, create, or abolish positions within limitations imposed by OPM and DoD; recruit and reassign employees in this pay band; set pay and to have their performance appraised under this project's Pay for Performance System. The laboratory wants to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

High-grade controls within the agency currently restrict movement into high grade positions (GS-14/15). OPM's definition of "high grade position" is a position where the base pay exceeds

that of a GS-13, Step 10. Unless the high-grade controls are lifted, demonstration employees will not be able to advance into the currently defined pay level of a high-grade, unless a high-grade authorization is available. To accommodate this, employees whose salary adjustment would place them above the high-grade pay limit in activities where high-grade authorizations are unavailable will receive permanent adjustments to basic salary up to an amount equivalent to one dollar less than the base of the defined high-grade pay structure. Any additional amount granted under pay-for-performance will be paid as a one-

time bonus payment from pay-pool funds. This pattern of payout will continue until high-grade authorizations become available.

The proposed pay bands for the occupational families and how they relate to the current GS grades are shown in Figure 1. Application of the Fair Labor Standards Act (FLSA) within each pay band is also shown in Figure 1. This pay band concept has the following advantages:

1. It reduces the number of classification decisions required during an employee's career.
2. It simplifies the classification decision-making process and

paperwork. A pay band covers a larger scope of work than a grade, and thus will be defined in shorter and simpler language.

3. It supports delegation of classification authority to line managers.

4. It provides a broader range of performance-related pay for each level. In many cases, employees whose pay would have been frozen at the top step of a grade will now have more potential for upward movement in the broader pay band.

5. It prevents the progression of low performers through a pay band by mere longevity, since job performance serves as the basis for determining pay.

FIGURE 1.—OCCUPATIONAL FAMILIES AND PAY BANDS

Occupational Families	Corresponding GS grades															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
	BANDS															
Engineers & Scientists (DB)	I (N)				II (*)							III (E)			IV (E)	V (E)
E&S Technicians (DE)	(I) (N)				II (*)					III (*)			IV (E)			
Administrative (DJ)	I (N)				II (*)						III (E)		IV (E)		V (E)	
General Support (DK)	I (N)				II (*)					III (*)						

FLSA CODES: N—Nonexempt E—Exempt *—Nonexempt or Exempt

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

Fair Labor Standards Act

The FLSA exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR Part 551. Supervisors with classification authority will make the determinations on a case-by-case basis with reference to documentation in the operating procedures manual and the advice and assistance of the Civilian Personnel Offices (CPO)/Civilian Personnel Advisory Centers (CPAC)/Civilian Personnel Operations Centers (CPOC). The generic position descriptions will not be the sole basis for the determination. The basis for exemption/non-exemption will be documented and attached to each description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. The basis for determinations will be reviewed as a part of the performance review process and when salary adjustments are warranted. Changes will be documented and provided to the CPO/CPAC/CPOC, as appropriate.

Simplified Assignment Process

Today's environment of rightsizing and workforce transition mandates that

the MPMC have maximum flexibility to assign duties and responsibilities to individuals. Broadbanding can be used to address this need. As a result of the assignment to a particular level descriptor, the organization will have maximum flexibility to assign an employee with no change in basic pay, within broad descriptions consistent with the needs of the organization, and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level and area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current level descriptor, or benchmark position description.

Such assignments within the coverage of the generic descriptors are accomplished without the need to process a personnel action. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows a broader latitude in assignments and further streamlines the administrative process and system.

Promotions

A promotion is the movement of an employee to a higher pay band within the same occupational family or to a pay band in a different occupational family which results in an increase in the employee's salary. Progression within a pay band is based upon performance pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction-in-force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(f) Impact of person on the job, accretion of duties, and Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide or similar guides) promotions.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

Link Between Promotion and Performance

To be promoted competitively or noncompetitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of "B" or better (see Performance Evaluation) or equivalent under a different performance management system.

B. Classification

Introduction

The objectives of the new classification system are to simplify the classification process, make the process more serviceable and understandable, and place more decision-making authority and accountability with line managers. All positions listed in Appendix A will be in the classification structure. Provisions will be made for including other occupations as employment requirements change in response to changing missions and technical programs.

Occupational Series

The present GS classification system has over 400 occupations (also called series), which are divided into 22 groups. The occupational series will be maintained. New series, established by OPM, may be added as needed to reflect new occupations in the workforce. Appendix A lists the occupational series currently represented at the MRMC by occupational family.

Classification Standards

MRMC will use a classification system that is a modification of the system now in use at the US Navy, Naval Command, Control and Ocean Surveillance Center, San Diego, California. The present classification standards will be used to create local benchmark position descriptions for each pay band, reflecting duties and

responsibilities comparable to those described in present classification standards for the span of grades represented by each pay band. There will be at least one benchmark position description for each pay band. A supervisory benchmark position description will be added to those pay bands that include supervisory employees. Present titles and series will continue to be used in order to recognize the types of work being performed and educational backgrounds and requirements of incumbents. Locally developed speciality codes and OPM functional codes will be used to facilitate titling, making qualification determinations, and assigning competitive levels to determine retention status.

Position Descriptions and Classification Process

The MRMC Commander will have delegated classification authority and will redelegate this authority to subordinate activity Commanders/Directors for redelegation to activity managers as appropriate. New position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, the functional code, the speciality code, pay band level, and the appropriate acquisition codes. The manager will document these decisions on a cover sheet similar to the present DA Form 374. Speciality codes will be developed by Subject Matter Experts (SMEs) to identify the special nature of work performed. Functional codes are those currently found in the OPM Introduction to the Classification Standards which defines certain kinds of activities, e.g., Research, Development, Test and Evaluation, etc., and covers Engineers & Scientists (E&S).

Classification Appeals

An employee may appeal the occupational series or pay band level of his or her position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If an employee is not satisfied with the DoD response, he or she may then appeal to the Office of Personnel Management, only after DoD has rendered a decision under the provisions of this demonstration project. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.

Time periods for case processing under Title 5 apply. An employee requesting a classification decision that would exceed the equivalent of a GS-15 level may not submit the appeal to OPM.

An employee may not appeal the assignment of the occupational series to an occupational family; the accuracy of the occupational family; the title of a position; the accuracy of the position description; the demonstration project classification criteria, or the pay-setting criteria; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPO/CPAC/CPOC providing personnel services and will include copies of appropriate demonstration project criteria.

C. Pay-for-Performance Management System

Performance Evaluation

Introduction

The performance appraisal system will link compensation to performance through annual performance evaluations and performance ratings. The performance appraisal system will allow optional use of peer evaluation input and/or input from subordinates whenever appropriate. The system will have the flexibility to be modified, if necessary, as more experience is gained under the project. Details of the system may be found in the implementing instructions.

Performance Objectives

Performance objectives are statements of job responsibilities based on the work unit's mission, goals, and supplemental benchmark position descriptions. Employees and supervisors will jointly develop performance objectives which will reflect the types of duties and responsibilities expected at the respective pay level. Absent agreement between employees and supervisors, final authority to establish performance objectives and element weights rests with line management. The performance objectives, representing joint efforts of employees and their rating chains, should be in place within 30 days from the beginning of each rating period.

Performance Elements

New performance elements and rating forms will be designed to implement a new scoring and rating system. The new

performance evaluation system will be based on critical performance elements defined in Appendix C. All elements in the new performance evaluation system are critical. Non-critical elements will not be used. Each performance element is assigned a weight between a specified range. The total weight of all elements in a performance plan is 100 points. The supervisor assigns each element some portion of the 100 points in accordance with its importance for mission attainment. These weights will be developed along with employee performance objectives.

Mid-Year Review

A mid-year review between a supervisor and employee will be held to determine whether objectives are being met and whether performance objectives should be modified to reflect changes in planning, workload, and resource allocation. Additional reviews may be held as deemed necessary by the supervisor. The weights assigned to performance elements will be changed, if necessary.

Performance Appraisal

A performance appraisal is scheduled for the final weeks of the annual performance cycle, although an individual performance appraisal may be conducted at any time after 60 days on approved standards. The performance appraisal process brings supervisors and employees together for formal discussions on performance and results in (1) written appraisals, (2) performance ratings, (3) performance pay increases and/or bonuses, (4) cash awards, and (5) other individual performance-related actions, as appropriate. A performance appraisal

may consist of two meetings held between employee and supervisor: the performance review meeting and the evaluation feedback meeting.

Performance Review Meeting Between Employee and Supervisor

The review meeting is to discuss job performance and accomplishments. Supervisors do not assign scores, ratings, pay increases, or awards at this meeting. The supervisor notifies the employee of the review meeting in time to allow the employee to prepare a list of accomplishments. Employees will be given an opportunity at the meeting to give a personal performance assessment and describe accomplishments. The supervisor and employee discuss job performance and accomplishments in relation to the performance elements, objectives, and planned activities established in the performance plan.

Evaluation Feedback Meeting Between Employee and Supervisor

In this second meeting between employee and supervisor, the supervisor informs the employee of management's appraisal of the employee's performance, the employee's performance score and rating, and any recommended related pay increase, bonus, award, or other personnel action. During this second meeting, the supervisor and employee will discuss and document performance objectives for the next rating period.

Performance Scores

Selection of the weighted points to assign to an employee's performance is assisted by use of benchmark performance standards (appendix D). Each benchmark performance standard describes the level of performance

associated with a particular point on a rating scale. Supervisors may add supplemental standards to the performance plans of the employees they supervise to further elaborate the benchmark performance standards.

The overall score is the sum of the individual element scores. Employees will receive an academic-type rating of "A", "B", "C", or "F" depending upon the percentage of goal attainment. These summary ratings are representative of Pattern E in Summary Level Chart in 5 CFR 430.208(d)(1). This rating will become the rating of record, and

(1) Employees rated "B" or higher will be eligible to receive performance-based pay increases and/or bonuses; and

(2) Retention years credit for RIF will be received by employees rated "C" or higher. (Note: except when a PIP does not result in an annual rating of "C" prior to the end of the rating cycle).

(3) Employees rated "F" will not receive the general increase, retention years credit for RIF, or be eligible to receive performance based pay increases and/or bonuses.

A rating of "A" will be assigned for cumulative scores of 85 to 100 points, "B" for cumulative scores of 70 through 84, and "C" for cumulative scores of 50 through 69. An overall rating of "F" indicates failure to perform at the 50 percent level for any one of the assigned weighted elements. (In such a case, even though the cumulative score may exceed 49, the employee will nonetheless receive an overall rating of "F". NOTE: An "F" constitutes an unacceptable rating). The academic-type ratings will be used to determine pay or bonus values and to award additional RIF retention years as follows:

Rating	Compensation (shares)	RIF Retention years added	General increase ²
"A"	2	10	YES
"B"	1	7	YES
"C"	0	3	YES
"F"	0	0	NO

¹ Employees rated "B" or higher will be eligible to receive performance-based pay increases and/or bonuses. Retention years credit for RIF will be received by employees rated "C" or higher, except when a PIP does not result in an annual rating of "C" prior to the end of the rating cycle.

² The maximum pay rate for pay band V cannot exceed rate for ES-4. Therefore, employees at or near the top pay band V may not receive the full general increase if it is not authorized for SES employees.

Performance Based Actions

MRMC will implement a two step process to deal with poor performers. This process may lead to involuntary separations if the employee receives a score of less than 50 percent of the points for any weighted element.

The process will begin with the recognition that an employee's

performance is unacceptable (any element that would be rated at less than the 50 percent level of its assigned benchmark weight). The two steps are as follows: (1) Performance improvement plan (PIP), and (2) separation.

When the employee is determined to be performing below the 50% level for any element, the supervisor and

employee will develop a structured PIP that will be monitored for a reasonable period of time.

If the employee fails to improve during this structured plan, the employee will be given notice of proposed appropriate action. The activity may consider a change in assignment or reduction in pay as

opposed to removal if the mission, organizational structure and available resources warrant such action. If employees are separated, they will have due process recourse as a former employee.

(Note: Performance based adverse actions may be taken under 5 U.S.C., Chapter 75 or Chapter 43).

Actions taken under Chapter 75 do not require a PIP.

If a PIP ends prior to the end of the annual performance cycle and the employee's performance improves to the 50% or above level in all assigned elements, the employee is appraised again at the end of the annual performance cycle.

If, in conjunction with the completion of the PIP, the employee attains an annual rating of "C" or higher, they will receive the annual general increase and RIF retention years credit will be earned. In addition, employees attaining an annual rating of "B" or higher will also be eligible for an increase to base pay and/or bonus.

If a PIP ends after the end of the annual performance cycle and the employee's performance has improved to the 50% or above level in all assigned elements, employment continues but no retroactive annual general increase, performance bonus, or RIF retention years credit is granted for that performance cycle period.

Employee Relations

Employees covered by the project will be evaluated under a performance evaluation system that affords grievance rights comparable to those provided currently. The MRMC will maintain the substantive and procedural appeal rights currently afforded when taking action for misconduct and poor performance.

Awards

The MRMC currently has an extensive awards program consisting of both internal and external awards. While not linked to the pay-for-performance system, awards will continue to be given for special acts and other categories as they occur. Awards may

include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off, and may be modified or expanded as appropriate. Major Army Command (MACOM) and DoD awards and other honorary noncash awards will be retained.

In an effort to foster and encourage team work among its employees, a Commander/Director may allocate a sum of money to a team for outstanding completion of a special task or significant achievement, and the team may decide the individual distribution of the total dollars among themselves.

Pay Administration

Introduction

The objective is to establish a pay system that will improve the ability of the MRMC to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of pay resources based upon individual performance.

Pay-for-Performance

MRMC will use a simplified performance appraisal system that will permit both the supervisor and the employee to focus on quality of the work. The proposed system will permit the manager/supervisor to base compensation on performance or value added to the goal of the organization rather than on longevity and risk aversion. This system will allow managers to withhold pay increases from nonperformers, thereby giving the nonperformer the incentive to improve performance or leave government service.

Pay-for-performance has two components: Performance pay increases (i.e. base pay increases) and/or bonuses. All covered employees will be given the full amount of locality pay adjustments (as applicable) when they occur, regardless of performance. The funding for performance pay increases and/or bonuses is composed of money previously available for within-grade increases, quality step increases, and promotions from one grade to another

when the grades are now in the same pay band.

Performance Pay Pool

The funding in the performance pay pool will be used for base pay increases and/or performance bonus pay. The payouts made to employees from the performance pay pool may be a mix of base pay increases, subject to the pay ceiling in the pay bands, and bonus payments.

The Headquarters, MRMC Comptroller, in conjunction with each subordinate activity Commander/Director, will calculate the total performance pay pool and allocate pay pools to subordinate activities. Each subordinate activity Commander/Director will allocate pay pools to organizational units or teams as appropriate.

Performance Pay Increases and/or Performance Bonuses

A pay pool manager is accountable for staying within pay pool limits. The pay pool manager assigns pay increases and/or bonuses to individuals on the basis of an academic-type rating, the value of the performance pay pool resources available, and the individual's current basic rate of pay within a given pay band. A pay pool manager may request approval from the Commander/Director or his/her designee to grant a higher performance pay increase/performance bonus than is generated by the compensation formula to recognize an employee's extraordinary achievement or to provide accelerated compensation for local interns.

A performance payout will be initially calculated for each individual based upon a pay pool assignment that will be composed of monies outlined previously. For illustration purposes, approximately 2.4 percent of the value of the combined basic rates of pay of the assigned employees will be used. A share will be calculated so that a pay pool manager will not exceed the resources that are available in the pay pool. The performance payout for an individual will be determined as follows:

$$\text{Individual Performance Payout} = \frac{\text{Pool Value} * \text{SAL}_i * N_i}{\text{SUM} (\text{SAL}_j * N_j); j = 1 \text{ to } n}$$

Where:

Pool Value = $0.024 * \text{SUM} (\text{SAL}_k)$; $k = 1 \text{ to } n$

n = number of employees in pay pool

N = Number of Shares (0–2) earned by an employee based on their performance rating

SAL = An individual's basic rate of pay

SUM = The summation of the entities in parenthesis over the range indicated

i = individual

To illustrate the formula, the basic rates of pay of the 10 employees in a pay pool, who each earn \$50,000 per year, total to \$500,000. The employees earned a total of 15 shares based on their

ratings (5 individuals earned an "A" rating, and 5 individuals earned a "B" rating). The pay pool value is then 2.4 percent of the sum of \$500,000, or \$12,000. The individual performance payout being determined is for an individual who earns \$50,000 per year and receives an "A" on the appraisal, thus earning 2 shares. Using the formula, the individual performance payout is calculated by multiplying the pay pool value, \$12,000, by the individual basic rate of pay, \$50,000, by the number of shares earned, 2. This product is divided by the sum of the products of the individual basic rates of pay times the number of shares earned, or 750,000. The resulting individual performance payout is \$1,600.00 for the year.

An annual performance base pay increase could be all, none, or part of the compensation formula depending on the current basic rate of pay of the employee. Annual performance base pay increases will be limited to the difference between the particular band pay cap and the employee's current basic rate of pay, or total dollar value of shares, whichever is less, with the balance converted to a performance bonus. This means that employees whose basic rates of pay have reached the upper limits of a particular pay band will receive most performance compensation as a performance bonus. Cash bonuses will not become a part of the employee's basic rate of pay. Employees receiving retained rates are subject to special rules governing basic pay adjustments. An employee receiving a retained rate whose performance rating is "F" at the time of a general pay increase will receive no increase in the retained rate. All other employees receiving a retained rate will receive a general pay increase equal to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position.

Supervisory Bonus

Supervisory bonuses of up to 10% of the basic rate of pay may be paid at the discretion of Commanders/Directors to supervisors with employees in the same pay band. In exceptional cases (approved by HQ, MRMC), supervisors who do not have employees in the same pay band may be compensated up to 5% of basic rate of pay. Employees who qualify for the bonus include supervisors in all occupational families with formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide. The supervisory bonus is to recognize supervisory responsibilities required of supervisors most often receiving the

same pay as non-supervisory subordinates. There are two situations in which a supervisory bonus may be warranted:

(1) Supervisors may be granted up to 10 percent of the basic rate of pay if they supervise employees within the same pay band or,

(2) Up to 5 percent of the basic rate of pay for those supervising employees in lower or other pay bands.

Note: Pay band V employees in the E&S occupational family are excluded.

Bonuses, which must be negotiated annually, will not be treated as basic pay and are not a part of the performance pay pool.

Because the bonus is paid at the beginning of the appraisal period, if the individual leaves a supervisory position or is removed from supervisory responsibilities (unless effected through RIF action), the prorated portion of the bonus for the non-supervisory portion of the performance year will be recovered as a debt due the Government. Before any supervisory bonus is paid, the supervisor will sign an agreement to make any required repayment.

Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the basic rate of pay paid in level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR Part 530, Subpart B.

In addition, each pay band will have its own pay ceiling, just as grades do in the current system. Pay rates for the various pay bands will be directly keyed to the GS rates, except the maximum rate for pay band V of the engineer and scientist occupational family which cannot exceed ES-4. Basic pay will be limited to the maximum rates payable for each pay band, except for retained rates as previously described.

Pay Setting for Promotion

The minimum basic pay increase upon promotion to a higher pay band will be 6 percent or the minimum rate of the new pay band. The maximum amount of pay increase upon promotion will not exceed \$10,000.

When a temporary promotion is terminated, the employee's pay entitlements will be redetermined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by MRMC. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate.

Placement in a Lower Pay Band

Employees who receive 50 percent or less of an assigned benchmark score in any element or who are on a performance improvement plan at the time pay determinations are made, do not receive performance payouts or the general increase. This action may result in a base salary that is identified in a lower pay band. This occurs because the minimum rates of basic pay in a pay band increase as the result of the general increase (5 U.S.C. 5303). This situation, (a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

D. Hiring and Appointment Authorities Hiring Authority

A candidate's basic eligibility will be determined using OPM's Qualification Standards Handbook of General Schedule Positions. Candidates must meet the minimum standards for entry into the payband. For example if the payband includes positions in grades GS-5 and GS-7, the candidates must meet the qualifications for positions at GS-5 level. Specific experience/education required will be determined based on whether a position to be filled is at the lower or higher end of the band. As a general rule, pay will be set at the lowest level in a pay band.

Appointments made above the minimum level will be based upon superior qualifications of the candidate. A candidate appointed toward the higher end of a pay band should have qualifications approaching the lowest General Schedule grade incorporated into the next higher pay band. For example, a person appointed at the higher end of Pay Band II in the Engineers and Scientists Occupational Family would have education, experience, or a combination of the two approaching the qualifications of the GS-13 level, which is the lowest General Schedule grade incorporated into Pay Band III. Under the demonstration authority, the MRMC is authorized to modify by increasing QSH qualifications and/or experience or substitutable education requirements. Substitutable education can be modified; however, no changes can be made to standards with positive education requirements or minimum education requirements. In some cases, MRMC will update these standards to reflect current practices in the occupational families and modern curricula in recognized degree programs. Selective placement factors may be established when judged to be critical to successful job performance.

These factors must be communicated to all candidates for specific vacancies and must be met for basic eligibility.

In the proposed system, as with the current system, the individual manager will decide whether to fill a position from among internal candidates or to recruit from outside.

The MRMC is committed to positive affirmative action and equal employment opportunity goals. Line managers will be accountable for understanding and implementing policies designed to meet these goals.

Appointment Authority

Under the demonstration project, there will continue to be career and career conditional appointments. These appointments will use existing authorities and entitlements. Non-permanent positions (exceeding one year) needed to meet fluctuating or uncertain workload requirements will be filled using a Contingent Employee appointment authority.

Employees hired for more than one year, under the contingent employee appointment authority are given term appointments in the competitive service for no longer than five years. The MRMC Commander is authorized to extend a contingent appointment one additional year. These employees are entitled to the same rights and benefits as term employees and will serve a one year trial period. The Pay-for-Performance Management System outlined in this Plan applies to contingent employees.

Appointment will be made under the same appointment authorities and processes as regular term appointments, but recruitment bulletins must indicate that there is a potential for conversion to permanent employment.

Employees hired under the contingent employee authority may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date; (2) served two years of substantially continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position; and (4) have a current rating of "B" or better.

Employees serving under regular term appointments at the time of conversion to the demonstration project will be converted to the new contingent employee appointments provided they were hired for their current positions

under competitive procedures. These employees will be eligible for conversion to career-conditional appointment if they have a current rating of "B" or better (or the equivalent of "B" in their current evaluation system), and are selected under merit promotion procedures for their permanent position after having completed two years of continuous service. Time served in term positions prior to conversion to the contingent employee appointment is creditable, provided the service was continuous.

Extended Probationary Period

The current one-year probationary period will be extended to "up to three years" for all newly hired employees in all pay bands. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a research cycle and/or to fully evaluate an employee's contribution and conduct. The length of the probationary period for the Engineers and Scientists Occupational Family will be three years. The probationary period for all other occupational families will be two years.

Aside from extending the time period, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee subject to serving a probationary period that was appointed prior to the implementation date will not be affected. The "up to three year" probation will apply to new hires or those who do not have reemployment rights or reinstatement privileges.

Probationary employees will be terminated when the employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When the MRMC decides to terminate an employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate his/her fitness or qualifications for continued employment, it shall terminate his/her services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the manager's conclusions as to the inadequacies of his/her performance or conduct.

Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR 315.901.

Employees that have successfully completed the initial probationary period will be required to complete an additional one-year probationary period for the initial appointment to a supervisory position. If, during the probationary period, the decision is made to return the employee to a non-supervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower pay band and basic pay than the position from which he/she was promoted.

Voluntary Emeritus Program

Under the demonstration project, Commanders/Directors will have the authority to offer retired or separated individuals voluntary assignments in their activities. This authority will include individuals who have retired or separated from Federal service. Voluntary Emeritus Program assignments are not considered "employment" by the Federal Government (except for the purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on an earlier separation from Federal service. The Voluntary Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing individuals to accept retirement incentive with the opportunity to retain a presence within their community. The program will be of most benefit during manpower reductions as individuals could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced individuals.

To be accepted into the emeritus program, a volunteer must be approved by the subordinate activity Commander/Director. Everyone who applies is not entitled to a voluntary assignment. The laboratory Commander/Director must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the individual's Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal individuals may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts where a conflict of interest exists. The same rules that currently

apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the subordinate activity Commander/Director, and the servicing CPO/CPAC/CPOC. The agreement will be reviewed by the Headquarters, MRMC legal office for ethics determinations under the Joint Ethics Regulations. The agreement must be finalized before the assumption of duties and shall include:

(a) a statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation, and any and all claims against the Government because of the voluntary assignment are waived by the volunteer;

(b) a statement that the volunteer will be considered a Federal employee for the purpose of injury compensation;

(c) volunteer's work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the subordinate activity (travel, administrative, office space, supplies);

(f) a one-page or less Statement of Duties and Experience;

(g) a provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay and leave as a result of being a member of the Voluntary Emeritus Program;

(h) a provision allowing either party to void the agreement with 10 working days written notice; and

(i) the level of security access required (any security clearance required by the position will be managed by the subordinate activity while the volunteer is a member of the Voluntary Emeritus Program).

E. Expanded Developmental Opportunities Program

The MRMC Expanded Developmental Opportunities Program will cover all demonstration project employees. An expanded developmental opportunity complements existing developmental opportunities such as (1) long-term training, (2) one-year work experiences in an industrial setting via the Relations With Industry Program, (3) one-year work experiences in laboratories of allied nations via the Science and Engineer Exchange Program, (4) rotational job assignments within the MRMC, (5) developmental assignments in higher headquarters within the Army and DoD, (6) self-directed study via correspondence courses and local colleges and universities, (7) details within MRMC and to other Federal

Agencies, and (8) Intergovernmental Personnel Act Agreements.

Each developmental opportunity period should benefit the MRMC, as well as increase the employee's individual effectiveness. Various learning or uncompensated developmental work experiences may be considered, such as advanced academic teaching or research, sabbaticals, or on-the-job work experience with public or non-profit organizations.

An expanded developmental opportunity period will not result in loss of (or reduction in) basic pay, leave to which the employee is otherwise entitled, or credit for time or service. Input for performance rating purposes will be obtained from the gaining organization to ensure a rating of record is on file and, if warranted, a performance award and/or bonus and retention years credit for RIF purposes is documented.

The opportunity to participate in the Expanded Developmental Opportunities Program will be announced as opportunities arise. Instructions for application and the selection criteria will be included in the announcement. Final selection/approval for participation in the program will be made by activity Commanders/Directors. The position of employees on an expanded developmental opportunity may be backfilled by temporary promotion, or temporary/contingent employees. However, that position or its equivalent must be made available to the employee returning from the expanded developmental opportunity.

An employee accepting an Expanded Developmental Opportunity must sign a continuing service agreement. If the employee voluntarily leaves the MRMC before the service obligation is completed, the employee is liable for repayment. However, the MRMC Director has the authority to waive this agreement.

F. Revised Reduction-in-Force (RIF) Procedures

Introduction

When an employee in the MRMC demonstration project is faced with separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of reemployment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days, RIF procedures will be used.

The procedures in 5 CFR Part 351 will be followed with the modifications

specified below pertaining to competitive areas, assignment rights, credit for performance ratings and service computation date.

Competitive Areas

The Headquarters and each subordinate activity of the MRMC will be in a separate competitive area for RIF purposes. Further, within each subordinate activity, detachments located at different geographic sites will be in a separate competitive area for RIF purposes. Each of the four occupational families will be a separate competitive area within each activity. (Competitive service and excepted service employees will compete separately within a competitive area.) DA Interns will continue to be part of the ACTEDS competitive area.

Retention

Within each competitive area, competitive levels will be established consisting of all positions in the same occupational family and pay band which are similar enough in duties, qualifications, and working conditions that the incumbent of one position can perform successfully the duties of any other position in the competitive level without unduly interrupting the work program.

Current RIF regulations will be modified to restrict bumping and retreating to positions within the employee's current occupational family. This feature will minimize the disruption associated with the RIF process. An employee may displace another employee within the same occupational family by bump or retreat to one band below the employee's existing band. A preference eligible veteran with a compensable service-connected disability of 30% or more may retreat to positions two bands (or the equivalent of five (5) grades) below his/her current band.

Reductions-in-force are accomplished using the retention factors of tenure, veterans preference, credit for performance ratings, and length of service, in that order.

Contingent employees are in Tenure Group III for reduction-in-force purposes. Reduction-in-force procedures are not required when separating these employees when their appointments expire.

Link Between Performance and Retention

Credit for performance based on the last three (3) ratings of record during the preceding four (4) years will be applied as follows: a rating of "A" equals 10 years; a rating of "B" equals 7 years; a

rating of "C" equals 3 years, and a rating of "F" adds no credit for retention. Credit for performance is cumulative, not averaged. Ratings given under non-demonstration systems will be converted to the demonstration rating scheme and provided the equivalent performance rating credit.

In some cases, an employee may not have three (3) annual performance ratings of record. In these situations, performance credit will be given on the basis of either an average of the ratings actually on record or if no actual ratings, modal rating (most common) given within the employee's competitive area. When an employee is missing a rating of record, the credit assigned for the actual ratings received will be averaged, and the result thus derived will be used as the credit for the missing rating. For an employee who has no ratings of record, all credit will be based on the repeated use of a single modal rating from the most recently completed appraisal period on record.

An employee who has received a written decision to demote him/her to a lower pay band because of unacceptable performance, competes in RIF from the position to which he/she will be/has been demoted. Employees who have been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice have not received a performance rating in the position to which demoted, will receive either an average of the ratings actually on record or if no actual ratings, modal rating (most common) given within the employee's competitive area.

An employee with a current annual performance rating of "F" has assignment rights only to a position held by another employee who has an "F" rating. An employee who has been given a written decision of removal because of unacceptable performance or conduct will be placed at the bottom of the retention register for their competitive level.

Link Between Service Computation Date (Length of Service) and Retention

Service computation date (length of service) will be used in RIF procedures when performance retention procedures result in two or more employees with the same standing. When this occurs, all creditable service (both civilian and military) will be used to determine which employee(s) will be separated.

Notice Period

The RIF notice period will follow OPM guidelines.

Grade and Pay Retention

Except where waived or modified in the waiver section of this plan, grade and pay retention will follow current law and regulations (e.g. occupational family pay bands will substitute for grade.)

Use of Voluntary Incentives

Subordinate activity Commanders/Directors currently have delegated authority to grant payments under the VSIP. This authority will continue under this project.

IV. Training

Introduction

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will not only provide the necessary knowledge and skills to carry out the proposed changes, but will also lead to commitment to the program on the part of participants.

Training at the beginning of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include at a minimum:

(1) A description of the personnel system, (2) how employees are converted into and out of the system, (3) the pay adjustment and/or bonus process, (4) familiarization with the new position descriptions and performance objectives, (5) the performance evaluation management system, (6) the reconsideration process, and (7) the demonstration project administrative and formal evaluation process.

Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, training in using the classification system, position description preparation, and performance evaluation. Additional training may focus on non-project procedural techniques such as interpersonal and communication skills.

Administrative Staff

The administrative staff, including personnel specialists, subordinate activity administrative officers, and personnel points of contact will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will need training in the procedural and technical aspects of the project.

Employees

The MRMC Demonstration Project Office will make and coordinate all arrangements necessary to train employees covered under the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

V. Conversion

Conversion to the Demonstration Project

a. Initial entry into the demonstration project will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate pay band without loss of pay. Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the contingent employee appointments so long as the original term appointment was made under competitive procedures. An automatic conversion from current GS/GM grade and pay into a new broadband system will be accomplished. Each employee's initial total salary under the demonstration project will equal the total salary received immediately before conversion. If conversion into the demonstration project is accomplished by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

b. Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the pay band which corresponds to the grade of record. When a temporary promotion is terminated, the employee's pay entitlements will be determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the MRMC. In no case may those

adjustments increase the pay for the position of record beyond the applicable pay range maximum rate. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

c. Employees who are covered by special salary rates, prior to the demonstration project, will no longer be considered a special rate employee under the demonstration project. These employees will, therefore, be eligible for full locality pay. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic pay rate computed by dividing their adjusted basic pay (higher of special rate or locality rate) by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary.

d. During the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same broadband, the employee's performance warrants the promotion and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent as defined below.

e. Under the current pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step based upon the portion of the waiting period they have completed prior to the date of implementation. Payment will be lump sum in nature (not added to base pay) and will be paid at the one-year anniversary of the date of implementation of the demonstration project. Those employees added to the MRMC by actions such as transfer of function, BRAC, etc., after initial implementation, will be awarded that portion of the next higher step based upon the portion of the waiting period they have completed at the time they convert into the demonstration project. This lump sum payment will be made upon conversion but no earlier than one year after the implementation of the project. Rules governing within-grade increases under the current Army

performance plan will continue in effect until the implementation date. Employees at step 10, or receiving retained rates, on the date of implementation will not be eligible for a prorated lump sum buyout of the WGI since they are already at or above the top of the step scale.

Conversion or Movement From a Project Position to a General Schedule Position

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rates of pay to GS-equivalent rates of pay. The converted GS grade and GS rates of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(a) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment) is compared with step 4 rate in the highest applicable GS rate range. (For this purpose, a "GS rate range" includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS-11.

(b) If the employee's adjusted project rate equals or exceeds the applicable

step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described "step 4" rule, but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(f) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time, the employee has undergone a reduction in band.

Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to GS rate of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted rate of basic pay under the project (including any locality payment) is converted to a GS adjusted rate on the highest applicable GS rate range for the converted GS grade. (For this purpose, a "GS rate range" includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted

GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

E&S Pay Band V Employees

An employee in Pay Band V of the E&S Occupational Family will convert out of the demonstration project at the GS-15 level. The MRMC, in consultation with the CPOs/CPACs/CPOCs, will develop a procedure to ensure that employees entering Pay Band V understand that if they leave the demonstration project and their adjusted pay exceeds the GS-15, step 10 rate, there is no entitlement to retained pay; their GS-equivalent rate will be deemed to be the rate for GS-15, step 10. For those Pay Band V employees paid below the adjusted GS-15, step 10 rate, the converted rates will be set in accordance with Pay-Setting Provisions above.

Employees With Band or Pay Retention

If an employee is retaining a band level under the demonstration project, apply the procedures in the Grade-Setting and Pay-Setting Provisions above, using the grades encompassed in the employee's retained band to determine the employee's GS-equivalent retained grade and pay rate. The time in a retained band under the demonstration project counts toward the 2-year limit on grade retention in 5 U.S.C. 5382.

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. MRMC will coordinate with OPM to prescribe a procedure for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade

increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. Supporting personnel specialists in CPOs/CPACs/CPOCs will continue to process personnel-related actions and provide consultative and other appropriate services.

Automation

The MRMC will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

Local automated systems will be developed to support computation of performance-related pay increases and awards and other personnel processes and systems associated with this project.

Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The MRMC will make minor modifications, such as changes in the occupational series in an occupational family without further notice. Major changes, such as a change in the number of occupational families, will be published in the **Federal Register**.

VI. Project Duration

Public Law 103-337 removed any mandatory expiration date for this demonstration. The project evaluation plan adequately addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration (Proposed Plan for Evaluation of the DoD Laboratory Demonstration Program, OPM, 1995). Major changes and modifications to the interventions can be made through announcement in the **Federal Register** and would be made if formative evaluation data warranted. At the 5-year point, the entire demonstration will be reexamined for either: (a) Permanent implementation, (b) a continuing test period, or (c) expiration.

VII. Evaluation Plan

Introduction

In response to the Reinvention Project legislation, OPM will evaluate the project annually and provide briefings and written reports of the findings. The Evaluation Plan stipulates both internal and external evaluation efforts. The phases of the plan are outlined below.

Evaluation Phases

The evaluation effort will be carried out in three phases: implementation, formative, and summative evaluation. Monitoring of the project will be concurrent with the implementation phase. An evaluation of this phase is necessary to determine whether the project is implemented as designed and to ascertain when the monitored processes become stable and fully operational. The formative phase evaluation will extend for the duration of the project. Data will be collected annually and periodic reports will be issued by OPM. The summative evaluation phase will assess overall impact of the project during appropriate time intervals and/or after 5 years of operation.

Evaluation Methodology

The evaluation will focus on the continuum of personnel issues and will be based on before-and-after comparison of the personnel data, using both quantitative and qualitative criteria. Personnel records and reports, as well as previously validated survey instruments, will be used to develop appropriate measures. New data collection methods and measures, or modifications to existing instruments, may be required for some criteria. Baseline data will be collected before the demonstration project implementation. The baseline survey was administered in the Summer of 1996.

Evaluation Criteria

While it is not possible to prove a direct causal link between intermediate and ultimate outcomes (personnel system changes and improved organizational performance), indirect cause and effect relationships can be evidenced through the establishment of relevant effectiveness measures. An intervention impact model (Appendix B) will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when

appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique. The evaluation model for the demonstration project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration of context variables that are likely to have an impact on project outcomes: e.g., HRM regionalization, rightsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved

organizational effectiveness, mission accomplishment and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee

attitudes and feedback using surveys, structured interviews and focus groups; (4) local activity histories; and (5) core measures of subordinate activity performance.

VIII. Demonstration Project Costs

Costs associated with the development of the personnel demonstration system include software automation, training, and project evaluation. All funding will be provided through the MEDCOM/MRMC budget. The projected annual expenses are as summarized in Table 1. Project evaluation costs are not expected to continue beyond the first 5 years unless the results warrant further evaluation. Projected developmental costs do not include potential contractor fees.

TABLE 1.—PROJECTED DEVELOPMENTAL COSTS (CURRENT YEAR DOLLARS)
[Thousands]

	Baseline	FY97	FY98	FY99	FY00	FY01
Training		\$99	\$19	\$19	\$19	\$19
Project Eval	\$17	28	60	60	60	60
Automation	80	10	10	10	10	10
Totals	97	137	89	89	89	89

IX. Required Waivers to Law and Regulation

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

1. Waivers to Title 5, U.S. Code

Chapter 31, Section 3111: Acceptance of volunteer service—To the extent that the acceptance of retired or separated civilian and military are included as volunteers under current statute in addition to student volunteers.

Chapter 31, Section 3132: The Senior Executive Service, Definitions and Exclusions.

Chapter 33, Section 3324: Appointments to Positions Classified Above GS–15.

Chapter 33, Section 3341: Details; within Executive or military departments—Increasing 120-Day Increments for Details to 180 days.

Chapter 35, Section 3502: Order of Retention—Applies only to the extent that performance score is placed before length of service.

Chapter 43, Sections 4302 and 4303: To the extent necessary to (1) substitute “pay band” for “grade” and (2) provide that moving to a lower pay band as a result of not receiving the full amount of a general pay increase because of poor performance is not an action covered by the provisions of section 4303.

Chapter 51, Sections 5101–5111: Purpose, definitions, basis, classification of positions, review, authority—Applies to the extent that white collar employees will be covered by broadbanding. Pay category determination criteria for federal wage system positions remain unchanged.

Chapter 53, Sections 5301, 5302 (8) and (9), 5303 and 5304: Pay Comparability System—Sections 5301, 5302, and 5304 are waived only to the extent necessary to allow (1) demonstration project employees to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay, and (3) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees for the purposes of these provisions.

Chapter 53, Section 5305: Special Salary rates.

Chapter 53, Sections 5331–5336: General Schedule Pay Rates.

Chapter 53, Sections 5361–5366: Grade and pay retention—This waiver applies only to the extent necessary to (1) replace “grade” with “pay band”; (2) allow demonstration project employees to be treated as General Schedule employees; (3) provide that pay band retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of “F”; (4) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; (5) provide that an employee receiving a retained rate whose performance rating is “F” at the time of a general pay increase will receive no increase in the retained rate; (6) ensure that, for employees in Pay Band V of the E&S Occupational Family, pay band retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to a retained rate).

Chapter 53, Section 5371: Health Care Positions—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as if they hold positions subject to Chapter 51 of title 5.

Chapter 55, Section 5545(d): Hazardous Duty Differential—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in Pay Band V of the Engineers and Scientists Occupational Family.

Chapter 57, Sections 5753, 5754, and 5755: Recruitment and Relocation Bonuses; Retention Allowances and Supervisory Differentials—This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees.

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. This waiver applies only to the extent necessary to provide that COLA's paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 59, Section 5948(1): Physicians Comparability Allowances—This waiver applies only to the extent necessary to allow (1) physicians under the demonstration project to be treated as employees paid under the General Schedule and (2) physicians in Pay Band V of the Engineers and Scientists Occupational Family who are performing research and technology assignments to be treated as ST positions.

Chapter 75, Section 7512(3): Adverse actions—This provision is waived only to the extent necessary to (1) replace "grade" with "pay band" and (2) provide that a reduction in band level is not an adverse action if it results from the employee's rate of basic pay being exceeded by the minimum rate of basic pay for his or her pay band.

Chapter 75, Section 7512(4): Adverse actions—This provision is waived only to the extent that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.

2. Title 5, Code of Federal Regulations

Part 300.601–605: Time-In-Grade Restrictions—Restrictions eliminated under the demonstration.

Part 308.101–103: Volunteer Service—To the extent that retired/separated civilians and military can perform voluntary services in addition to student volunteers.

Part 315.801 and 315.802: Probation on Initial Appointment to a Competitive Position—Demonstration project employees in some occupational families will have extended probationary period.

Part 316.301: Term Employment—Adding years to exceed 4 and establishment of Contingent appointments.

Part 316.303: Tenure of term employees—Demonstration allows for conversion to career/career-conditional appointments.

Part 316.305: Eligibility for within-grade increases—Demonstration employees no longer receive WGs.

Part 334, Section 334.102: Temporary Assignment of Employees Outside the Agency.

Part 335.103: Covering the length of details and temporary promotions.

Part 351.402(b): Competitive Area—To the extent that occupational family is the competitive area.

Part 351.403: Competitive Level—To the extent that pay band is substituted for grade.

Part 351.504: Credit for Performance—Retention standing to the extent that service credit will not be modified based on performance rating.

Part 351.701: Assignment Involving Displacement—To the extent that bumping and retreating will be limited to no more than one pay band except for 30 percent compensable veterans who can retreat to the equivalent of 5 GS grades.

Part 430.201 thru 210: Subpart B, Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees—Employees under the demonstration project will not be subject to the requirements of this subpart.

Part 432: Performance Based Reduction In Grade and Removal Actions—Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, and reduced in pay without a reduction in band level based on unacceptable performance. For employees who are reduced in band level without a reduction in pay as a result of non-receipt of a general increase, Sections 432.105 and 432.106 (a) and (c) do not apply.

Part 432, Sections 104 and 105: Addressing unacceptable performance and proposing and taking action based on unacceptable performance—In so far as references to "critical elements" are deleted (all elements are critical), and adding that the employee may be "reduced in band level, or pay, or removed" if performance does not

improve to acceptable levels after a reasonable opportunity.

Part 511: Classification Under the General Schedule—To the extent that grades are changed to broadbands, and that white collar positions are covered by broadbanding.

Part 530, subpart C: Special Salary Rate Schedules for Recruitment and Retention.

Part 531, subparts B, D, and E: Pay Under the General Schedule—Determining rate of basic pay, within-grade increases, and quality step increases.

Part 531, subpart F: Locality Based Comparability Payments—This waiver applies only to the extent necessary to allow (1) Demonstration project employees to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay, and (3) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees for the purposes of these provisions.

Part 536: Grade and pay retention—This waiver applies only to the extent necessary to (1) Replace "grade" with "pay band"; (2) allow demonstration project employees to be treated as General Schedule employees; (3) provide that pay band retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of "F"; (4) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; (5) provide that an employee receiving a retained rate whose performance rating is "F" at the time of a general pay increase will receive no increase in the retained rate; (6) ensure that, for employees in Pay Band V of the E&S Occupational Family, pay band retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS-15, step 10 (i.e., there is no entitlement to a retained rate).

Part 550.703: Severance Pay—This waiver applies only to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."

Part 550.902: Hazardous Duty Differential—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to

employees in Pay Band V of the Engineers and Scientists Occupational Family.

Part 575, subparts A, B, C and D: Recruitment and Relocation Bonuses; Retention Allowances; Supervisory Differentials—This waiver applies only to the extent necessary to allow (1) Employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees for the purposes of these provisions.

Part 591, subpart B: Cost-of-Living Allowances and Post Differential-Non-foreign Areas—This waiver applies to the extent necessary to allow (1) Demonstration project employees to be treated as employees under the General Schedule and (2) employees in Pay Band V of the Engineers and Scientists Occupational Family to be treated as ST employees for the purposes of these provisions.

Part 752.401(a)(3): Adverse Actions—This waiver applies only to the extent necessary to (1) replace “grade” with “pay band” and (2) provide that a reduction in pay band level is not an adverse action if it results from the employee’s rate of basic pay being exceeded by the minimum rate of basic pay for his or her pay band.

Part 752.401(a)(4): Adverse Actions—This waiver applies only to the extent that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.

Appendix A: Occupational Series by Occupational Family

I. Engineers and Scientists

0101 Social Science
0180 Psychology
0190 Anthropology
0401 Biology
0403 Microbiology
0405 Pharmacology
0408 Ecology

0410 Zoology
0413 Physiology
0414 Entomology
0415 Toxicology
0440 Genetics
0601 General Health Science
0602 Medical Officer
0610 Nurse
0630 Dietitian & Nutritionist
0644 Medical Technologist
0662 Optometrist
0701 Veterinary Medical Science
0801 General Engineering
0808 Architecture
0830 Mechanical Engineering
0855 Electronics Engineering
0858 Biomedical Engineering
1301 General Physical Science
1306 Health Physics
1310 Physics
1320 Chemistry
1520 Mathematics
1529 Mathematical Stat
1530 Statistician
II. E&S Technicians
0181 Psychology Aid/Technician
0404 Biological Science Technician
0499 Biological Science Student Trainee
0620 Practical Nurse
0640 Health Aid & Technician
0645 Medical Technician
0646 Pathology Technician
0647 Diagnostic Radiologic Technologist
0649 Medical Instrument Technician
0802 Engineer Technician
0809 Construction Control
0818 Engineering Drafting
0856 Electronics Technician
1311 Physical Sciences Technician
1521 Mathematics Technician
III. Administrative
0018 Safety & Occupational Health Management
0028 Environmental Protection Spec
0080 Security Administration
0201 Civilian Personnel Management
0205 Military Personnel Management
0301 Misc Administration & Program
0332 Computer Operation
0334 Computer Specialist
0340 Program Management
0341 Administrative Officer
0342 Support Services Administration
0343 Management/Program Analysis
0346 Logistics Management
0391 Telecommunications
0501 Financial Administration & Program
0505 Financial Management

0510 Accounting
0511 Auditing
0560 Budget Analysis
0905 General Attorney
1020 Illustrating
1035 Public Affairs
1040 Language Specialist
1060 Photography
1071 Audiovisual Production
1082 Writing & Editing
1083 Technical Writing & Editing
1084 Visual Information
1102 Contracting
1105 Purchasing
1152 Production Control
1222 Patent Attorney
1410 Librarian
1412 Technical Information Services
1601 General Facilities & Equipment
1640 Facility Management
1670 Equipment Specialist
1710 Educational & Vocational Training
1740 Education Services
1801 General Inspection, Investigation and Compliance
1910 Quality Assurance
2001 General Supply
2003 Supply Program Management
2010 Inventory Management
2050 Supply Cataloging
2181 Aircraft Operation

IV. General Support

0086 Security Clerical & Asst
0204 Military Personnel Technician
0302 Messenger
0303 Misc Clerk and Asst
0304 Information Receptionist
0305 Mail and File
0312 Clerk-Stenographer/Reporter
0318 Secretary
0322 Clerk-Typist
0326 Office Automation Clerical/Asst
0335 Computer Clerk/Asst
0344 Management Clerical/Asst
0525 Accounting Technician
0561 Budget Clerical/Asst
0675 Medical Records Technician
0679 Medical Clerk
1016 Museum Specialist & Technician
1087 Editorial Asst
1106 Procurement Clerical/Tech
1411 Library Technician
1499 Library and Archives Student Trainee
1531 Statistical Asst
2005 Supply Clerical/Tech
2102 Transportation Clerk/Asst

APPENDIX B: PROJECT EVALUATION AND OVERSIGHT—INTERVENTION IMPACT MODEL—DOD LAB DEMONSTRATION PROGRAM

Intervention	Expected effects	Measures	Data source
1. Compensation			
a. Broad banding	—Increased organizational flexibility. —Reduced administrative workload, paperwork reduction. —Advanced in-hire rates	—Perceived flexibility	—Attitude survey
	—Slower pay progression at entry levels.	—Actual/perceived time savings ... —Starting salaries of banded v. non-banded employees. —Progression of new hires over time by band, career path.	—Personnel office data, PME results, attitude survey —Workforce data —Workforce data

APPENDIX B: PROJECT EVALUATION AND OVERSIGHT—INTERVENTION IMPACT MODEL—DOD LAB DEMONSTRATION PROGRAM—Continued

Intervention	Expected effects	Measures	Data source
b. Conversion buy-in	—increased pay potential —increased satisfaction with advancement. —Increased pay satisfaction —Improved recruitment —No change in high grade (GS-14/15) distribution. —Employee acceptance	—mean salaries by band, career path, demographics. —total payroll cost —employee perceptions of advancement. —Pay satisfaction, internal/external equity. —Offer/acceptance ratios —Percent declinations —Number/percentage of high grade salaries pre/post banding. —Employee perceptions of equity, fairness. —Cost as a percent of payroll	—Workforce data —Personnel office data —Attitude survey —Attitude survey —Personnel office data —Workforce data —Workforce data
2. Performance Management			
a. Cash awards/bonuses	—Reward/motivate performance .. —To support fair and appropriate distribution of awards.	—Perceived motivational power ... —Amount and number of awards by career path, demographics. —Perceived fairness of awards —Satisfaction with monetary awards.	—Attitude survey —Workforce data —Attitude survey —Attitude survey
b. Performance/contribution based pay progression.	—Increased pay-performance link —Improved performance feedback —Decreased turnover of high performers/increased turnover of low performers. —Differential pay progression of high/low performers. —Alignment of organizational and individual performance expectations and results. —Increased employee involvement in performance planning and assessment.	—Perceived pay performance link —Perceived fairness of ratings —Satisfaction with ratings —Employee trust in supervisors ... —Adequacy of performance feedback. —Turnover by performance rating category. —Pay progression by performance rating category, career path. —Linkage of performance expectations to strategic plans/goals. —performance expectations, —Perceived involvement	—Attitude survey —Attitude survey —Attitude survey —Attitude survey —Attitude survey —Workforce data —Workforce data —Performance expectations, strategic plans —Attitude survey/focus groups —Attitude survey/focus groups
c. New appraisal process	—Reduced administrative burden	—Performance management procedures. —Employee and supervisor perception of revised procedures.	—Personnel regulations —Attitude survey
d. Performance development	—Improved communication —Better communication of performance expectations. —Improved satisfaction and quality of workforce.	—Perceived fairness of process ... —Feedback and coaching procedures used. —Time, funds spent on training by demographics. —Organizational commitment —Perceived workforce quality-attitude survey.	—Focus group —Focus group —Personnel office data —Training records —Attitude survey Attitude survey
3. Classification			
a. Improved classification systems with generic standards.	—Reduction in amount of time and paperwork spent on classification. —Ease of use —Improved recruitment of employees with appropriate skills.	—Time spent on classification procedures. —Reduction of paperwork/number of personnel actions (classification/promotion). —Managers' perceptions of time savings, ease of use, improved ability to recruit. —Quality of recruits —Perceived quality of recruits —GPAs of new hires, educational levels. —Perceived authority	—Personnel office data —Personnel office data —Attitude survey —Attitude survey —Focus groups/interviews —Personnel office data
b. Classification authority delegated to managers.	—Increased supervisory authority/accountability.	—Perceived authority	—Attitude survey

APPENDIX B: PROJECT EVALUATION AND OVERSIGHT—INTERVENTION IMPACT MODEL—DOD LAB DEMONSTRATION PROGRAM—Continued

Intervention	Expected effects	Measures	Data source
c. Dual career ladder	—Decreased conflict between management and personnel staff. —No negative impact on internal pay equity. —Increased flexibility to assign employees. —Improved internal mobility —Increased pay equity —Flatter organization —Improved quality of supervisory staff.	—Number of classification disputes/appeals pre/post. —Management satisfaction with service provided by personnel office. —Attitude survey. —Internal pay equity —Assignment flexibility —Supervisory/non-supervisory ratios. —Perceived internal mobility —Perceived pay equity —Supervisory/non-supervisory ratios. —Employee perceptions of quality of supervisors.	—Personnel records —Attitude survey —Focus groups, survey —Workforce data —Attitude survey —Attitude survey —Workforce data —Attitude survey
4. RIF			
Modified RIF	—Prevent loss of high performing employees with need skills. —Contain cost and disruption	—Separated employees by demographics, performance. —Satisfaction with RIF process —Cost comparisons of traditional v. modified RIF. —Time to conduct RIF —Number of appeals/reinstatements.	—Workforce data —Attitude survey/focus groups —Attitude survey/focus groups —Personnel office/budget data —Personnel office data —Personnel office data
5. Combination of all Interventions			
All	—Improved organizational effectiveness. —Improved management of R&D workforce. —Improved planning —Improved cross functional coordination. —Increased product success —Cost of innovation	—Combination of personnel measures. —Employee/management job satisfaction (intrinsic/extrinsic). —Planning procedures —Perceived effectiveness of planning procedures. —Actual/perceived coordination ... —Customer satisfaction —Project training/development cost (staff salaries, contract cost, training hours per employee).	—All data sources —Attitude survey —Strategic planning documents —Organizational charts —Attitude survey —Customer satisfaction surveys —Demo project records —Contract documents
6. Context			
a. Regionalization	—reduced servicing ratios/cost —No negative impact on service quality.	—HR servicing ratios —Average cost per employee served. —Service quality, timeliness	—personnel office data, workforce data —Workforce data/personnel office data —Attitude survey/focus groups
b. GPRA	—Improved organizational performance.	—Other measures to be developed.	—As established

Appendix C. Performance Elements

Each performance element is assigned a weight between a specified range. The total weight of all elements in a performance plan is 100 points. The supervisor assigns each element some portion of the 100 points in accordance with its importance for mission attainment.

All employees will be rated against at least the five generic performance elements listed through "e" below. However, only those employees whose duties require supervisor or manager/leader responsibilities will be rated on element "f". Supervisors will be rated against an additional performance element, listed at "g" below:

a. Technical Competence. Exhibits and maintains current technical knowledge,

skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate career paths, seeks and accepts developmental and /or special assignments. Adaptive to technological change. (Weight Range: 15 to 50)

b. Working Relationships. Accepts personal responsibility for assigned tasks. Considerate of others views and open to compromise on areas of difference, if allowed by technology, scope, budget, or direction. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Always willing to give assistance. Shows appropriate respect and courtesy. (Weight Range: 5 to 15)

c. Communications. Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and cogent. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight Range: 5 to 15)

d. Resource Management. Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; support organization's resource development and conservation goals. (Weight Range: 15 to 50)

e. Customer Relations. Demonstrates care for customers through respectful, courteous, reliable and conscientious actions. Seeks out and develops solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customers informed and prevents surprises. Within the scope of job responsibility, seeks out and develops new programs and /or reimbursable customer work. (Weight Range: 10 to 50)

f. Management/Leadership. Actively furthers the mission of the organization. As

appropriate, participates in the development and implementation of strategic and operational plans of the organization. Develops and implements tactical plans. Exercises leadership skill within the environment. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises due responsibility to oversee technical/acquisition/organizational positions assigned to them. (Weight Range: 0 to 50)

g. Supervision/EEO. Works toward recruiting, developing, motivating, and retaining quality team members; takes timely/appropriate personnel actions, applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members. (Weight Range: 15 to 50)

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Appendix D. Benchmark Performance Standards

ELEMENT POINT-RANGES AND PERFORMANCE STANDARDS

THESE BENCHMARK PERFORMANCE STANDARDS ARE USED TO EVALUATE AND SCORE PERFORMANCE AGAINST THE WEIGHTED PERFORMANCE ELEMENTS. THIS SHEET MUST BE USED IN CONJUNCTION WITH BENCHMARK JOB DESCRIPTION AND PERFORMANCE OBJECTIVES.

	ELEMENT WEIGHTS									
	50	45	40	35	30	25	20	15	10	5
100% Performance elements were attained demonstrating exceptional initiative, versatility, originality, and creativity. This individual demonstrates the ability to grasp, understand, organize, and convey complex issues to others and carry the job assignment to successful completion with minimum direct supervision. Performance elements were effectively achieved utilizing cooperation, responsiveness, conflict avoidance, or conflict resolution. Written and oral communications were appropriately demonstrated effectively and efficiently. Performance elements were achieved with demonstrated leadership, integrity, competency, commitment, candor, and sense of duty.	49	44	39	34	29		24			
	48		43	38			19			
	47	42		33	28				14	
	46		37			23				
		41		32						
	45		36		27		18			9
		40		31		22				
	44		35							
	43	39		30	26					
		38	34				17			
	42			29	25	21				
	41	37	33							
	40	36	32	28	24	20	16	12	8	4
	39	35	31		23					
	38	34		27		19				
			30				15			
	37	33		26	22			11		
	36		29			18				
		32		25						
70% Performance elements were attained effectively and efficiently with consistently high quality and quantity of work. This individual has demonstrated the ability to complete the job assignments in an efficient, orderly sequence that culminated in results that were timely, correct, thorough and cost effective. Performance elements were attained with consistently above average quality and reliability while effectively utilizing accepted procedures and resolving problems with skill and resourcefulness. Performance elements were attained with consistently productive cooperative efforts and with clear, precise, and convincing written and oral communication.	35		28		21		14		7	
		31		24						
	34		27			17				
	33	30		23	20			10		
			26				13			
	32	29		22		16				
	31	28	25		19					
	30	27	24	21	18	15	12	9	6	3
	29	26	23							
	28			20	17	14				
		25	22				11			
	27	24		19	16					
	26		21							
		23		18		13				
50% Performance elements were accomplished, were mostly reliable, and delivered without unacceptable delays. Procedures were minimally correct and problems were dealt with satisfactorily. Attained performance elements, using work methodology that demonstrated a reasonable degree of cooperation with other with clear and concise written and oral communications.	25		20		15		10		5	
UNSATISFACTORY	24	22	19	17	14	12	9	7	4	2
Performance elements were not successfully completed because of failure in quality, quantity, completeness, responsiveness, or timeliness of work. Performance elements products were deficient, because they were contrary to direction or guidelines; did not meet minimum specifications; were inconsistent with organizational procedures; were significantly flawed or substandard in quality; demonstrated insufficient technical knowledge or skill; were incomplete; were unacceptably late; lacked essential cooperative involvement or support; or problems that arose during performance of performance elements activities were not satisfactory resolved.										

Final Report
Task 1

Tuesday
March 3, 1998

Part IV

Office of Personnel Management

Science and Technology Laboratory
Personnel Management Demonstration
Project Final Plan: U.S. Army Engineer
Waterways Experiment Station (WES),
Vicksburg, MS; Notice

OFFICE OF PERSONNEL MANAGEMENT

Science and Technology Laboratory Personnel Management Demonstration Project; Department of the Army, U.S. Army Engineer Waterways Experiment Station (WES), Vicksburg, MS

AGENCY: Office of Personnel
Management.

ACTION: Notice of approval of
demonstration project final plan.

SUMMARY: 5 U.S.C. 4703 authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Public Law 103-337, October 5, 1994, permits the Department of Defense (DoD), with the approval of the OPM, to carry out personnel demonstration projects generally similar to the China Lake demonstration project at DoD Science and Technology (S&T) Reinvention Laboratories. The Army will implement demonstration projects initially to cover five of its S&T Reinvention Laboratories: The Army Research Laboratory; the Army Missile Research, Development, and Engineering Center; the Army Aviation Research and Development Center; the Army Medical Research and Materiel Command; and the Army Engineer Waterways Experiment Station. This plan is for the Army Engineer Waterways Experiment Station (WES).

DATES: This demonstration project may be implemented at WES beginning on June 3, 1998.

FOR FURTHER INFORMATION CONTACT:

WES: Dr. C.H. Pennington, U.S. Army Engineer Waterways Experiment Station, ATTN: CEWES-ZT-E, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180-6199, phone 601-634-3549. **OPM:** Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, phone 202-606-1138.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, at least 19 studies of DoD laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The WES Personnel Management Demonstration Project involves simplified job classifications,

pay banding, a performance-based compensation system, streamlined hiring processes, and modified Reduction-in-Force (RIF) procedures.

2. Overview

On March 15, 1997, [62 FR 12006] OPM published this proposed demonstration plan and received thirty-nine letters and eight individuals commented on the proposed plan at the Public Hearing. These comments brought several new perspectives to the attention of those responsible for implementing, overseeing, and evaluating the project. The comments highlighted instances of miscommunication and misunderstanding with the present system as well as the project interventions. Further, they underscored the importance of providing training to employees and supervisors on the demonstration project. The substance of all comments received has been conveyed to the WES Director, Commander and Deputy Director, and the Laboratory Directors in the event that local policies, processes, and training sessions may benefit from such perspectives. A summary of all comments received, along with accompanying responses, is provided below.

A. General Management Issues

Comments: Seventeen comments were in support of the project as a way to provide incentives for promising young people to stay in the Federal Government. Seven were opposed to the project, others were opposed to some of the provisions in the project, and two recommend coverage of engineers and scientists only. Many other comments were made that addressed the organizational environment at WES. Several comments expressed concern over a demonstration project which provides additional flexibility to supervisors and suggested that these flexibilities will allow for or promote abuses and compromises of the merit system. With the feeling that many supervisors currently do not properly execute supervisory responsibilities or utilize the authority and tools provided under the current system, these employees fear a new system that gives supervisors additional flexibility over their career and pay. Several comments mentioned that no checks or oversight seem apparent and that management accountability is lacking under the Project.

Response: It has been the intent of WES from the inception of the Personnel Management Demonstration Project to include the total workforce in

a broadbanding performance-based personnel management system, not just the engineers and scientists. Internal equity, organizational cohesiveness based on a common performance management philosophy, and administrative efficiency are reasons WES included the entire workforce in the project. WES acknowledges that the project provides increased authority and responsibility to supervisors, particularly in those areas impacting employees' pay. Experience with other personnel demonstration projects, including the China Lake project, does not support the assumption that increased supervisory discretion and authority leads to merit system abuses. However, WES is sensitive to the concerns expressed by many of the comments and is committed to holding supervisors accountable for the proper use of increased authorities and flexibilities. To assist supervisors in carrying out their new responsibilities, the Personnel Management Demonstration Project currently requires that supervisors be trained on the new system and receive feedback from a number of sources. Aggregate data from the feedback process will be made available to the top management at WES and will be used to monitor and identify further supervisory development and training needs. Project oversight will be achieved by an executive steering committee, co-chaired by the Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army, Civilian Personnel Policy. Additionally, extensive independent evaluations of the demonstration project will be conducted by OPM's Personnel Resources and Development Center over the first five years of the project. The results of these evaluations will provide WES with information as to whether specific provisions of the project need to be modified, continued as is, or curtailed.

B. Occupational Family and Broadbands

Comments received on this aspect of the Personnel Management Demonstration Project were related to two subtopics; broadbanding and assignment of job series to occupational families.

(1) Broadbanding

(a) *Comment:* Four individuals expressed concern about the proposed broadbanding structure in the Engineers and Scientists occupational family. Two recommended that grades GS-12 through GS-14 be included in one pay band since this was in the original WES

proposal. One recommended one pay band covering GS-11 through GS-15. The other recommended that GS-13s, GS-14s, and GS-15s be placed in separate pay bands. Concerns presented included: GS-12s at WES consistently work at the GS-13 or GS-14 level; there is a glass ceiling for GS-12s; GS-12s are lower than others serving on national and international committees; expectations of wholesale transfer of GS-12s which will be a loss to the community; retention problems; costs of retraining new recruits; and concerns about ethical dilemmas when raters and ratees are in the same pay band.

Response: WES recognizes there is a concern over the lack of progression opportunities from GS-12 to GS-13 under the present system and the desirability of establishing a pay band that would remove promotion barriers and allow progression to a level of pay equivalent to the GS-14 level. This is evident in the turnover of engineer and science employees at the GS-12 level, which is the highest at WES. A proposal was included in the first WES plan to address these issues and to experiment with a GS-12 through GS-14 pay band for engineers and scientists performing research, testing and evaluation, and experimental development functions. Based on these comments and those presented during the project development process, the pay banding scheme for the Engineers and Scientists occupational family has been revised to recognize a pay band covering GS-12 through GS-14. The issue of raters and ratees in the same band was considered to be comparable to rating levels under the present system whereby person-in-job positions are frequently at or above the level of their raters. This is not viewed as a potential problem.

(b) *Comment:* One commentor recommended that separate occupational families, pay bands, and pay pools be established for both legal and contracting personnel.

Response: WES currently has 3 attorneys and 13 GS-1102 contracting employees. The creation of separate occupational families and pay bands for each professional group is impractical, would require an inordinate amount of time to manage, and the pay pools would be too small to provide substantial financial rewards to recognize exceptional performance. The legal and contracting occupations will continue to be included in the Administrative occupational family.

(c) *Comment:* One commentor stated that "the ratio of possible pay increases caused by the banding is highly favorable to the white male while the minorities, especially African

Americans and females, will find themselves locked in the lower paying bands."

Response: The pay banding schemes were developed by a committee comprised of labor, management, professional, clerical, technical, wage grade, African American, white, male, and female employees. Pay band considerations included the nature of work (professional, nonprofessional, technical, support, etc.), normal level of work, and normal career progression of employees within the various occupational families. The results reflect progression from entry level trainee, to intern to developmental, to journeyman, to advanced journeyman, to expert, to managerial level. No positions were designated to bands based on non-merit factors such as race, sex, national origin, or any other personal considerations of incumbents. Additionally, experience of the China Lake Project shows that broadbanding does not discriminate based on race, sex, national origin or any other personal considerations. To assist WES in monitoring this important issue, data on band level salary, and workforce demographics, supplemented by perceptual data, are included in the planned evaluation strategy. Evaluation results will alert WES of any unintended outcomes and will serve as the basis for decisions to modify the project.

(d) *Comment:* One employee voiced concern about the potential problem of applying for a job in another agency if they were at pay band IV in the Engineers and Scientists occupational family and the desired job was GS-15. The employee was concerned about how the agency would know their comparable grade level.

Response: The project includes a provision for conversion out of the project to the General Schedule pay system. In instances such as this, employees will be encouraged to ask prospective employers to contact the employee's servicing Human Resources Management (HRM) Office for comparable grades, etc., in order to make qualifications determinations.

(2) Assignment of Job Series to Occupational Families

Comments: Three comments were submitted raising concern about the identification of job series to occupational families. These comments were related to the assignment of GS-0544, Civilian Pay Technician, and GS-1106, Procurement Clerk, positions to the General Support occupational family.

Response: The occupational families selected for the WES Personnel Management Demonstration Project group positions by job series under one of four occupational families: Engineers and Scientists; E&S Technicians; Administrative; and General Support. Each occupational family covers occupations similarly treated in regard to type of work, typical career progression, and qualification requirements. Using these criteria, positions designated as Civilian Pay Technician, GS-0544, and Procurement Clerk, GS-1106, are assigned to the General Support occupational family.

C. Performance Evaluation

Comment: One commentor had three concerns about the performance evaluation system that will be used by this project. The commentor recommended that a pass/fail system be adopted, three performance elements be added to the appraisal, and the employee-to-supervisor ratio of about 15:1 be waived.

Response: Several performance evaluation options including a pass/fail system were considered during project development. While pass/fail is a viable option, a system that rates an employee's performance on a scale from 0 to 5 was adopted. The latter is believed to be more compatible for converting performance ratings or scores to pay-for-performance. The recommended three additional performance elements (empowers his/her personnel, acquisition streamlining initiatives, and support to the organization) will not be added since they are considered to be embedded within the seven non-supervisory performance elements or the two supervisory performance elements. The plan contains no requirements for changing the employee-to-supervisor ratio.

D. Supervisory Pay Adjustments and Supervisory Pay Differentials

Comments: Eight comments were received (one was signed by seven individuals) regarding the proposal to allow supervisory pay adjustments and differentials for supervisors in the Engineers and Scientists occupational family. One was in support of supervisory pay adjustments and differentials. One recommended that supervisory pay adjustments be applied equally to all engineers and scientists supervisors rather than be variable. One commentor recommended that adjustments and differentials be made available to all supervisors regardless of occupational family assignment. One recommended that supervisory pay

adjustments be allowed to exceed the pay band maximum pay and considered as basic pay. The others recommended that the proposal to allow these adjustments and differentials be withdrawn. Reasons given included supervisory skills are supporting elements that are not specific to mission and are generic tasks, supervisory work force is stable, proposed plan simplifies the work of supervisors, increased pay for supervisors will penalize direct-mission skills, and the plan should reward individual performance not the position.

Response: The proposal to allow supervisory pay adjustments was to attract and reward the best individuals for supervisory positions, recognize the increased burden placed on engineers and scientists supervisors, and to compensate supervisors who supervise employees that are typically at the same grade level or higher. The supervisory pay adjustment will allow an increase in pay for new supervisors who lateral from a nonsupervisory position to a supervisory position within the same pay band, i.e., pay band IV or V. This adjustment is not automatic and may be varied based on a supervisor's performance, up to a maximum of 10 percent. Supervisory pay differentials are included in order to recognize pay for performance for supervisors who have reached the maximum pay for their pay band. This extension of pay will be given and adjusted based on their actual performance and the differential will not be treated as basic pay. Supervisory adjustments and differentials were not made available to supervisors in other occupational families since most supervise employees in lower pay bands.

E. Distinguished Scholastic Achievement Appointment

Comments: Eighteen individuals identified a need to modify the Personnel Management Demonstration Project to include an initiative that was in the original WES proposal, the establishment of a Distinguished Scholastic Achievement Appointment which provides the authority to appoint undergraduates and graduates with outstanding scholastic records to positions in the Engineers and Scientists occupational family.

Response: 5 U.S.C. 4703 states that before a personnel demonstration project is conducted, a plan shall be developed which identifies the methodology of the project. The plan must be published in the **Federal Register** and submitted as published to public hearings. New initiatives or substantive changes to a proposed

personnel demonstration project are not permitted without being submitted to public hearing. The Distinguished Scholastic Achievement Appointment is considered to be a new initiative and has not been the subject of a public hearing. Therefore, the Distinguished Scholastic Achievement Appointment will not be included as part of the WES Personnel Management Demonstration Project at this time. However, WES management intends to submit the Distinguished Scholastic Achievement Appointment as a personnel initiative at the appropriate time in the future.

F. Voluntary Emeritus Program

Comment: One person suggested that the Voluntary Emeritus Program be made available to retired or separated individuals regardless of occupational family.

Response: The national prominence earned by researchers at WES results from their unparalleled engineering and scientific achievements. Many of the retired engineers and scientists continue to be leaders in their professions and the Voluntary Emeritus Program allows them the opportunity to assist WES in solving problems of importance to the nation in broad areas of civil engineering and environmental quality. This intervention will be retained as written and will be monitored through the evaluation process to determine whether it should be expanded to other occupational families.

G. Conversion Buy-In

Comments: Seven commentors were concerned that, at the time of conversion, employees would be given a lump sum cash payment rather than adjusting base salary for time credited toward what would have been the employee's next within-grade increase. All believe that a one-time payment equal to an employee's time vested in their current grade step takes away from the employee's future earnings.

Response: WES has modified the conversion procedure so that, at the time of conversion into the project, each employee will have their basic pay adjusted for time credited toward what would have been the employee's next within-grade increase.

H. Reduction-In-Force (RIF)

Comments: Five commentors were concerned with the revised RIF procedures that place greater emphasis on performance when establishing retention registers. Two commentors viewed the revised procedures as unfair since performance scores are not used to adjust the service computation date; one commentor was concerned about

veterans' preference issues; one commentor did not believe that competitive areas should be defined as the occupational family; and the other commentor saw no need to change current RIF procedures.

Response: The current RIF system is complicated, costly, and relatively unresponsive to the needs of the organization. WES believes that flexible and responsive alternatives are needed that place greater emphasis on performance while preserving the guiding principles of veterans' preference laws. The revised RIF procedures will disrupt the organization the least and will increase the probability of retaining the highest performing individuals. Under the Project, employees will retain rights and protections during RIF. At the same time, one goal of the Project is to expand the role of performance in various aspects of employment. For this reason, the Project does not use performance scores to adjust the service computation date (SCD), as one commentor suggested. The Project instead emphasizes performance by using the most recent employee performance score as a separate element in the order of retention during RIF and by giving that score priority over the service computation date in determining the order of retention. Retention standing will be based upon the following factors, listed in order of priority: tenure, veterans' preference, most recent employee performance score, and SCD. The role of veterans' preference remains unchanged from the current system. Finally, competitive areas have been modified to make each of the four occupational families a separate competitive area. All positions in a given occupational family, regardless of their geographic locations, will fall within a single competitive area.

3. Demonstration Project System Changes

Minor editorial changes were made to correct the final version of the Project. In addition, pertinent sections of the final plan have been modified to include: a pay band in the Engineers and Scientists occupational family that combines GS 12-14 positions (Section III, A, Broadbanding); and an adjustment of basic pay for the time credited toward the employee's next within-grade increase at the time of conversion into the project (Section V, A, Conversion to the Demonstration Project).

Dated: February 26, 1998.

Office of Personnel Management.

Janice R. Lachance,
Director.

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Appendix A: Intervention Impact Model: Project Evaluation	

I. Executive Summary

The Department of the Army (DA) will establish Personnel Demonstration Projects generally similar to the system currently in use at the Navy Personnel Demonstration Project known as China Lake. The Personnel Demonstration Projects will be developed to be in-house budget neutral, based on a baseline of September 1995 in-house costs and consistent with the DA plan to downsize the DA laboratories and research and development centers. An in-house budget is a compilation of costs of the many diverse components required to fund the day-to-day operations of a laboratory. These components generally include pay of people (labor, benefits, overtime, awards), training, travel, supplies, non-capital equipment, and other costs depending on the specific function of the activity.

This project was designed by the Assistant Secretary of the Army for Research, Development and Acquisition with the support of the Assistant Secretary of the Army for Civil Works, and the participation of five Army S&T Reinvention Laboratories. Review was provided by the US Army Corps of

Engineers, DA, DoD, and OPM. Phases of the project that address non-Title 5 issues began as early as 1 October 1995, with implementation of Title 5 initiatives to begin no earlier than June 3, 1998.

This project is built upon the concepts of linking performance to pay for all covered positions, simplifying paperwork in the processing of classification and other personnel actions, emphasizing partnerships among management, employees, and unions, and delegating other authorities to line managers.

II. Introduction

A. Purpose

The quality of DoD laboratories, their people, and products has been under intense scrutiny in recent years. The perceived deterioration of laboratory quality is due, in substantial part, to the erosion of control which line managers have over their human resources. This demonstration, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products. The purposes of the demonstration project are to: Improve the hiring process and allow WES to compete more effectively for high-quality personnel; motivate and retain staff through pay for performance, sabbaticals, and a more responsive personnel system; strengthen the manager's role in personnel management through increased delegation of personnel authorities; increase the efficiency of the personnel system by simplifying the classification system through broadbanding and reduction of guidelines, steps, and paperwork; and create a model that could be adopted by other government agencies.

This project will be under the joint sponsorship of the Assistant Secretary of the Army for Research, Development and Acquisition and the Assistant Secretary of the Army for Manpower and Reserve Affairs. The MACOM Commander will execute and manage the project.

Project oversight will be achieved by an executive steering committee made up of top-level executives, co-chaired by the Deputy Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army (Civilian Personnel Policy). Oversight external to the Army will be provided by DoD and OPM.

B. Problems With the Present System

The civilian personnel system currently in use at DoD laboratories has

several major inefficiencies, which hinder management's ability to recruit and retain the best qualified personnel. Line managers have only limited flexibility to administer personnel resources, and existing personnel regulations are often in conflict with line management's ability to perform world-class research. Laboratory managers are frustrated in their attempts to hire the best and brightest engineers and scientists.

The classification system requires lengthy, narrative, individual position descriptions, which have to be classified by the use of complex and often outdated position classification standards. The system causes delays in recruiting, reassigning, promoting, and removing employees. Rewarding or taking a performance based action requires inordinate paperwork and time, often discouraging managers from pursuing critical actions. Few incentives, with limited flexibility, exist for managers to deal with all levels of the workforce, and pay is not always commensurate with an employee's performance. The current RIF system does not adequately recognize performance as a major criterion in RIF situations. The RIF rules are complex, and difficult to understand and administer. The RIF process disrupts operations, due to displacement of employees within their competitive levels and in the exercise of bumping and retreat rights.

C. Changes Required and Expected Benefits

This project is expected to demonstrate that a human resource management system tailored to the mission and need of WES will result in: Increased quality in the engineering and science workforce and the laboratory products they produce; increased timeliness of key personnel processes; trended workforce data that reveals increased retention of excellent contributors and separation rates of poor contributors; and increased customer satisfaction with the laboratory and its products by customers serviced.

This demonstration program builds on the successful features of demonstration projects at China Lake and the National Institute of Standards and Technology (NIST). These demonstration projects have produced impressive statistics on job satisfaction of their employees versus that for the federal workforce in general. This demonstration expects similar successes. A full range of data will be collected to evaluate the project (and is described in Section VII, Evaluation Plan).

D. Participating Organization

U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180-6199. Employees assigned to WES work at the locations shown in Table 1.

TABLE 1.—DUTY LOCATIONS

Location	Total No. of employees
London, England	1
Berkeley, CA	1
Mobile, AL	3
Washington, DC	1
Fayette, NC	1
Natchez, MS	1
Vicksburg, MS	1,312
Duck, NC	10
Calhoun Falls, SC	2
Lewisville, TX	3
North Bonneville, WA	3
Dallesport, WA	1
Spring Valley, WI	2
Omaha, NE	56

E. Participating Employees

The project will cover all General Schedule (GS) employees assigned to WES. Federal Wage System (FWS) employees, Civilian Intelligence Personnel Management System (CIPMS) employees covered by Title 10, and 5 U.S.C. 3105 Scientific and Technical (ST) employees are not covered, but will follow the same employee development provisions of this plan, except, in the case of CIPMS employees, where the provisions are found to be in conflict with CIPMS. The occupational series of employees included in the project are identified by occupational family in Table 2. All GS employees with appointments exceeding one year will be covered by the provisions of this project. GS employees with appointments limited to one year or less will be covered for pay banding, the performance appraisal process, and salary adjustments. Senior Executive Service (SES) employees will not be included in the project. It is the intent of WES to expand coverage of the project to all FWS employees 1 to 2 years following the date of implementation. In the event of expansion to FWS employees beyond the employee development provisions, full approval will be obtained from DA, DoD, and OPM.

The American Federation of Government Employees (AFGE) represents approximately 500 GS and FWS employees at WES. The AFGE represents most E&S Technicians; most Administrative employees; all General Support employees except fire protection inspectors, security guards, student trainees, and those designated

as confidential employees; and all nonsupervisory FWS employees. WES plans to implement this project on June 3, 1998. Bargaining unit employees will be included in the project at that time if Impact and Implementation bargaining is complete. If Impact and Implementation bargaining has not been completed on the date of project implementation, employees represented by AFGE Local 3310 may not be brought into the project until completion of the bargaining process. AFGE Local 3310 has been involved with and participated in the development of the project since its inception. WES will continue to fulfill its obligation to consult or negotiate with the AFGE, as appropriate, in accordance with 5 U.S.C. 4703 (f) and 7117. The participation with the AFGE is within the spirit and intent of Executive Order 12871.

TABLE 2.—OCCUPATIONAL SERIES INCLUDED IN THE DEMONSTRATION PROJECT

Engineers & Scientists	
0023	Outdoor Recreation Planner
0150	Geographer
0193	Archeologist
0401	Biologist
0403	Microbiologist
0408	Ecologist
0410	Zoologist
0414	Entomologist
0430	Botanist
0434	Plant Pathologist
0435	Plant Physiologist
0470	Soil Scientist
0471	Agronomist
0482	Fishery Biologist
0486	Wildlife Biologist
0499	Student Trainee
0690	Industrial Hygienist
0801	General Engineer
0803	Safety Engineer
0806	Materials Engineer
0807	Landscape Architecture
0808	Architecture
0810	Civil/Hydraulic/Structural Engineer
0819	Environmental Engineer
0830	Mechanical Engineer
0850	Electrical Engineer
0854	Computer Engineer
0855	Electronics Engineer
0893	Chemical Engineer
0896	Industrial Engineer
0899	Student Trainee
1301	Physical Scientist
1310	Physicist
1313	Geophysicist
1315	Hydrologist
1320	Chemist
1350	Geologist
1360	Oceanographer
1399	Student Trainee
1515	Operations Research Analyst
1520	Mathematician
1530	Statistician
1550	Computer Scientist
1599	Student Trainee

TABLE 2.—OCCUPATIONAL SERIES INCLUDED IN THE DEMONSTRATION PROJECT—Continued

E&S Technicians	
0028	Environmental Protection Specialist
0802	Engineering Technician
0818	Engineering Draftsman
0856	Electronics Technician
1311	Physical Science Technician
1371	Cartographic Technician
1521	Mathematics Technician
1670	Equipment Specialist
Administrative	
0018	Safety & Occupational Health Specialist
0099	Student Trainee
0260	Equal Employment Opportunity Specialist
0301	Info Syst Mgr Spec/Joint Test Prog Mgt Coordinator/Emergency Oper Mgr
0334	Computer Specialist
0341	Administrative Officer
0343	Mgt & Prog Analysis Officer
0346	Logistics Management Officer
0391	Telecommunications Officer
0399	Student Trainee
0505	Financial Manager
0510	Accountant
0511	Auditor
0560	Budget Officer
0599	Student Trainee
0610	Nurse
0905	General Attorney
0950	Paralegal Specialist
1020	Illustrator
1035	Public Affairs Specialist
1060	Photographer
1071	Audiovisual Specialist
1082	Editor
1084	Visual Information Specialist
1102	Contract Specialist
1104	Property Disposal Specialist
1199	Student Trainee
1410	Librarian
1412	Technical Information Specialist
1499	Student Trainee
1712	Training Instructor
2001	General Supply Specialist
2101	Transportation Specialist
General Support	
0019	Safety Technician
0081	Firefighter
0085	Security Guard
0090	Guide
0099	Student Trainee
0302	Messenger
0303	Clerk
0305	Mail & File Clerk
0312	Clerk-Stenographer
0318	Secretary
0322	Clerk-Typist
0326	Office Automation Clerk
0332	Computer Operator
0335	Computer Clerk
0344	Management Assistant
0361	Equal Employment Opportunity Assistant
0394	Communications Clerk
0503	Financial Clerk & Assistant
0525	Accounting Technician
0530	Cash Processing Technician
0540	Civilian Pay Technician
0544	Teller

TABLE 2.—OCCUPATIONAL SERIES INCLUDED IN THE DEMONSTRATION PROJECT—Continued

0561	Budget Clerk
0986	Legal Clerk
1105	Purchasing Clerk
1106	Procurement Clerk
1107	Property Disposal Clerk
1411	Library Technician
2005	Supply Clerk
2102	Transportation Clerk
2131	Freight Rate Specialist

F. Project Design

In August 1994, a Project Manager was appointed to lead the WES reinvention effort. The Project Manager was assisted by a representative of the servicing HRM Office. During October-November 1994, a WES concept plan was developed to map out desired areas in which to propose changes in the personnel system. The concept plan was then merged into a single Army plan for the participating Army S&T Laboratories and was submitted to the DA in December 1994.

WES formed four teams in January 1995 to develop specific initiatives to be undertaken in the WES demonstration project. The teams were composed of 7 to 14 employees each and included representatives from management, engineers, scientists, technicians, clerical, administrative, wage grade, human resources, and representatives from the local union. The teams developed human resources management initiatives which were designed to: assist in hiring the best people to accomplish the mission; improve training and development of the workforce; improve and simplify the position classification process; develop a broadband system to facilitate classification and career progression; and develop a pay for performance system to recognize employee contributions to mission accomplishment.

The Army's plan was reviewed concurrently by DoD and OPM in April 1996. It was recommended that each

Army lab submit individual project plans. The second joint review by DoD and OPM of the lab plans was conducted in September 1996. The philosophy and intent of WES throughout the process of project development was the inclusion of its total workforce. As such, a pay-for-performance broadbanding system was developed for FWS employees, in partnership with representation from the bargaining unit, and was included as part of the WES plan. At the joint reviews, the DoD Civilian Personnel Management Service and OPM's Office of Classification and Office of Compensation Policy considered the broadbanding of FWS employees as outlined in the WES plan to be inappropriate. FWS employees were removed from the plan but will follow the same employee development provisions of this plan. Options for including them in a pay-for-performance system at a later date will be developed by WES, DA, DoD, and OPM.

This plan and these initiatives are the result of many months of effort by dedicated participants at WES, U.S. Army Corps of Engineers, DA, DoD, and OPM levels.

III. Personnel System Changes*A. Broadbanding**1. Pay Bands*

Each occupational family will be composed of discrete pay bands corresponding to recognized career advancement within the occupations. The pay bands will replace grades. The pay bands will not be the same for all occupational families. Each occupational family will be divided into four to six pay bands, each pay band covering the same pay range now covered by one or more grades. The minimum rate of basic pay for a band will be the minimum rate for the lower grade in the band as shown on the regular GS schedule. The maximum rate of basic pay for a pay band will be the

highest regular schedule GS rate possible for positions within that occupational family and pay band. A salary overlap, similar to the current overlap between GS grades, will be maintained.

Ordinarily an individual will be hired at the lowest salary in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance salary within a pay band.

The proposed pay bands for the occupational families and how they relate to the current GS grades are shown in Table 3. This pay band concept has the following advantages because it: reduces the number of classification decisions required during an employee's career; simplifies the classification decision-making process and paperwork; supports delegation of classification authority to line managers; provides a broader range of performance-related pay for each pay band; and prevents the progression of low performers through a pay band by mere longevity, since job performance serves as the basis for determining pay.

The WES pay banding plan expands the pay banding concept used at China Lake and NIST by creating pay band VI of the Engineers and Scientists occupational family. This pay band is designed for Senior Scientific Technical Managers.

Current legal definitions of Senior Executive Service (SES) and ST positions do not fully meet the needs of WES. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS-15 grade level. The primary knowledge and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are reserved for bench research scientists and engineers; these positions require a very high level of technical expertise and they have little or no supervisory responsibility.

TABLE 3.—OCCUPATIONAL FAMILIES AND PAY BANDS

Occupational families	Pay Bands										
Engineers and Scientists (E&S)*	I (N)		II (N)			III (E)		IV (E)		V (E)	VI (E)
E&S Technicians	I (N)		II (N)	III (N)		IV (E)					
Administrative	I (N)		II (N)			III (E)		IV (E)		V (E)	
General Support	I (N)	II (N)	III (N)	IV (E)							

TABLE 3.—OCCUPATIONAL FAMILIES AND PAY BANDS—Continued

Corresponding GS Grades	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
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*Engineers and Scientists pay band II includes a mix of positions: positions equivalent to GS–5 through 10 involve research, test, evaluation, and equipment development work as well as non-research work; positions equivalent to GS–11 involve research work. Pay band III includes non-research positions, e.g., engineers in public works. Pay band IV positions equivalent to GS–12 through GS–14 involve research work; the balance of band IV includes a mix of research and non-research supervisory positions, and program managers. FLSA Codes: N=Nonexempt; E=Exempt. Although typical exemption status under the various pay bands is shown, actual FLSA exemption status determinations are made on a case-by-case basis.

WES currently has a few positions which typically have characteristics of both SES and ST classifications. Most of these positions are responsible for supervising other GS–15 positions, including branch or division chiefs, non-supervisory research engineers and scientists, and potential ST positions. These positions are classified at the GS–15 level, although their technical expertise warrants classification beyond GS–15. Because of their management responsibility, these individuals are excluded from the ST system.

Because of management considerations, they cannot be placed in the SES. WES management considers the primary requirement for the positions to be knowledge of and expertise in the specific scientific and technology areas related to the mission of the organization. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders, who possess primarily scientific/engineering credentials and are considered experts in their field. However, they must also possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as STS is not an option, because the managerial and supervisory responsibilities inherent in the positions cannot be ignored.

The purpose of pay band VI (which will reinforce the equal pay for equal work principle) is to solve a critical classification problem. It will also contribute to an SES “corporate culture” by excluding from the SES positions for which technical expertise is paramount. Payband VI proposes to overcome the difficulties identified above by creating a new category of positions—the Senior Scientific Technical Manager, which has both scientific/technical expertise and full managerial and supervisory authority.

Current GS–15s will convert into the demonstration project at pay band V. After conversion they will be reviewed against established criteria to determine if they should be reclassified to pay band VI. Other positions possibly meeting criteria for classification to pay band VI will be reviewed on a case-by-

case basis. The proposed salary range is a minimum of 120 percent of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (ES–4). Vacant positions in pay band VI will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities.

Selection panels will be created to assist in filling Payband VI positions. Panel members will be selected from a pool of current WES SES members, ST employees, and later those in Payband VI, and an equal number of individuals of equivalent stature from outside the laboratory to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level.

DoD will test the establishment of pay band VI for a 5-year period. Positions established in pay band VI will be subject to limitations imposed by OPM and DoD. Pay band VI positions will be established only in an S&T Reinvention Laboratory which employs scientists, engineers, or both. Incumbents of pay band VI positions will work primarily in their professional capacity on basic or applied research and secondarily perform managerial or supervisory duties. The number of pay band VI positions within DoD will not exceed 40. These 40 positions will be allocated by ASD (FMP), DoD, and administered by the respective Services. The number of pay band VI positions will be reviewed periodically to determine appropriate position requirements. Pay band VI position allocations will be managed separately from SES, ST, and Senior Level (SL) positions. An evaluation of the pay band VI concept will be performed during the fifth year of the demonstration project.

The final component of pay band VI is the management of all pay band VI assets. Specifically, this authority will be exercised at the DA level and includes the following: authority to classify, create or abolish positions within the limitations imposed by OPM

and DoD; recruit and reassign employees in this pay band; set pay and to have their performance appraised under this project’s pay-for-performance system. The laboratory wants to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

2. Occupational Families

Positions will be grouped into occupational families according to similarities in type of work and customary requirements for formal training or credentials. The historical patterns of advancement within the occupational families will be considered. The current positions and grades at WES have been examined, and their characteristics and distribution have served as guidelines in the development of occupational families. Four occupational families will be established:

(a) Engineers and Scientists. This occupational family includes all technical professional positions such as engineers (civil, hydraulic, structural, mechanical, electronic, electrical, chemical, and environmental), mathematicians, statisticians, computer scientists, outdoor recreational planners, geographers, architects, archaeologists, operations research analysts, and a variety of physical and biological scientists. Specific course work or educational degrees are required for positions in this occupational family.

(b) E&S Technicians. This occupational family consists of the positions that support the various engineering and scientific activities. Employees in this occupational family are required to have training and skills in the various technical areas (civil, hydraulic, structural, geotechnical, physical, coastal, biological, chemical).

(c) Administrative. This occupational family contains specialized functions in such fields as counsel, audit, finance, procurement, public information, accounting, administrative, computing, safety, and management analysis. Special training and skills in administrative fields or special degrees are required.

(d) General Support. This occupational family is composed of positions requiring special skills and knowledge, such as typing or shorthand, and job-related experience. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries, legal clerks, guards, mail clerks, etc.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the executive, administrative, or professional criteria for exemption. As a general rule, the FLSA status can generally be matched to the occupational families and pay bands found in Table 3. Exceptions to these guidelines include supervisors/managers who meet the definitions outlined in the OPM General Schedule Supervisory Guide. The generic position descriptions will not be the sole basis for the FLSA determination. Each position will be evaluated on a case by case basis by comparing the duties and responsibilities assigned, the classification standards for each pay band, under 5 CFR part 551 criteria.

B. Classification

1. Coverage

The present GS classification system has over 400 occupations (also called series), which are divided into 22 groups. The present occupational series will be maintained. New series may be added as needed to reflect new occupations in the work force when established by OPM.

2. Classification Standards

The classification system will be modified to facilitate pay banding. The present classification standards will be used to create local benchmark position description/standards for each pay band, reflecting duties and responsibilities comparable to those described in present classification standards for the span of grades represented by each pay band. Present titles and series will continue to be used in order to recognize the types of work being performed and educational backgrounds and requirements of incumbents. Locally developed specialty codes and OPM functional codes will be used to facilitate titling, making qualification determinations,

and assigning competitive levels to determine retention status.

3. Position Descriptions and Classification Process

New standardized position descriptors will be developed to assist managers in exercising delegated position classification authority. Managers will identify the appropriate pay band and descriptor definition and proceed to finalize the position description. A cover sheet similar to the present DA Form 374 will be used to reflect their classification decision. The cover sheet used will include a provision for designating specialty codes. These specialty codes will be developed to identify the special nature of work performed and will be included on the final position descriptor.

An employee may appeal the occupational series or pay band level of his or her position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If an employee is not satisfied with the DoD response, he or she may then appeal to OPM only after DoD has rendered a decision under the provisions of this demonstration project. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under Title 5 apply. An employee requesting a classification decision that would exceed the equivalent of a GS-15 level may not submit the appeal to OPM.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the Civilian Personnel Office/Human Resources Office providing personnel service and will include copies of appropriate demonstration project criteria.

C. Pay for Performance

The objective is to establish a pay system that will improve the ability of WES to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of pay resources based upon individual performance.

1. Determining Pay Increases

Compensation will be allocated to employees through organizational compensation pools. The WES Director, Commander and Deputy Director, and Laboratory Directors at WES will manage their respective pools.

The compensation pools will have two components: Funds for performance pay increases (money previously available for within-grade increases, quality step increases, and promotions between grades that are banded under the project); and funds for General Schedule pay increases. Performance awards (cash awards and bonuses presently allowed) and locality pay increases will continue under the project and will be excluded from the compensation pools. The compensation pools will be managed to ensure relative cost neutrality. As a result, funds will not be shifted between pools.

Annual base pay increases paid from the performance pay increase component of the compensation pools will be based on eligibility as well as scores on the established standards as follows:

$$PR = \frac{V}{100} S P$$

Where:

PR = employee's annual performance-based pay raise, \$

V = value of a share, percent

S = number of shares earned by employee based on performance

P = employee's salary prior to pay raise

The number of shares earned by an employee will vary from 0 to 4 and will depend upon their performance score. A performance pay increase may not cause the employee's rate of basic pay to exceed the maximum rate of the pay band.

The value of a share will be computed in a manner to ensure that the amount of money available for performance pay increases will not exceed the amount of money in a compensation pool that is available for raises. Therefore, the amount of money available annually within a pay pool for performance-based pay raises is:

$$M = \frac{A}{100} \sum_{i=1}^n P_i$$

Where:

A = average annual historical pay raise, percent

M = pay pool size, \$

P_i = salary of employee I

n = number of employees in compensation pool

The share value (percent) is computed in a manner to ensure exact expenditure of the amount of money in the compensation pool as follows:

$$V = \frac{M}{\sum_{i=1}^{n_e} S_i P_i} \times 100$$

Where:

S_i = number of shares earned by employee I based upon performance
 n_e = number of employees within compensation pool that are eligible for a performance-based pay raise

A payout function that correlates number of shares earned by an employee for a performance based pay raise to average performance score will be similar to the plot shown in Figure 1.

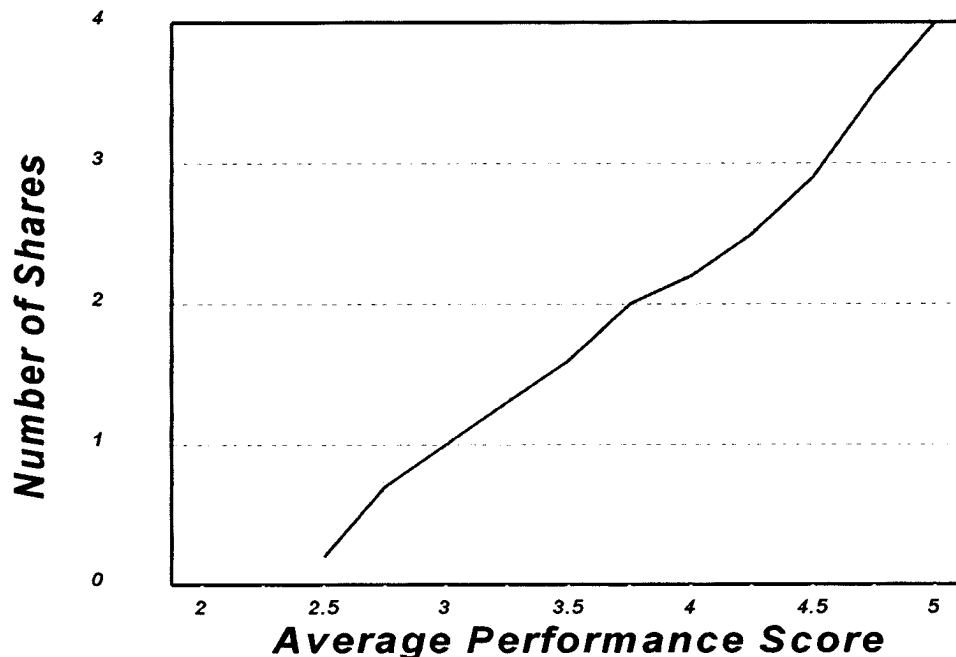
The annual General Schedule pay increase will be allocated as follows:

(a) The first step is setting the percentage General Schedule increase that will be given to all eligible employees. This amount will be equal to the General Schedule increase authorized for GS employees. All employees whose average performance score is 2.0 or greater will be eligible for the increase. Employees with an average performance score of less than 2.0 will

be ineligible for the full General Schedule increase and may receive either none or one-half of the increase. Pay increases for employees receiving retained rates will be determined in accordance with 5 U.S.C. 5363 except that those with an average performance score of less than 2.0 may receive either none or one-quarter of the increase in the maximum rate of basic pay for the applicable pay band.

Figure 1. Relation Between Shares Earned for Performance and Average Performance Score

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(b) The minimum and maximum pay rates of basic pay for each pay band in an occupational family will be adjusted by any general pay increase to reflect the new rates in accordance with the

criteria reflected in Section III, A, Broadbanding, of this plan. The maximum pay rate for pay band VI cannot exceed the rate for SES level 4. Therefore, employees at or near the top of pay band VI may not receive the full

general increase if it is not authorized for SES employees.

2. Performance Evaluation

The performance appraisal system will link compensation to performance

through annual performance evaluations and performance ratings. Performance will be evaluated against generic performance standards. Rating elements will be provided for all employees. All rating elements will be critical and scored on a scale of 0 to 5. The score will be based on employees performance as evaluated against generic performance standards for each element. The supervisor will discuss performance rating standards with the employee to clarify performance criteria at the beginning of the rating period. The generic performance standards, with the provision to add specific work plans, will be used to evaluate employee performance. The standards will describe the level of performance required for the employee to be rated fully successful. Reviews will be conducted at least at mid-year to evaluate employee progress in meeting performance standards. However, WES interns in recognized career programs will be appraised semi-annually until they complete their internship. The last performance rating in each annual cycle will be considered to be the rating of record.

Since all employees will not have the same number of rating elements, the element scores will be summed and averaged by the number of elements rated to determine the overall performance score. The score will be used for setting performance pay increases and determining eligibility for performance awards.

Employees must have an average performance score of 2.5 and above to be eligible for performance pay increases. Employees with an average performance score of 2.0 or greater will be eligible for performance awards and full General Schedule increases. Employees with an average score of less than 2.0 will be ineligible for

performance awards and full General Schedule increases. A within-the-year review may be used to reevaluate employees with performance scores of less than 2.0. If the employee's performance has improved sufficiently since the last rating period, the employee may be eligible for a nonretroactive General Schedule pay raise at that time.

3. Awards

WES currently has an extensive awards program consisting of both internal and external awards. On-the-spot, special act, and other internal awards (both monetary and nonmonetary) will continue under the project. MACOM, DA, and DoD awards and other honorary noncash awards will be retained.

Cash awards may be given for performance and to recognize and encourage special contributions. Awards can be made to individuals, teams, or organizations. Awards must be approved at a managerial level at least one level higher than the recommending official except in the case where the WES Director is the recommender. Cash awards will not be considered to be a part of base pay.

D. Pay Setting Provisions

1. Pay and Compensation

(a) Pay Ceilings. An employee's total monetary compensation paid in a calendar year may not exceed the rate of basic pay for level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Each pay band will have its own pay ceiling, just as grades do in the GS system. Basic pay rates for the various pay bands will be directly keyed to the GS basic rates of pay except for pay band VI in the Engineers and Scientists occupational family. Pay band VI will have pay rates

keyed to a minimum of 120% of the minimum rate of basic pay for GS-15 basic pay with a maximum of the basic rate of pay established for SES level 4.

(b) Staffing Supplements. Employees assigned to occupational series and geographic areas covered by special rates will be eligible for a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades (e.g., certain engineers in pay bands II and III). The staffing supplement is added to the base pay, much like locality rates are added to base pay. The employee's total pay immediately after implementation of the demonstration project will be the same as immediately before the demonstration project, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the old GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. So the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate. Simplified, the formula is:

$$\text{Staffing factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS rate corresponding to that special rate}}$$

$$\text{Demonstration base rate} = \frac{\text{Old GS adjusted rate (special or locality rate)}}{\text{Staffing factor}}$$

Staffing supplement = Demonstration base rate x (staffing factor—1)
Salary upon conversion = Demonstration base rate + staffing supplement (sum will = existing rate)

Example: In the case of a GS-801-11/03 employee who is receiving a special salary rate, the salary before the demonstration project is \$42,944. The maximum special rate for a GS-801-11

Step 10 is \$51,295 and the corresponding regular rate is \$46,523. The staffing factor is computed as follows:

$$\text{Staffing factor} = \frac{\$51,295}{\$46,523} = 1.1026$$

$$\text{Demonstration base rate} = \frac{\$42,944}{1.1026} = \$38,948$$

Then to determine the staffing supplement, multiply the demonstration base by the staffing factor minus 1.

$$\text{Staffing supplement} = \frac{\$38,948 \times .1026}{\$} = \$3,996$$

The staffing supplement of \$3,996 is added to the demonstration base rate of \$38,948 and the total salary is \$42,944, which is the salary of the employee before conversion to the demonstration project.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee is converted into the demonstration, the demonstration base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

Any General Schedule or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, affected employees will be entitled to pay retention. Upon geographic movement, an employee who receives the special staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

Established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), i.e., for purposes of retirement, life insurance, premium pay, and severance pay purposes and for advances in pay. It will also be used to compute worker's compensation payments and lump sum payments for accrued and accumulated annual leave.

2. Promotions

A promotion is the movement of an employee to a higher pay band within the same occupational family or to a pay

band in a different occupational family which results in an increase in the employee's salary. Progression within a pay band, whether by performance pay increases or supervisory adjustments, are not subject to the provisions of this section.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by RIF procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(f) Impact of person-in-the-job promotions.

(g) Promotion resulting from the accretion of duties and responsibilities.

(h) A promotion resulting from the correction of an initial classification error.

Upon promotion to a higher pay band, an employee will be entitled to a 6 percent basic pay increase or the lowest level in the pay band to which promoted, whichever is greater.

3. Link Between Promotion and Performance

Noncompetitive promotions (e.g., accretion of duties, recognition of

impact of person-in-job, career ladder) will require an acceptable level of performance in their current position. To be promoted noncompetitively from one band to the next within an occupational family, an employee must meet the minimum qualifications for the job and have a current average performance score of 2.5 or above (Section III, C, Pay for Performance) or equivalent under a different performance management system (an equivalence chart will be developed by HRM specialists and included in the implementation instructions). Selection of employees through competitive procedures will require a current average performance score of 2.5 or above.

4. Supervisory Pay Adjustments

Supervisory pay adjustments may be used, at the discretion of the WES Director, to compensate employees in the Engineers and Scientists occupational family in supervisory positions. Employees in pay band VI of the Engineers and Scientists occupational family are excluded from receiving supervisory pay adjustments. Supervisory pay adjustments are increases to the supervisor's basic rate of pay, ranging up to 10 percent of that pay rate, subject to the constraint that the adjustment may not cause the employee's basic rate of pay to exceed the pay band maximum rate. Only employees in supervisory positions with formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide will be considered for the supervisory pay adjustment. Criteria to be considered in determining the pay increase percentage include the following organizational and individual employee factors: needs of the organization to attract, retain, and motivate high quality supervisors; budgetary constraints; years of supervisory experience; amount of supervisory training received;

performance; and managerial impact on the organization.

Conditions, after the date of conversion into the demonstration project, under which the application of a supervisory pay adjustment will be considered are as follows:

(a) New hires into supervisory positions will have their initial rate of basic pay set at the supervisor's discretion within the pay range of the applicable pay band. This rate of pay may include a supervisory pay adjustment determined using the ranges and criteria outlined above.

(b) An employee selected for a supervisory position that is within the employee's current pay band may also be considered for a supervisory pay adjustment.

(c) If a supervisor is already authorized a supervisory pay adjustment and is subsequently selected for another supervisory position, within the same pay band, then the supervisory pay adjustment will be redetermined.

(d) An employee promoted to a supervisory position in a higher pay band may be considered for a supervisory adjustment in addition to the pay increase that resulted from the promotion.

Supervisors, upon initial conversion into the demonstration project into the same, or substantially similar position, will be converted at their existing basic rate of pay and will not be given a supervisory pay adjustment at conversion.

Before supervisory employees may receive the pay adjustment, they must sign a statement acknowledging that the entire adjustment will be immediately withdrawn if they are removed from the supervisory position because of unacceptable performance or conduct. Supervisory employees who are reassigned to a nonsupervisory position for any other reasons (i.e., employee choice, management directed reassignment, or RIF) will receive one-half of the pay adjustment for one year following the reassignment. Eliminations or reductions in supervisory pay adjustments are not adverse actions, are not subject to appeal, and are not covered under pay retention provisions.

5. Supervisory Pay Differentials

Supervisory pay differentials may be used, at the discretion of the WES Director, to incentivize and reward supervisors in the Engineers and Scientists occupational family in pay bands IV and V whose pay is at the maximum rate of the pay band. Employees in pay band VI of the Engineers and Scientists occupational

family are excluded from receiving supervisory pay differentials. Formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide is required. A supervisory pay differential is a cash incentive, paid out on a pay period basis, which is not included as part of the supervisor's basic rate of pay. The differential may be up to 10 percent of the supervisor's basic rate of pay. Criteria to be considered in determining the amount of this supervisory pay differential includes those identified for supervisory pay adjustments.

Supervisors, upon initial conversion into the demonstration project into the same, or substantially similar position, will be converted at their existing basic rate of pay and will not be given a supervisory pay differential upon conversion. The differential will be terminated if the employee is removed from a supervisory position, regardless of cause.

As specified in the Supervisory Pay Adjustment Section, all personnel actions involving a supervisory differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the WES Director. The termination or reduction of the differential is not an adverse action, is not subject to appeal, and is not covered under pay retention provisions.

E. Hiring and Placement Authorities

1. Modified Term Appointments

WES conducts many research and development projects that range from 3 to 6 years. The current 4-year limitation on term appointments imposes a burden on laboratory managers by forcing the termination of some term employees prior to completion of projects they were hired to support. This disrupts the research and development process and reduces the ability of WES to serve its customers.

Under the demonstration project, WES will have the authority to hire individuals under modified term appointments. These appointments will be used to fill positions for a period of more than 1 year but not more than 5 years when the need for employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed 5, rather than 4 years. The WES Director is authorized to extend a term appointment 1 additional year.

Employees hired under the modified term appointment authority may be

eligible for conversion to career-conditional appointments. To be converted, the employee must: have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected may be eligible for conversion to a career-conditional appointment at a later date; have served 2 years of continuous service in the term position; be selected under WES merit promotion procedures for the permanent position; and have a current performance score of 2.5 or better.

Employees serving under term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointment if they have a current performance score of 2.5 or better and are selected under merit promotion procedures for the permanent position after having completed 2 years of continuous service. Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous. Employees serving under modified term appointments under this plan will be covered by the plan's pay-for-performance system.

2. Extended Probationary Period

A new employee needs to demonstrate adequate contribution during all cycles of a research effort for a laboratory manager to render a thorough evaluation. The current 1-year probationary period will be extended to 2 years for all newly hired career employees in the Engineers and Scientists occupational family. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's contribution and conduct.

Aside from extending the time period, all other features of the current probationary period, including the criteria for crediting prior service and the limited notice and appeal rights, are retained. The requirements for conversion to career tenure are unchanged. Employees appointed prior to the implementation date will not be affected.

Probationary employees will be terminated when the employee fails to demonstrate proper conduct, technical competency, and/or adequate work contribution for continued employment. When WES decides to terminate an

employee serving a probationary period because their work contribution or conduct during this period fails to demonstrate their fitness or qualifications for continued employment, it shall terminate their services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of WES's conclusions as to the inadequacies of their work contribution or conduct.

3. Voluntary Emeritus Program

Under the demonstration project, the WES Director will have the authority to offer retired or separated engineers and scientists voluntary assignments in the laboratory. This authority will include engineers and scientists who have retired or separated from Federal service. Voluntary Emeritus Program assignments are not considered "employment" by the Federal Government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on an earlier separation from Federal service. The Voluntary Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior engineers and scientists could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the emeritus program, a volunteer must be recommended by a Laboratory Director to the WES Director. Everyone who applies is not entitled to a voluntary assignment. The WES Director must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated federal employees may accept an emeritus position without a waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source

selection members will apply to volunteers.

An agreement will be established between the volunteer and WES. The agreement will be reviewed by the local Office of Counsel for ethics determinations under the Joint Ethics Regulation. The agreement must be finalized before the assumption of duties and shall include:

(a) A statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation and any and all claims against the Government because of the voluntary assignment are waived by the volunteer;

(b) A statement that the volunteer will be considered a federal employee for the purpose of injury compensation;

(c) Volunteer's work schedule;

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) Support provided by the laboratory (travel, administrative, office space, supplies);

(f) A one page Statement of Duties;

(g) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Program;

(h) A provision allowing either party to void the agreement with 10 working days written notice; and

(i) The level of security access required (any security clearance required by the assignment will be managed by the laboratory while the volunteer is a member of the Voluntary Emeritus Program).

F. Employee Development

The objective of the employee development program will be to develop the competence of employees for maximum achievement of Laboratory, MACOM, DA, and DoD goals. WES will continue its employee development programs, such as local training, off-site training, long-term training, and developmental assignments. Under this Project, the opportunity to apply for expanded developmental opportunities to include sabbaticals and training for degrees, which was previously restricted, will be made available to permanent employees.

1. Sabbatical

WES will have the authority to grant paid sabbaticals to career employees to permit them to engage in study or uncompensated work experience that will contribute to their development and effectiveness. Each sabbatical should benefit WES as well as increase

the employee's individual effectiveness. Examples are as follows: advanced academic teaching, study, or research; self-directed (independent) or guided study; and on-the-job work experience with a public, private, or nonprofit organization. Each recipient of a sabbatical must sign a continued service agreement and agree to serve a period equal to at least three times the length of the sabbatical.

2. Degree Training

Degree training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of DoD laboratories is also a critical tool for recruiting and retaining employees with or requiring critical skills. Constraints under current law and regulation limit degree payment to shortage occupations. In addition, current government-wide regulations authorize payment for degrees based only on recruitment or retention needs. Degree payment is currently not permitted for non-shortage occupations involving critical skills.

Under the Personnel Demonstration Project, WES will expand the authority to provide degree training for purposes of meeting critical skill requirements, to ensure continuous acquisition of advanced and specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. It is expected that the degree payment authority will be used primarily for attainment of advanced degrees.

G. Reduction in Pay or Removal Actions

Employees covered by the project will be evaluated under a performance evaluation system that affords grievance and/or appeal rights the same as those provided currently.

1. Unacceptable Performance

An employee whose performance is unacceptable (i.e., who does not perform at the acceptable level described by the standards for a particular critical element, and whose performance thus warrants a performance score of 0 on that element) at any time during the year shall be placed in a Performance Improvement Plan (PIP). If an employee is in a PIP at the end of a rating period, the performance rating will be delayed until the end of the PIP. Any General Schedule increase will be based on the rating at the end of the PIP. If performance remains unsatisfactory upon completion of the PIP, the employee will be separated from his or

her position or reduced to a lower pay band. If performance becomes satisfactory, the employee will receive a performance rating of record and appropriate adjustments to pay may be made at that time (i.e., granting General Schedule increase). These performance-based actions will follow the same procedures as current performance-related removals and reductions in grade under Chapter 43 or Chapter 75 when appropriate.

2. Placement in a Lower Pay Band

An employee with an average performance score of less than 2.0 is ineligible for a performance pay increase or performance award and may receive either none or one-half the General Schedule pay increase. Because the minimum pay rate for each pay band will be increased each year by the amount of the General Schedule increase, it is possible that the new minimum rate of a pay band will exceed the basic pay of an employee in that band who did not receive the full General Schedule increase. In these cases, the employee will be moved to the next lower band level. This will not be considered an adverse action, will not be appealable through a statutory appeals process, and will not be covered under grade retention provisions.

H. Revised Reduction in Force (RIF) Procedures

Modifications include limiting competitive areas to occupational families and increasing the emphasis on performance in the RIF process. These modifications will increase the probability of retaining the highest performing individuals in their positions and will increase the probability of displacing the lowest performing individuals.

1. Competitive Areas

For RIF purposes, the competitive area will be the occupational family in which the employee is assigned and will cover all geographic locations.

2. Retention

Retention registers will be established based on the following criteria listed in order of priority: Tenure status (Tenure I-career, Tenure II-career conditional, Tenure III-modified term); veteran's preference; most recent employee performance score; and service computation date. Modified term employees within the affected occupational family will be separated before permanent Tenure I and II employees. The present RIF system essentially remains in effect, except that performance scores are part of the

retention order. Performance scores will not be used to adjust the service computation date. The service computation date will be used as a tie breaker. A preference eligible with a compensable service-connected disability of 30 percent or more may displace employees in positions equivalent to 5 GS grades below the minimum grade level of his/her current pay band. Other employees may displace employees in positions no more than two pay band levels below the minimum level of his/her current pay band. Increasing the emphasis on job performance will help ensure the retention of outstanding individuals in RIF situations.

In some cases, an employee may not have a performance score of record. In these situations, a modal performance score will be assigned.

An employee who has received a written decision to demote him/her to a lower pay band competes in a RIF from the position to which he/she has been demoted. Employees who have been demoted for unacceptable performance or conduct, and as of the date of issuance of the RIF notice have not received a performance score in the position to which demoted, will receive a modal performance score.

An employee who has received an improved performance score following a PIP will have the improved performance score considered as the current performance score of record, provided that notification of such improvement is approved and received prior to the cutoff for receipt of personnel actions associated with implementation of RIF mechanics.

An employee with a current rating of unsatisfactory has assignment rights only to a position held by another employee who has a rating of unsatisfactory. An employee who has been given a written decision of removal will not compete in the RIF process.

Modified term appointment employees are in Tenure Group III for reduction in force purposes. Reduction in force procedures are not required when separating these employees when their appointments expire.

3. Grade and Pay Retention

Except where waived or modified in the waiver section of this plan, grade and pay retention will follow current law and regulations.

IV. Training

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will not only provide the necessary knowledge and skills to carry

out the proposed changes, but will also lead to commitment to the program on the part of all participants. Training will be tailored to fit the requirements of every employee included in the project and will fully address employee concerns to ensure that everyone has a comprehensive understanding of the program.

Training at the beginning of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include the following: A description of the system; how employees are converted into the system; pay adjustment process; familiarization with the new position descriptions and performance objectives; the individual performance rating process; the reconsideration process; and the demonstration project administrative and formal evaluation process.

A. Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in using the classification system, position description preparation, and performance evaluation. Additional training may focus on nonproject procedural techniques such as interpersonal and communication skills.

B. Administrative Staff

The administrative staff, generally personnel specialists, technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will need training in the procedural and technical aspects of the project.

C. Employees

WES will train employees covered under the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them

of all project decisions, procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate occupational family and pay band without loss of pay. An automatic conversion from current GS/GM grade and pay into the new broadbanding system will be accomplished.

Special conversion rules will apply to special rate employees (see Section III, D, Pay Setting Provisions). Employees who enter the demonstration project later by lateral reassignment or transfer will be subject to the same pay conversion rules. Employees serving under regular term appointments at the time of project implementation will be converted to the modified term appointment. Position announcements, etc., will not be required for these term appointments. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the pay band which corresponds to the grade of record. When a temporary promotion is terminated, the employee's pay entitlements will be determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by WES. In no case may those adjustments increase the pay for the position of record beyond the maximum pay rate for the applicable pay band. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered and, if implemented, will be subject to all existing priority placement programs.

At the time of conversion, each employee will have their basic pay adjusted for the time credited (in weeks) toward what would have been the

employee's next within-grade increase. This adjustment in basic pay is applicable when employees are converted into the project.

Any employee covered by the project that is located at a permanent duty station Outside the Continental United States will continue to be ineligible for locality pay. Except for the maximum rate of basic pay for pay band VI, which will be limited to rate of basic pay for SES level 4, the maximum basic salary payable in the pay band will be limited to the maximum rate of pay on the GS salary table which does not include any locality pay.

B. Conversion From the Demonstration Project

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS equivalent grade and the employee's project rate of pay to GS equivalent rates of pay. The converted GS grade and rates of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rates of pay will become the employee's actual GS grade and rates of pay after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rates of pay will be used in applying any GS pay/administration rules applicable in connection with the employee's movement out of the project (i.e., promotion rules, highest previous rate rules, pay retention rules) as if the GS converted grade and rates of pay were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(a) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement but excluding any supervisory pay adjustment) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a "GS rate range" includes

a rate range in the GS base schedule, the locality rate schedule for the locality pay area in which the position is located, or the appropriate special rate schedule for the employee's occupational series, as applicable. If the series is a two-grade interval series, only odd-numbered grades are considered below GS-11.

(b) If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted project rate of pay is lower than the applicable step 4 rate of the highest grade, the adjusted rate of pay is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate of pay equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate of pay equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate of pay is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: If the employee's adjusted project rate of pay exceeds the maximum rate of the grade assigned under the above-described "step 4" rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted that next higher applicable grade.

(f) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement but excluding any supervisory pay adjustment) is

converted to a GS adjusted rate of pay on the highest applicable GS rate range for the converted GS grade. For this purpose, a "GS rate range" includes a rate range in the GS base schedule, an applicable locality rate schedule, or an applicable special rate schedule.

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate of pay is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate of pay must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

3. Engineers and Scientists Pay Band VI Employees

Employees in pay band VI of the Engineers and Scientists occupational family will convert out of the demonstration project at the GS-15 level. WES will develop a procedure to ensure that employees entering pay band VI understand that if they leave the demonstration project and their adjusted pay exceeds the GS-15, step 10 rate, there is no entitlement to retained pay; their GS equivalent rate will be deemed to be the rate for GS-15, step 10. For those pay band VI employees paid below the adjusted GS-15, step 10 rate, the converted rates will be set in accordance with paragraph 2 above.

4. Employees With Band or Pay Retention

(a) If an employee is retaining a pay band level under the demonstration project, apply the procedures in paragraphs 1 and 2, above, using the grades encompassed in the employee's retained band to determine the employee's GS equivalent retained grade and pay rate. The time in a retained band under the demonstration project counts toward the 2-year limit on grade retention in 5 U.S.C. 5382.

(b) If an employee is retaining rate under the demonstration project, the employee's GS equivalent grade is the highest grade encompassed in his or her band level. WES will coordinate with OPM to prescribe a procedure for determining the GS equivalent pay rate for an employee retaining a rate under the demonstration project.

5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project since the last pay-for-performance determination is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

Public Law 103-337 removed any mandatory expiration date for this demonstration. The project evaluation plan adequately addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration (Proposed Plan for the Evaluation of the DoD Laboratory Demonstration Program, OPM, 1995). Major changes and modifications to the interventions can be made through announcement in the Federal Register and would be made if formative evaluation data warranted. At the 5 year point, the entire demonstration will be reexamined for either: permanent implementation; change and another 3-5 year test period; or expiration.

VII. Evaluation Plan

Authorizing legislation mandated evaluation of the demonstration project to assess the merits of project outcomes and to evaluate the feasibility of applications to other federal organizations. A comprehensive and methodologically rigorous evaluation of the personnel system changes will be carried out. The overall evaluation consists of two components—external and internal evaluation. The external evaluation will be conducted by OPM's Personnel Resources and Development Center (PRDC) to benefit from their extensive experience evaluating demonstration projects. PRDC will serve in the role of external evaluator to ensure the integrity of the evaluation process, outcomes, and interpretation of results. Their external evaluation will be supplemented by an internal evaluation to be accomplished by the staff of WES. Selected parts of the evaluation will be

completed using contractor support. The contractor(s) will be well qualified and experienced with demonstrated expertise in performing relevant support functions.

Essential elements of the evaluation plan are set forth below. The demonstration project is a complex experiment to be conducted in a dynamic environment over several years. Modifications and refinements to the evaluation plan will be made as required by mid-course project changes. All additions, deletions, and refinements to the current plan will be fully documented and explained as part of the evaluation reporting process. The main purpose of the evaluation is to determine the effectiveness of the personnel system changes described by the individual interventions. Every effort will be made to establish direct cause-and-effect relationships between the interventions and effectiveness criteria. An ancillary objective is to assess the effects of the interventions on improved organizational performance. An indirect causal link is hypothesized between the personnel system changes and improved organizational effectiveness, i.e., improved laboratory performance, mission accomplishment, and customer satisfaction. The current personnel management system with its many rigid rules and regulations often is perceived as a barrier to mission accomplishment. Together, the demonstration project initiatives are intended to remove some of those barriers, and therefore, are expected to contribute to improved laboratory performance.

The evaluation effort will be accomplished in four distinct phases:

(a) Design phase—includes development of the evaluation model, selection of experimental and comparison sites, and collection of baseline data prior to implementation.

(b) Implementation phase—includes actual project implementation and monitoring of the degree and support of implementation to assure that each of the project interventions has been operationalized as originally conceived.

(c) Formative evaluation phase—includes data collection and analysis for five years for purposes of evaluating the effects of the interventions. Periodic reports and annual summaries will be prepared to document the findings.

(d) Summative evaluation phase—focuses on summary evaluation and overall assessment of the project's impact, including presentation of conclusions and final recommendations upon completion of the project.

An intervention impact model (Appendix A) will be used to measure

the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified with consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique.

The evaluation model for the Demonstration Project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration on context variables that are likely to have an impact on project outcomes (e.g., HRM regionalization, downsizing, cross-service integration, and the general state

of the economy). However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate

information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: workforce data; personnel office data; employee attitudes and feedback using surveys, structured interviews and focus groups; local activity histories, and core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

Costs associated with the development of the personnel demonstration system include software automation, training, and project evaluation. All funding will be provided through the WES budget. The projected annual expenses for each area is summarized in Table 4.

TABLE 4.—PROJECTED DEVELOPMENTAL COSTS

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
Training .....	.....	\$97K	\$19K	.....	.....	.....
Project Evaluation	\$25K	60K	60K	\$60K	\$60K	\$60K
Automation	80K	10K	.....	.....	.....	.....
Totals	105K	167K	79K	60K	60K	60K

IX. Required Waivers to Law and Regulations

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the Demonstration Project. In due course, additional laws and regulations may be identified for waiver request.

A. Waivers to Title 5, U.S. Code

Section 3111, Acceptance of volunteer service.

Section 3132, The Senior Executive Service; definitions and exclusions.

Section 3324, Appointments to positions classified above GS–15.

Section 3341, Details (to the extent that non-competitive details to higher band levels can now be 180 days rather than 120).

Section 4107, Non-Government facilities; restrictions (to the extent that training may be paid for the purpose of an employee to obtain a degree).

Section 4108, Employee agreements; service after training (to the extent that continued service is required only for long-term training and sabbaticals).

Section 4303(f), Actions based on unacceptable performance (to the extent necessary to: (1) Substitute “pay band” for “grade” and (2) provide that moving

to a lower pay band as a result of not receiving the full amount of a general pay increase because of poor performance is not an action covered by the provisions of section 4303).

Sections 5101–5111, Purpose, definitions, basis, classification of positions, review, authority (to the extent that white collar employees will be covered by broadbanding. Pay category determination criteria for Federal Wage System positions remain unchanged).

Sections 5301; 5302 (8), and (9); 5303; and 5304, Pay comparability system (Sections 5301, 5302, and 5304 are waived only to the extent necessary to allow: (1) Demonstration project employees to be treated as General Schedule employees; (2) basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay; and (3) employees in band VI of the Engineers and Scientists occupational family to be treated as ST employees for the purposes of these provisions).

Section 5305, Special pay authority.

Sections 5331–5336, General Schedule pay rates.

Sections 5361–5366, Grade and pay retention (to the extent necessary to (1) replace “grade” with “pay band”; (2) allow demonstration project employees to be treated as General Schedule; (3) provide that pay band retention provisions do not apply to movements

to a lower pay band as a result of receiving no or only part of a general pay increase because of poor performance; (4) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of all or part of a supervisory pay adjustment upon leaving a supervisory position; (5) provide that an employee on pay retention whose performance rating is less than 2.0 is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee’s position; and (6) ensure that for employees of pay band VI of the Engineers and Scientists occupational family, pay band retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate).

Section 5545, Night, standby, irregular, and hazardous duty differential (to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in band VI of the Engineers and Scientists occupational family).

Sections 5753, 5754, and 5755, Recruitment and relocation bonuses, retention allowances, and supervisory differentials (to the extent necessary to allow: (1) Employees and positions under the demonstration project to be treated as employees and positions under the General Schedule; and (2) employees in band VI of the Engineers and Scientists occupational family to be treated as ST employees).

Section 7512(3), Adverse actions (to the extent necessary to (1) substitute "pay band" for "grade" and (2) provide that moving to a lower pay band as a result of not receiving the full amount of a general pay increase because of poor performance is not an adverse action).

Section 7512(4), Adverse actions (to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (2) reductions in pay due to removal of all or part of a supervisory adjustment).

B. Waivers to Title 5, Code of Federal Regulations

Part 300.601–605, Time-in-grade restrictions (to the extent that time-in-grade restrictions are eliminated).

Part 308.101–103, Volunteer service (to the extent that volunteer service is unrestricted).

Parts 315.801(a) and 315.802(a), Length of probationary period (to the extent that the probationary period for engineers and scientists is increased to 2 years).

Part 316.301, Term appointment (to the extent that modified term appointments may cover a maximum period of 6 years).

Part 316.303, Tenure of term employees (to the extent that term employees may compete for permanent status through local merit promotion plans).

Part 316.305, Eligibility for within grade increases.

Part 335.103, Covering the length of details and temporary promotions.

Part 351.402(b), Competitive area (to the extent that occupational family is the competitive area).

Part 351.403, Competitive level (to the extent that pay band is substituted for grade).

Part 351.504, Retention standing, credit for performance (to the extent that service credit will not be modified based on performance rating).

Part 351.701, Assignment involving displacement (to the extent that a performance score of 1 is substituted for level 2 and bumping and retreating will be limited to no more than 2 pay bands except for 30 percent compensable veterans who can retreat to the equivalent of 5 GS grades).

Part 410.308, Training to obtain an academic degree.

Part 410.309, Agreements to continue in service. (To the extent necessary that individuals pursuing academic degrees do not sign service agreements.)

Part 430.204, Definition of rating of record (to the extent necessary to allow ratings of record that do not cover performance over the entire appraisal period).

Part 430.208(d), Summary levels (to the extent necessary to allow use of summary performance scores that are not further categorized into five or fewer summary levels).

Part 432.104–105, Performance based reduction in grade and removal actions (to the extent that "pay band" is substituted for "grade" and reduction in band level as a result of non-receipt of General Schedule increases because of poor performance is not an adverse action).

Part 511.101, 201–203, General provisions and coverage of the General Schedule (to the extent that positions are covered by broadbanding).

Part 511.601–612, Classification appeals (to the extent that positions are covered by broadbanding).

Part 530, subpart C, Special salary rates.

Part 531, subparts B, D, and E, Determining the rate of basic pay, within-grade increases, and quality step increases.

Part 531, subpart F, Locality-based comparability payments (to the extent necessary to allow: (1) Demonstration project employees to be treated as General Schedule employees; (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay; and (3) employees in band VI of the Engineer and Scientist occupational family to be treated as ST employees).

Part 536, Grade and pay retention (to the extent necessary to: (1) Replace "grade" with "pay band"; (2) provide that pay band retention provisions do not apply to movements to a lower pay band as a result of receiving no or only part of a general pay increase because of poor performance; (3) provide that pay retention provisions do not apply to

conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of all or part of a supervisory pay adjustment upon leaving a supervisory position; (4) provide that an employee on pay retention whose performance rating is less than 2.0 is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position and (5) ensure that for employees in pay band VI of the Engineers and Scientists occupational family, pay band retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate).

Part 550.703, Severance pay (to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level").

Part 550.902, Hazardous duty differential, definition of "employee" (to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in band VI of the Engineers and Scientists occupational family).

Part 575, subparts A, B, C, and D, Recruitment bonuses, relocation bonuses, retention allowances and supervisory differentials (to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in band VI of the Engineers and Scientists occupational family to be treated as ST employees for the purposes of these provisions).

Part 752.401 (a)(3), Adverse actions (this provision is waived only to the extent necessary to (1) substitute "pay band" for "grade" and (2) provide that moving a lower pay band as a result of not receiving the full amount of a general pay increase because of poor performance is not an adverse action).

Part 752.401 (a)(4), Adverse actions (to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (2) reductions in pay due to the removal of all or part of a supervisory adjustment).

APPENDIX A—INTERVENTION IMPACT MODEL: PROJECT EVALUATION

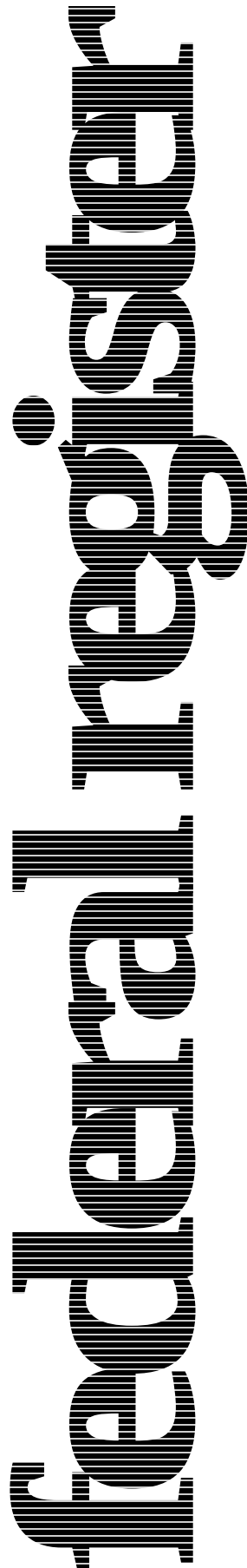
Intervention	Expected effects	Measures	Data sources
1. Broadbanding:			
a. Pay Bands	—Less difficulty and less time spent on classification.	—Perceptions of difficulty and time spent on classification activities by managers and personnelists.	—Focus groups. —Attitude survey. —Personnel activity reports.
	—Increased understanding with the classification results under the new system.	—Perceptions of satisfaction with classification process.	—Focus groups. —Attitude survey.
b. Occupational Families	—Increased satisfaction with advancement potential.	—Perceptions of satisfaction with career path process and progression.	—Focus groups. —Attitude survey.
	—Increase in management authority.	—Perception of authority	—Attitude survey.
c. Conversion of Employees to the Demonstration Project.	—Employee acceptance	—Perception of equity and fairness.	—Attitude survey.
2. Classification:			
a. Classification Standards	—Less difficulty and less time spent on classification; less difficulty classifying jobs.	—Perceptions of difficulty and time spent on classification activities by managers and personnelists.	—Focus groups. —Attitude survey. —Personnel activity reports.
	—Increased satisfaction with the classification results under the new system.	—Perceptions of satisfaction with classification process.	—Focus groups. —Attitude survey.
b. Position Descriptions and Classification Process.	—Less difficulty and less time spent on classification by managers.	—Perceptions of difficulty and time spent on classification activities by managers and personnelists.	—Focus groups. —Attitude survey. —Personnel activity reports.
	—Fewer position descriptions	—Reduced time to develop position descriptions.	—Attitude survey. —Personnel activity reports.
	—Increased satisfaction with the classification results under the new system.	—Perceptions of satisfaction with classification process.	—Focus groups. —Attitude survey.
	—Development of generic classification standards.	—Implementation of generic standards.	—Personnel activity reports.
3. Pay for Performance:			
a. Supervisory Pay Adjustments and Differentials.	—Reward top performers who take supervisory and managerial assignments.	—Attitudes of supervisors and managers with pay.	—WES workforce data. —Attitude survey.
b. Promotion Link	—Promotions based on individual's performance.	—Probability of promotion for high performers.	—WES workforce data. —Attitude survey.
c. Link Between Performance and Pay.	—Stronger link between performance and pay.	—Pay for performance correlations.	—WES workforce data. —Attitude survey.
		—Perception of pay for performance link.	—Attitude survey.
	—Improve retention of high performers.	—Employee perception of equality	—Attitude survey.
	—Increase turnover among low performers.	—Turnover rates by performance over time.	—WES workforce data.
	—Increase in supervisory decision making authority accountability.	—Supervisors perception of pay for performance link.	—Attitude survey.
	—Increase pay satisfaction	—Employees perception of pay for performance link.	—Attitude survey.
d. Awards	—Reward/motivate performance ..	—Perceived motivational power ...	—Attitude survey.
	—To support fair and appropriate distribution of awards.	—Amount and number of awards by occupational family, demographics.	—WES workforce data.
		—Perceived fairness of awards	—Attitude survey.
		—Satisfaction with monetary awards.	—Attitude survey.
4. Hiring and Placement:			
a. Hiring Authority	—Reduction in time to hire	—Time lag from announcement to date.	—WES workforce data hiring log.
	—Improve rate of job offers/acceptance.	—Offer acceptance rate	—WES workforce data hiring log.
	—Improve image as interested caring employer.	—Offer acceptance rate	—Managers' and supervisors' documented experience.
b. Modified Term Appointments.	—Decrease in hiring authorities ...	—Better qualified candidates within the temporary workforce.	—WES workforce data.
c. Extended Probationary Period.	—Provide managers time to accurately identify successful employees.	—Managers perception of new hires success.	—Attitude survey.

APPENDIX A—INTERVENTION IMPACT MODEL: PROJECT EVALUATION—Continued

Intervention	Expected effects	Measures	Data sources
	—Increase in length of probation for engineers and scientists. —Increase in voluntary (in lieu of adverse action) and involuntary turnover of low performers during probation.	—New hires performance ratings —Pre and post comparison of length of probation. —Comparison of voluntary/involuntary turnover rates for low performers during probation period.	—WES workforce data. —WES workforce data. —WES workforce data.
5. Employee Development:			
a. Sabbaticals	—Increase development of employees. —Use of sabbaticals for career development.	—Perception of fairness in career development.	—Attitude survey. —Documented experience of managers and supervisors.
b. Degree Training	—Increase development of employees.	—Perception of fairness in career development.	—Attitude survey.
6. Reduction-In-Force:			
Modified RIF	—Retention of high performers —Reduce disruption to the workforce by limiting RIF to occupational family.	—Evaluation rating vs RIF turnover. —Attitudes on a RIF action	—WES workforce data. —Historical WES data. —Historical RIF data from other Army Laboratories. —Attitude survey.
7. Combination of all Interventions:			
All	—Improved organizational effectiveness. —Improved management of R&D workforce. —Improved planning —Improved cross functional coordination. —Increased product success	—Combination of personnel measures. —Employee/management satisfaction. —Planning procedures —Perceived effectiveness of planning procedures. —Actual perceived coordination ... —Customer satisfaction	—All data sources. —Attitude survey. —Strategic planning documents. —Organizational charts. —Attitude survey. —Customer satisfaction surveys.

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Tuesday
March 3, 1998

Part V

The President

Proclamation 7069—American Red Cross
Month, 1998

Proclamation 7070—Irish-American
Heritage Month, 1998

Presidential Documents

Title 3—**Proclamation 7069 of February 27, 1998****The President****American Red Cross Month, 1998****By the President of the United States of America****A Proclamation**

Americans share a long tradition of compassion for others and lending aid to those in need. Since our earliest days as a Nation, we have been able to bear the heartbreak of family tragedy, personal hardship, or natural disaster because of the help of caring friends and neighbors. For 117 years, the American Red Cross has been the staunchest of friends and neighbors to millions of people both here at home and around the world, adding its own vital contributions to our history of service.

The American Red Cross brings both comfort and practical assistance to the victims of more than 65,000 disasters each year, from hurricanes and tornadoes affecting thousands of people to a house fire involving a single family. Members of the Red Cross also work on the front lines of armed conflicts and disasters across the globe to relieve suffering and restore human dignity and self-sufficiency. At the same time, they serve alongside our men and women in uniform wherever they are deployed, relaying urgent family messages and providing a precious link with home. And through its Holocaust and War Victims Tracing and Information Center, the Red Cross has helped thousands of families in their search for information about the fate of loved ones from whom they were separated during the Holocaust.

Few of us have remained untouched by the work of the Red Cross. The Red Cross collects, tests, and distributes six million units of donated blood each year, nearly half the Nation's supply. More than 1,300 Red Cross chapters in communities across America teach health and safety courses to 12 million people each year, providing them with knowledge regarding CPR, first aid, water safety, and HIV/AIDS that can—and does—save lives.

The Red Cross has become a simple yet powerful symbol that transcends language and conveys a universally understood message of hope. This symbol draws its strength from the dedication of the more than 1.3 million volunteers who help disaster victims, assist at blood drives, teach health classes, and respond to urgent community needs. I commend the generous spirit of all those who carry out the important work of the American Red Cross, and I encourage all Americans to support their efforts—whether by giving blood, donating funds to help disaster victims, or becoming Red Cross volunteers themselves. In doing so, we will ensure that the American Red Cross will continue its tradition of compassionate service in the 21st century and beyond.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1998 as American Red Cross Month. I urge all the people of the United States to support Red Cross chapters nationwide, and I challenge each of you to become active participants in advancing the noble mission of the Red Cross.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William Clinton

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Filed 3-2-98; 11:34 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 7070 of February 27, 1998

Irish-American Heritage Month, 1998

By the President of the United States of America

A Proclamation

As it has been for many immigrants, America has always been a beacon of hope for the Irish people, a land of promise beckoning on the far shore of the Atlantic where they could build a better life for themselves and their children. Those who traveled here in the 17th and 18th centuries came primarily to escape religious, social, and political discrimination in their homeland. But millions of Irish immigrants who came to the United States in the 19th century were fleeing not only persecution, but also the specter of starvation and disease brought on by the Great Hunger, the devastating potato famine that began in the 1840s. Many of them did not survive the journey; many of those who did arrive at America's ports were hungry, ill, and crushingly poor.

But the Irish did not come to America empty-handed. They brought with them strong arms and an even stronger spirit that would help to build our Nation's great canals, bridges, and railroads. They would wrest coal from the mines of Pennsylvania and raise the skyscrapers of New York. They brought with them a love of words that enriched American journalism and literature and produced writers such as John Boyle O'Reilly, Ring Lardner, Eugene O'Neill, and Mary McCarthy. They brought as well a great reverence for education and created schools, colleges, and universities across the country renowned for their scholarship and social conscience.

Perhaps their greatest gifts to America have been a abiding love of liberty, and an patriotic spirit. Irish Americans have served with distinction in every American conflict, from the Revolutionary War to the Persian Gulf, and their keen sense of social justice made them among the first and most effective voices for labor reform. From Mary Kenney O'Sullivan to George Meany, they have been in the vanguard of efforts to improve working conditions and wages for all Americans. Generations of Irish Americans entered public service to reach out to those in need—to feed the poor, find jobs for the unemployed, fight for racial equality, and champion social reform. From the Kennedys of Massachusetts to the Daleys of Chicago, from Governor Al Smith to Ambassador Mike Mansfield, Americans of Irish descent have made important and enduring contributions to the public life of our Nation.

The United States continues to draw strength and vision from our multicultural, multiracial society. This month, when citizens across the country celebrate Saint Patrick's Day, we remember with special gratitude the gifts of Irish Americans: faith in God, love of family and community, and an unswerving commitment to freedom and justice that continues to enrich our Nation and fulfill the promise envisioned by the first Irish immigrants who turned their eyes and hearts toward America so many years ago.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1998 as Irish-American Heritage Month. I call upon all the people of the United States to observe this month with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William Clinton

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