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Friday
August 14, 1987

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202–523–5239

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CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Executive Order 12605 of August 12, 1987

Navy and Marine Corps Reserve Officer Promotions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 301 of Title 3 of the United States Code, and in order to delegate certain functions concerning the promotion of commissioned officers of the Naval Reserve and the Marine Corps Reserve, it is hereby ordered as follows:

Section 1. The function vested in the President by Section 5898(b) of Title 10 of the United States Code to approve, modify, or disapprove the report of a Naval Reserve or Marine Corps Reserve selection board is delegated to the Secretary of Defense. Nothing in this Section shall be deemed to delegate the authority vested in the President by Section 5898(c) of Title 10 of the United States Code to remove a name from a selection board report.

Sec. 2. The function delegated to the Secretary of Defense by this Order may be redelegated to the Deputy Secretary of Defense, any of the Assistant Secretaries of Defense, and the Secretary of the Navy who may further subdelegate such authority to subordinates who are appointed to their office by the President, by and with the advice and consent of the Senate.

Sec. 3. With respect to the functions delegated by this Order, all prior actions taken for or on behalf of the President that would have been valid if taken pursuant to this Order are ratified.

Ronald Reagan

THE WHITE HOUSE,
August 12, 1987.

[FR Doc. 87-18722
Filed 8-12-87; 3:15 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

Increase in License Fees; Perishable Agricultural Commodities Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USA) is revising the Regulations (other than Rules of Practice) under the Perishable Agricultural Commodities Act (PACA) to increase the license fee. The purpose of the revision is to cover increased operating costs associated with administration of the program.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Assistant to the Chief, PACA Branch, Room 2095 S., Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, Phone (202) 475-3244.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedures established in the Secretary's Memorandum 1512-1 and supplemental memorandum dated March 5, 1980, to implement Executive Order 12291 and has been classified as "non-major" because it does not meet any of the criteria identified under the Executive Order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Although there are numerous small entities doing business subject to the Perishable Agricultural Commodities Act, the regulation revision merely assures that the program, intended to prevent unfair trade practices in the industry, is sufficiently funded to perform its responsibilities.

The proposed action will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. The Administrator of the Agricultural Marketing Service has determined that the proposal is in response to an emergency funding situation and as such is considered to be an agency management decision. OMB Control No. 0581-0031 is assigned pursuant to the Paperwork Reduction Act.

Background

The PACA was enacted by Congress in 1930 so as to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing for the collection of damages from anyone who fails to meet contractual obligations. On May 7, 1984, an amendment to the PACA, Pub. L. 98-273, impressed a statutory trust on licensees for perishable agricultural commodities received, products derived from, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents who have not been paid.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the Act must be licensed. The cost of administering the Act is financed entirely through the license fees paid by those engaging in business subject to the law. The Secretary is charged with setting the license fee at a level necessary to meet the expenses of administration within the maximum provided in the law by Congress. Amendments to the Act in 1981 permitted the Secretary to assess a base annual fee of up to $300, plus an assessment of up to $150 for each branch operation exceeding nine. The maximum aggregate annual license fee for any firm cannot exceed $3,000.

The administration of the trust statute has increased the workload under the program along with related travel expenses far above original expectations. As a by-product of the trust amendment, there has also been a dramatic increase in the filings of reparation actions by injured parties to recover damages under their contract, as well as increases in trade inquiries, disciplinary complaint filings, and investigations that require personal audits. It is anticipated that the workload and travel requirements will continue to increase as more growers, shippers, and distributors seek to utilize the benefits and protection of the new statute. Under the current fee assessment, the program has been operating with a deficit and drawing down its trust fund reserve. Unless fees are increased, the program will deplete its trust fund reserve during Fiscal Year 1988, at which time enforcement activities will have to be curtailed.

In order to ensure continued and effective administration of the program, the license fees for firms dealing in commodities subject to the PACA must be amended to reflect the increased costs associated with the program in the coming fiscal years. The current license fee is $216 plus $108 for each branch or additional business facility operated by the applicant exceeding nine. The Secretary has determined that an increase in such fees to $300 and $150, respectively, will cover the costs of the program through the beginning of Fiscal Year 1990.

Comments: On June 25, 1987, AMS published in the **Federal Register** (52 FR 23842) a proposed revision of regulations to increase license fees to cover operating costs associated with the program. The public was invited to submit written comments for 30 days ending July 27, 1987. During the 30-day period, the Agency received eight comments on the proposed rule. Six commentors support the fee increase. Two of the commentors that support the fee increase suggested that fees be assessed for each trust notice and/or reparation complaint filing. One of these commentors, however, recommended that the agency collect a filing fee on reparation and trust complaints from only non-licensed parties. The

commentor stated this fee assessment would help support costs of administration of the Act and lessen the need to further raise the license fee.

One of the commentors, an association representing the fruit and vegetable industry, expressed recommendations of certain members. One suggestion was that filing fees be assessed for each trust notice in order to offset administrative expenses and cut down on "frivolous" trust notice filings. Some members suggested that a fee be assessed against non-licensees filing reparation complaints. The commentor also expressed concerns of its members that the PACA Branch should take aggressive steps to license all firms subject to the Act. There is an ongoing effort to identify and license potential licensees. With the new fee structure in place, however, the branch will be in a better position to direct additional resources to the license prospect area.

One commentor suggested that a fee be charged for each trust notice filing instead of a large increase in license fees. This commentor stated it would be more equitable for the firms who use the PACA trust to pay for it.

These comments all relate to one issue—a fee assessment for filing PACA actions. Under the trust provisions, sellers have the right to file a trust notice anytime after payment is past due. This amendment was intended to provide protection for produce traders by returning funds that might otherwise be uncollectable and to date, it has proven to be a very successful marketing tool.

If a fee were to be assessed for filing notices, it might reduce the number of filings. However, implementing a fee assessment would take an amendment to the Act. It would also require substantial input from all segments of the produce industry to determine if a fee assessment would benefit the administration of the law.

In the area of reparation complaints where parties have nine months to file claims, as opposed to 30 days under the trust, it is less likely that an invalid claim would be filed. Because there is a longer statute of limitations for reparation cases, the complaining parties almost always have sufficient time to determine the merits of the claim and whether there is a proper cause of action.

To require a filing fee for non-licensees only (primarily growers) either in reparation complaints or trust notice filings, would not have a significant impact on the PACA Branch budget.

One commentor, an association representing food brokers, is concerned that another increase in license fees will occur in another six months. This commentor also states that the PACA Branch is not consistent in applying increases. As an example, it compares the past increases of the exemption levels for frozen food brokers representing vendors and retailers with the license fee increases. Frozen food brokers representing vendors and retailers currently are exempted from licensing unless their purchases of fresh and frozen fruits and vegetables exceeds $230,000 in a calendar year. It is the commentor's opinion that the invoice values of sales have increased and the exemption amount should be increased as well.

With the new fee structure in place, the license fees will be at their statutory maximum and by law, cannot be raised unless the Act is amended to increase the ceilings. With the new fees in place, the branch will be in a position to concentrate more efforts in the license enforcement area which should substantially increase revenue. Although projections show the PACA reserve fund will again begin depleting by FY 1990, it is anticipated an increase in license numbers may counteract the need for additional revenue.

The retailer/broker exemption has been raised throughout the years to keep pace with the increased cost of perishable agricultural commodities. The exemption was raised from $100,000 to $200,000 in November 1978, and to the current $230,000 in December 1981. The license fees have been raised from $100 to $150 in October 1979, to $180 in October 1982, and to $216 in 1986. Raising the retailer/broker exemption would require an amendment to the law whereas this rule proposes an amendment to the regulations. If the industry supports an increase in the exemption to offset inflation, this action would require Congressional approval.

The commentor also questioned the need for food brokers to be licensed at all because these companies have no control over pricing, packaging, or handling of product. Because most PACA time is spent on credit problems, sales terms, and fulfillment of contract, the commentor believes the license fee is more of a penalty for food brokers because they are not involved in this segment of the industry.

Food brokers are an integral part of the fruit and vegetable industry. They are estimated to be a part of 75 percent of all fruit and vegetable transactions. Because of this integral role, brokers are required to be licensed by the Act and the issue of whether or not they should be licensed is a matter not subject to this rulemaking. However, it is appropriate to document the importance of the broker's function in the sales process. Generally, buyers and sellers do not communicate with each other directly, but rely on the broker to consummate their contracts. If a broker is negligent in performing its duties, it can have an adverse effect on contracts between buyers and sellers. The broker's function to negotiate contracts is a vital link in the chain of distribution. Brokers are closely involved in purchase and sale contracts especially considering that the PACA Branch relies on brokers as unbiased parties to a contract to aid in determining the merits of a dispute.

When all segments of the industry abide by fair trading practices, protection of the marketplace is maximized. Therefore, it is essential that food brokers come within the realm of PACA jurisdiction.

In a final statement, the commentor questioned why frozen fruits and vegetables come within PACA jurisdiction while canned products are exempt.

The fresh and frozen fruit and vegetable industry is unique in many respects. Product availability can be limited by growing conditions as well as other factors. The products are highly perishable, as opposed to canned products that can be stored over extended periods of time in non-refrigerated common storage. The fruit and vegetable industry is particularly vulnerable to unfair trading practices such as misrepresentation of products or contractual defaults because of price changes. The purpose of the PACA and its administration is to suppress unfair and fraudulent practices.

Because the PACA fund will be fully depleted sometime in FY 1988, an emergency condition exists. Without immediate implementation of the license fee change, funding may be inadequate to continue administering the Perishable Agricultural Commodities Act at current levels early in the fiscal year. In view of this situation, the Administrator of the Agricultural Marketing Service has determined that this regulation is in response to an emergency funding situation, and that the fee increase must be effectuated as soon as possible. He has determined for reasons of administrative feasibility that September 1, 1987, is the earliest date on which this regulation may take effect. This will provide continuity of the program and avoid further depletion of the trust fund.

List of Subjects in 7 CFR Part 46

Agriculture commodities.

Accordingly, 7 CFR Part 46 is amended as set forth below:

PART 46—[AMENDED]

1. The authority citation for Part 46 continues to read as follows:

Authority: Section 15, 46 Stat. 537; 7 USC 499o.

2. Section 46.6 is revised to read as follows:

§ 46.6 License Fee.

The annual license fee is three hundred (300) dollars plus one hundred fifty (150) dollars for each branch or additional business facility operated by the applicant exceeding nine. In no case shall the aggregate annual fees paid by any applicant exceed three thousand (3,000) dollars. The Director may require that the fee be submitted in the form of a money order, bank draft, cashier's check or certified check made payable to Agricultural Marketing Service. Authorized representatives of the Department may accept fees and issue receipts therefore.

Done at Washington, DC, on August 11, 1987.

William T. Manley,

Acting Administrator.

[FR Doc. 87-18610 Filed 8-13-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1043-87]

Nonimmigrant Classes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Clarification.

SUMMARY: This notice clarifies certain questions raised concerning the amendment to 8 CFR 214.2, issued by the Immigration and Naturalization Service December 3, 1986 and published in the Federal Register on December 9, 1986, at 51 FR 44266. This notice also explains the basis for the foregoing amendment.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street NW, Washington, DC 20536 Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: In the December 9, 1986 Federal Register, 51 FR 44266, the Immigration and Naturalization Service (the Service) published an amendment to 8 CFR 214.2. This amendment added paragraph (b)(3), barring classification and admission as business visitors of aliens seeking to enter the United States to perform certain building and construction work. The background and provisions of this amendment are described in the above-noted Federal Register.

1. On April 14, 1987, the Department of State published in the Federal Register, 52 FR 12001, a notice of proposed rulemaking, which would amend its regulations regarding visa issuance to temporary business visitors to conform to the Service's regulations. In that proposal, the Department of State stated that concern had been raised as to whether certain language in the preamble of the Service's amendment would suggest an exception to the denial of B-1 nonimmigrant status for building or construction workers entering the United States for the purpose of performing after-sale installation and service, or warranty work after installation. The Department of State further stated that it had received from the Service confirmation that no such exception was intended.

In view of a further comment received by the Department of State in response to its proposed rule, we wish to confirm the Service's intent that the December 9, 1986 amendment to 8 CFR 214.2(b) precludes B-1 nonimmigrant status to any alien seeking to enter the United States to perform building or construction work, whether on-site or in-plant, subject only to an exception for supervision and training as described in the amendment. The December 9, 1986 amendment does not allow an additional exception for building or construction work incident to after-sale installation and service or other warranty work after installation.

2. The December 9, 1986 amendment was a modification of Operations Instruction 214.2(b)(5), which was issued under section 101(a)(15) of the Immigration and Nationality Act (Act), 66 Stat.166. Operations Instruction 214.2(b)(5) interpreted Section 101(a)(15) of the Act as applied to the installation, servicing or repair of industrial or commercial equipment or machinery purchased from a foreign supplier. Where the conditions of the Operating Instruction are met—in particular, where the alien performing the installation, servicing or repair makes the trip within the first year after the sale; where the alien possesses specialized knowledge relating to the machinery; and where the alien is paid abroad by the foreign seller and his services are supplied as part of the sale—there is assurance that the alien is basically performing a foreign job for a foreign employer as part of that employer's international business, rather than displacing U.S. workers from a U.S. job. And since the alien in this situation is performing a foreign job rather than a domestic job, his admission is not subject to the provisions of section 101(a)(15)(H) of the Act, which was designed to protect American jobs.

However, these considerations are not applicable to building and construction work. In the special conditions of this industry it is more reasonable to regard all building and construction work as representing domestic employment, even where the worker is employed by a foreign company and paid abroad. Building and construction work has traditionally been viewed as a local activity, and because of its unique status has received special treatment under federal labor law. *Woelke & Romero Framing Inc.* v. *NLRB*, 456 U.S. 645 (1982); *NLRB* v. *Iron Workers, Local 103*, 434 U.S. 335 (1978). Each construction project tends to be "a distinct entity." The Impact of the Taft-Hartley Act on the Building and Construction Industry, 60 Yale L.J. 673, 676, 677 n.24 (1951). Congress has recognized that "the employees of various subcontractors [at a single construction project] have a close community of interest, and that the wages and working conditions of one set of employees [at the project] may affect others." *Woelke & Romero, supra*, 456 U.S. at 661-2. In light of these factors, we believe it is reasonable to regard building and construction workers as being employed at the construction site, even though their employer be located abroad and they may otherwise meet the conditions of the Operations Instruction. For these reasons, we believe these workers are performing jobs that are subject to the provisions of section 101(a)(15)(H) of the Act, designed to give American workers protection regarding American jobs, and cannot avoid these protective provisions by utilizing the temporary business for visitor classification.

Dated: August 11, 1987.

Delia B. Combs,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-18581 Filed 8-13-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-92-AD; Amdt. 39-5706]

Airworthiness Directive; British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe-146 series airplanes, which requires an inspection and/or functional test of certain electro/pneumatic solenoid valves in the stall identification system, and replacement, if necessary. This amendment is prompted by several reports of internal corrosion within the solenoid assembly, which may cause the valve to become defective. This condition, if not corrected, could result in an unannunciated failure of the stall identification system.

EFFECTIVE DATE: August 31, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition, which may exist or develop on certain British Aerospace Model BAe 146 airplanes. There have been several reports of internal corrosion within electro/pneumatic stall identification system solenoid valves. This condition, if not corrected, could result in a defective valve, leading to an unannunciated failure of the stall identification/prevention system.

British Aerospace has issued Service Bulletin BAe-146, 27-58, Revision 1, dated November 14, 1986, which describes procedures for inspection and test of the electro/pneumatic valves, and replacement, if necessary. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certified in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires inspection and test of electro/pneumatic solenoid valves, and replacement, if necessary, in accordance with the British Aerospace service bulletin previously mentioned.

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Regulations (14 CFR 39.13) are amended as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-146 airplanes, as listed in British Aerospace BAe-146 Service Bulletin 27-58, Revision 1, dated November 14, 1986, certified in any category. Compliance is required as indicated, unless previously accomplished.

To prevent an unannunciated failure of the stall identification system, accomplish the following:

A. Within 14 days or prior to the accumulation of 125 landings, whichever occurs first after the effective date of this AD, inspect the electro/pneumatic solenoid valve to identify the serial number and modification state in accordance with BAe-146 Service Bulleting 27-58, Revision 1, November 14, 1986. If the valve is identified as suspect, accomplish either of the following:

1. Prior to further flight, replace the affected valve with a modified valve identified in accordance with the service bulletin; or

2. Prior to further flight, and thereafter at intervals not to exceed 14 days or 125 landings, whichever occurs first, functionally test the suspect valve in accordance with the Accomplishment Instructions of the service bulletin.

a. Valves found defective must be removed prior to further flight and replaced with modified valves or a serviceable suspect valve.

b. The serviceability of suspect replacement valves must be determined by performing the above mentioned functional test upon installation.

B. Replacement of suspect valves with modified valves identified in accordance with BAe-146 Service Bulletin 27-58, Revision 1, dated November 14, 1986, constitutes terminating action for the requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 31, 1987.

Issued in Seattle, Washington, on August 5, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-18534 Filed 8-13-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24778; File No. S7-21-86]

Customer Protection Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to its customer protection rule under the Securities Exchange Act ("Act") in connection with repurchase agreements where the broker-dealer agrees to retain custody of the securities that are subject to those agreements ("hold in custody repurchase agreements"). The amendments to the rule will require registered broker-dealers to obtain repurchase agreements in writing, to make specific disclosures regarding certain risks associated with hold in custody repurchase transactions and to disclose that the Securities Investor Protection Corporation ("SIPC") has taken the position that coverage under the Securities Investor Protection Act of 1970 is not available to repurchase agreement participants. The amendments further require registered broker-dealers to maintain possession or control of securities subject to hold in custody repurchase agreements, except that possession or control during the trading day is not required if certain conditions are met.

EFFECTIVE DATE: January 31, 1988.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Julio A. Mojica, (202) 272-2372, or Michael P. Jamroz, (202) 272-2398, Division of Market Regulation, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In September of 1986, the Commission proposed amendments to its financial responsibility rules relating to repurchase and reverse repurchase agreements. Those proposed amendments were in response to the failures of several government securities dealers which caused substantial harm to public investors through fraudulent practices.[1] The proposal included amendments to the Commission's net capital rule, securities count and recordkeeping rules and customer protection rule, Securities Exchange Act Rule 15c-3. Subsequently, Congress enacted the Government Securities Act of 1986 ("GSA"), which authorized the Department of the Treasury ("Treasury") to adopt financial responsibility and customer protection rules for all brokers and dealers of U.S. government securities, including those firms currently registered with the Commission. The Treasury has since adopted rules that, in large part, incorporate existing Commission financial responsibility rules. The Treasury's customer protection rule requires compliance with Rule 15c3-3, but modified the provisions that were proposed in the September Release. In Securities Exchange Act Release No. 24554 ("the June Release"), the Commission proposed for comment amendments to Rule 15c3-3 that would substantially conform to the Treasury's temporary customer protection rule. Today, the Commission adopts those amendments with certain modifications to conform to the Treasury's customer protection rule as adopted in final form on July 24, 1987.[2]

Unrelated to these changes, the Commission is deleting the word "last" from the wording of Item 9 of the Formula for Determination of Reserve Requirements in Rule 15c3-3a to correct an error in the Code of Federal Regulations.

I. Discussion

The proposed amendments to Rule 15c3-3 announced in September were made in response to, among other things, fraudulent practices of both unregistered and registered government securities broker-dealers involving repurchase agreements where the broker-dealers retained possession of the securities underlying the repurchase agreements ("hold in custody repo"). In a repurchase agreement ("repo"), the broker-dealer sells securities and agrees to repurchase the same or similar securities at a later date. In a hold in custody repo, the broker-dealer receives the funds from the sale of the securities but retains control of the securities. Some of the failed broker-dealers allegedly used those securities in their business although they had been sold to the repo counterparties. Those counterparties will be exposed to loss if coverage under the Securities Investor Protection Act of 1970 ("SIPA") is not available.[3] The position of the Securities Investor Protection Corporation is that persons engaging in repurchase and reverse repurchase agreements are not customers of the broker-dealer within the meaning of SIPA and are therefore not covered under SIPA.[4]

The amendments to Rule 15c3-3 proposed in September would have required broker-dealers that enter into hold in custody repos to: (i) Disclose the rights and liabilities of the parties to hold in custody repos including a statement that SIPC has taken the position that SIPA coverage is not available to repo counterparties; (ii) disclose to the counterparty which securities are being held on his behalf under the hold in custody repo; and (iii) maintain possession and control of those securities free of lien, except for clearing liens imposed during the trading day for hold in custody repos exceeding $1 million.

Subsequent to the Commission's original proposal, the Treasury, pursuant to authority recently granted to it under the GSA, adopted temporary financial responsibility rules for all brokers and dealers in U.S. government securities in May of 1987. The Treasury's temporary customer protection rule altered the requirements proposed by the Commission. In essence, the Treasury's temporary regulation included the Commission's amendments to Rule 15c3-3 except that: (i) The Treasury rule required broker-dealers to obtain written hold in custody repurchase agreements and to make specific disclosures in those agreements regarding the broker-dealer's use of securities obtained pursuant to hold in custody repos during the trading day; and (ii) the Treasury rule did not require intra-day possession or control of securities that were subject to hold in custody repos of under $1 million on any day on which the broker-dealer obtained the specific prior consent of

[1] *See* Securities Exchange Act Release No. 23602 (September 4, 1986), 51 FR 32858 (September 15, 1986) ("September Release").

[2] 52 FR 27910 (July 24, 1987).

[3] Under section 9(a) of SIPA, advances for customer claims are limited to $100,000 for cash claims and $500,000 for claims for securities. To the extent the claims of repo counterparties exceed those limits, those counterparties will be exposed to loss even if SIPC coverage is extended.

[4] The United States District Court for the District of New Jersey decided in *Cohen* v. *Army Moral Support Fund (in re Bevill, Bresler and Schulman)*, Adv. Proc. No. 85-21-3 (slip op.) (D.N.J. Oct 23, 1986), that repo transactions were purchases and sales rather than secured loans. The practical effect of this decision was to extend coverage under the Securities Investor Protection Act to repo participants within that jurisdiction. A final order in that case, however, has not yet been entered and, therefore, no appeal has been possible from the Court's determination.

the counterparty to substitution. The Commission's original proposal would have required registered broker-dealers to maintain continuous possession or control of securities subject to hold in custody repos under $1 million.

In the June Release, the Commission proposed for comment alternative amendments to Rule 15c3–3 relating to the treatment of hold in custody repos. One version was the same as the Treasury's temporary rule. The other version differed from the Treasury's rule only with respect to hold in custody repos under $1 million. The second alternative contained a continuous possession or control requirement for securities obtained under those agreements.

The Commission received one comment letter in response to its proposal.[5] In its letter, the Public Securities Association ("PSA") objected to the required confirmation of specific securities subject to hold in custody repos and the disclosure of the market value of those securities. The PSA also opposed special restrictions on hold in custody repurchase transactions under $1 million.

In designing its proposed amendments to the customer protection rule, the Commission intended to ameliorate, among other things, two weaknesses observed in the hold in custody repo market. One concern was the duplicative use of securities obtained by broker-dealers under hold in custody repos. The use of securities that were already subject to hold in custody repos was facilitated by the broker-dealers' failure to designate specific securitries to specific repos. In confirming specific securities, this allocation will have to be performed and the double use of securities will be inhibited.

The other concern was the apparent lack of understanding of hold in custody repo counterparties of their rights and liabilities. To some extent, this misunderstanding was exacerbated by the unsettled legal status of repos. As noted above, SIPC has taken the position that repos are secured loans and not purchases and sales of securities protected under SIPA. If hold in custody repos are secured lending transactions, whether and when a perfected security interest attaches are questions of local law, the answers to which are not always clear. To the extent an interest in securities subject to a hold in custody repo exists, counterparties may be frustrated in submitting claims against those securities because they are not told which securities they purchased under the repo. In many instances, broker-dealers confirm those transactions by submitting a confirmation to the counterparty that states that they have purchased "various" government securities. Because the counterparty never receives the securities, it may never become aware of which securities are subject to the agreement. In some cases, even the broker-dealer is not aware of which securities are subject to the agreement. As mentined above, this may occur when the broker-dealer fails to make the designation necessary to confirm specific securities.

The amendments to Rule 15c3–3 require broker-dealers to make basic disclosures to hold in custody repo counterparties regarding their rights and liabilities under the agreement. The amendments require that the broker-dealer inform the counterparty of SIPC's position and state to the counterparty that its securities may be subject to clearing liens during the trading day.

The amendments also require the broker-dealer to disclose the identity of the specific securities that are the subject of the agreement so the counterparty will be able to pursue any legal interest it may have in those securities in the event that the broker-dealer defaults. The broker-dealer will also be required to include the market value of those securities on the confirmation so the conterparty can more easily determine if sufficient securities have been allocated to it under the agreement. The disclosure of market value is particularly important because it is evident that in some sectors of the repo market, counterparties are measuring credit exposure by comparing the amount of funds invested in the repurchase transaction to the face value of government securities involved. The disclosure of market value of the securities subject to the repo emphasizes to those counterparties that market value, not face value, is the appropriate measure for determining credit exposure.

With respect to hold in custody repo transactions under $1 million, the Commission believes that special treatment for those transactions is not appropriate at this time. When the amendments to Rule 15c3–3 were proposed for comment in September 1986, the Commission sought to achieve its regulatory objectives with a minimum burden on the repo marketplace. The Commission learned that, in order to maximize the efficiency of the settlement process for U.S. government securities, broker-dealers needed to be able to substitute securities subject to hold in custody repos. In order for those substitutions to be performed, broker-dealers had to combine securities subject to hold in custody repos with other government securities in their clearance accounts and submit all of those securities to clearing liens during the day. However, the Commission was also aware of instances where securities subject to hold in custody repos were misappropriated. The Commission therefore proposed that broker-dealers obtain possession and control of securities that were the subject of hold in custody repo agreements exceeding $1 million at the end of each trading day. Because the Commission was concerned that smaller investors might not fully appreciate the risks involved with hold in custody repo transactions, the Commission propsed that small hold in custody repo transactions be subject to a continuous possession or control requirement.

When the Commission reproposed its amendments in the alternative in June 1987, the amendments included significant modifications to the Commission's original proposal that were included in the recently adopted Treasury's temporary rule. Both alternatives required that hold in custody repo agreements be written and include specific disclosures regarding SIPC coverage and the effects of consent to substitution by the counterparty. The alternatives differed in that one would have required continuous possession or control of securities subject to hold in custody repos under $1 million while the other proposed, in a manner identical to that required under the Treasury's temporary rule, that those securities could be used by the broker-dealer provided that prior written or oral consent of the counterparty had been received on the day of use.

The release requested comment on the enforceability of an oral consent provision but, at the same time, the Commission was uncertain of whether the benefit obtained by a continuous possession or control requirement was worth the cost to the industry of treating smaller hold in custody repos differently. The Commission was aware that broker-dealers may incur a significant recordkeeping cost in identifying those transactions. Furthermore, a continuous possession or control requirement may hinder the settlement process if the broker-dealer is unable to effect substitutions. The

[5] The Department of Treasury received 21 comment letters which the Commission considered in evaluating this proposal. The Treasury comment letters have been placed in the Commission's public files.

Commission also understands that many small hold in custody repos are entered into by large, sophisticated investors. Since hold in custody repos often represent temporary investments of available cash balances, the size of the repo is often more a function of available funds than the net worth of the investor. Finally, the Commission was concerned that the stricter segregation requirements might result in many firms refusing to effect small hold in custody repo transactions.

Some of the Commission's concerns have been addressed by modifications to its original proposal. The amendments, as adopted, require explicit disclosures regarding the risks of entering into hold in custody repos to be made in a written agreement. The counterparty will be informed of the ramifications of his consent to substitution and the exposure of his securities to clearing liens. Moreover, the Commission believes that the requirement that firms segregate hold in custody securities every night and confirm the specific securities employed in hold in custody repos should serve to protect against the double use of those securities. In light of all of the considerations, the Commission has determined that a separate standard for hold in custody repos under $1 million is not appropriate.

The Commission remains concerned about the use of free credit balances by means of hold in custody repurchase agreements. In some instances, broker-dealers have characterized free credit balances as repurchase agreements in an apparent attempt to avoid depositing those free credit balances in the Special Reserve Bank Account for the Exclusive Benefit of Customers ("Reserve Account") under Rule 15c3–3(e).[6] The Commission believes that the written agreement requirement will inhibit this practice and make smaller repo participants more conscious of the risks involved in the transaction. However, the Commission's view is that if the broker or dealer enters into a hold in custody repurchase agreement with a retail customer who has a preexisting free credit balance with the broker or dealer, the liability of the broker or dealer will ordinarily be considered to be a free credit balance for purposes of Rule 15c3–3. Customers that conduct their business with the broker-dealer on a delivery versus payment basis would not be considered retail customers for purposes of this interpretation. The Commission will continue to monitor this area and may consider imposing separate restrictions on smaller hold in custody repos in the future. The Commission has selected an effective date of January 31, 1988, to coincide with the effective date of the Treasury rule adopted in final form July 24, 1987. Between July 25, 1987 and January 31, 1988 registered broker-dealers must comply with applicable provisions of the Treasury rule.

[6] Rule 15c3–3(e) requires broker-dealers to deposit in the Reserve Account an amount as computed on a periodic basis under the Rule 15c3–3a Formula for Determination of Reserve Requirement ("Reserve Formula"). Under the Reserve Formula, the amount of the required deposit is determined by comparing the free credit balances and other funds obtained from customers to the amount by which the broker-dealer finances customer activities through the use of its own funds. Because the Commission has not taken the position that repo participants are "customers" for purposes of Rule 15c3–3, funds obtained in a repo would not be included in the Reserve Formula unless customer securities were used in the repo.

II. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. section 604 regarding the amendments to Rule 15c3–3. The Analysis notes that the objective of the amendments is to further the purposes of the various financial responsibility rules, which are designed to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers and to require broker-dealers to maintain such records as necessary or appropriate in the public interest or for the protection of investors. The Analysis states that the amendments would subject small broker-dealers to additional recordkeeping and disclosure requirements. The Analysis states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Michael P. Jamroz, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2398.

III. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and, particularly, sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78*o*(c)(3), 78q, and 78w, the Commission is adopting amendments to 240.15c3–3 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Securities.

Text of Amendments

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w * * *. Section 240.15c3–3 is also issued under secs. 15(c)(3) and 17(a), 15 U.S.C. 78*o*(c)(3) and 78*q*(a).

2. By adding paragraph (b)(4) to § 240.15c3–3 as follows:

§ 240.15c3–3 Customer protection reserves and custody of securities.

* * * * *

(b) * * *

(4)(i) Notwithstanding paragraph (k)(2)(i) of this section, a broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a counterparty shall:

(A) Obtain the repurchase agreement in writing;

(B) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the trading day on which the transaction is intitiated and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date, par amount or coupon rate as specified in the previous confirmation;

(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the counterparty with respect to the repurchase agreement;

(D) Maintain possession or control of securities that are the subject of the agreement.

(ii) For purpose of this paragraph (b)(4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3–3 (c)(1), (c)(3), (c)(5) or (c)(6) of this title.

(iii) A broker or dealer shall not be in violation of the requirement to maintain possession or control pursuant to paragraph (b)(4)(i)(D) during the trading day if:

(A) In the written repurchase agreement, the counterparty grants the broker or dealer the right to substitute other securities for those subject to the agreement; and

(B) The provision in the written repurchase agreement governing the right, if any, to substitute is immediately preceded by the following disclosure

statement, which must be prominently displayed:

Required Disclosure

The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute other securities. If the [buyer] grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.

(iv) A confirmation issued in accordance with paragraph (b)(4)(i)(B) of this section shall specify the issuer, maturity date, coupon rate, par amount and market value of the security and shall further identify a CUSIP or mortgage-backed security pool number, as appropriate, except that a CUSIP or a pool number is not required on the confirmation if it is identified in internal records of the broker or dealer that designate the specific security of the counterparty. For purposes of this paragraph (b)(4)(iv), the market value of any security that is the subject of the repurchase transaction shall be the most recently available bid price plus accrued interest, obtained by any reasonable and consistent methodology.

(v) This paragraph (b)(4) shall not apply to a repurchase agreement between the broker or dealer and another broker or dealer (including a government securities broker or dealer), a registered municipal securities dealer, or a general partner or director or principal officer of the broker or dealer or any person to the extent that his claim is explicitly subordinated to the claims of creditors of the broker or dealer.

3. By amending § 240.15c3-3a by revising item 9 as follows:

§ 240.15c3-3a Exhibit A—formula for determination of reserve requirement of brokers and dealers under § 240.15c3-3.

* * * * *

	Debits	Credits
* * * * *		
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days..	XXX	
* * * * *		

By the Commission.
August 6, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18478 Filed 8-13-87; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87-34-000; Order No. 500]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: August 7, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule and statement of policy.

SUMMARY: On June 23, 1987, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Associated Gas Distributors* v. FERC (AGD),[1] generally upholding the substance of Order No. 436.[2] However, the Court "found problems in a few of the Order's components" [3] and, due to the interrelationship of the rule's provisions, vacated Order No. 436 and remanded the matter for further proceedings.

This order responds to the Court's concerns about Order No. 436 on an interim basis while the Commission undertakes a thorough examination of the aspects of that order about which the Court expressed concern. As part of this examination, the Commission will seek data from industry participants in order to make an accurate and reliable assessment of current market conditions. This interim rule, however, should avoid any uncertainty that would otherwise exist as to the applicable transportation regulations so as to avoid any interruption in transportation services while the Commission is developing and considering permanent rules responsive to the Court's concerns.

The Commission believes that this interim rule is responsive to the Court's concerns in *AGD* regarding pipeline take-or-pay problems, and meets the standards for an interim rule without notice and comment as set out in the Court's recent opinion in *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, No. 86-1414 (D.C. Cir. June 1987) (Mid-Tex).[4]

Guided by the standards in *Mid-Tex*, the Commission has structured this interim rule to take the initial steps to correct the problems identified by the Courts in *AGD* while the Commission conducts a more thorough examination of the issues before developing a final rule. Accordingly, in this interim rule, the Commission readopts the regulations originally promulgated by Order No. 436 (including the grandfathering provisions), with the following modifications: (1) In order to permit pipelines to minimize the incurrence of take-or-pay liability because of open-access transportation under these regulations, a producer must offer to credit gas transported by a pipeline against that pipeline's take-or-pay liability to the producer accruing under certain pre-June 23, 1987, gas purchase contracts; (2) in order to provide for equitable sharing, between pipelines and their customers, of the costs of settling already accrued take-or-pay obligations and reforming existing contracts, the Commission adopts a policy as to the acceptable mechanisms for the passthrough of take-or-pay buyout and buydown costs; (3) in order to avoid the future recurrence of the kind of take-or-pay problems that exist today, the Commission adopts principles on which pipelines may base future gas supply charges; and (4) while the Commission compiles a record to justify contract demand reductions the Commission eliminates the contract demand reduction option in former § 284.10(c) of its regulations but in order to maintain some meaningful access to transportation for sales customers, the Commission retains the contract conversion option in former § 284.10(d) of its regulations.

DATES: The Commission will request the Court's permission to make this interim rule effective immediately upon issuance of the Court's mandate or the

[1] No. 85-18111, *et al.*

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), 50 FR 42408 (October 18, 1985), (Reg. Preambles 1982-1985) FERC Stats. & Regs. ¶ 30,665 (October 9, 1985), *modified*, Order No. 436-A, 50 FR 52217 (December 23, 1985), *modified further*, Order No. 436-B, 51 FR 6398 (February 24, 1986), III FERC Stats. & Regs. ¶ 30,688 (February 14, 1986), *reh'g denied*, Order No. 436-D, 34 FERC ¶ 61,405 (March 28, 1986), *reconsideration denied*, Order No. 436-E, 34 FERC ¶ 61,403 (March 28, 1986).

[3] Slip op. at 124.

[4] In *Mid-Tex*, the Court reviewed the Commission's interim rule repromulgating the construction work in progress (CWIP) rule for electric utilities that had previously been vacated and remanded by the Court. *See Mid-Tex Electric Cooperative Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985).

leave of the Court. The Commission will publish a notice of the effective date of this interim rule as soon as leave is obtained from the Court or the mandate of the Court issues. Additionally, the suspension of § 284.10 of the Commission's regulations is removed effective the first day of the second month after the effective date of this rule. Written comments on this interim rule must be filed with the Commission by October 13, 1987.

ADDRESS: Comments should be filed with: Federal Energy Regulatory Commission, Office of the Secretary, Room 3110, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8308.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Neave.

I. Introduction

On June 23, 1987, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Associated Gas Distributors* v. *FERC* (AGD),[1] generally upholding the substance of Order No. 436.[2] However, the Court "found problems in a few of the Order's components" [3] and, due to the interrelationship of the rule's provisions, vacated Order No. 436 and remanded the matter for further proceedings.

The purpose of this order is to respond to the Court's concerns about Order No. 436 on an interim basis while the Commission undertakes a thorough examination of the aspects of that order about which the Court expressed concern. As part of this examination, the Commission will seek data from industry participants in order to make an accurate and reliable assessment of current market conditions. This interim rule, however, should avoid any uncertainty that would otherwise exist as to the applicable transportation regulations so as to avoid any interruption in transportation services while the Commission is developing and considering permanent rules responsive to the Court's concerns.

The Commission believes that this interim rule is responsive to the Court's concerns in *AGD* regarding pipeline take-or-pay problems, and meets the standards for an interim rule without notice and comment as set out in the Court's recent opinion in *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, No. 86–1414 (D.C. Cir. June 30, 1987) (*Mid-Tex*). In *Mid-Tex*, the Court reviewed the Commission's interim rule repromulgating the construction work in progress (CWIP) rule for electric utilities that had previously been vacated and ramanded by the Court.[4] Despite objections that the repromulgation of the CWIP rule in an interim rule violated the Court's prior mandate, the Court upheld the interim rule because of three factors. First, although the prior CWIP rule had been vacated the Court had recognized that the Commission could repromulgate the rule if certain problems were addressed. Second, because the Commission took steps in the interim rule to guard against the potential harm identified by the Court while the Commission developed a permanent solution, the Court found that the Commission had been faithful to the letter and spirit of the Court's prior decision. Third, there was a need for an interim rule to provide regulatory guidance to avoid confusion and irreparable financial consequences to the regulated companies.

Guided by the standards in *Mid-Tex*, the Commission has structured this interim rule to take the initial steps to correct the problems identified by the Court in *AGD* while the Commission conducts a more thorough examination of the issues before developing a final rule. In this process the Commission has attempted to be faithful to both the letter and the spirit of the Court's opinion in *AGD*.

Accordingly, in this interim rule, the Commission readopts the regulations originally promulgated by Order No. 436 (including the grandfathering provisions), with the following modifications: (1) In order to permit pipelines to minimize the incurrence of take-or-pay liability because of open-access transportation under these regulations, a producer must offer to credit gas transported by a pipeline against that pipeline's take-or-pay liability to the producer accruing under certain pre-June 23, 1987 gas purchase contracts; (2) in order to provide for equitable sharing, between pipelines and their customers, of the costs of settling already accrued take-or-pay obligations and reforming existing contracts, the Commission adopts a policy as to the acceptable mechanisms for the passthrough of take-or-pay buyout and buydown costs; (3) in order to avoid the future recurrence of the kind of take-or-pay problems that exist today, the Commission adopts principles on which pipelines may base future gas supply charges; and (4) while the Commission compiles a record to justify contract demand reductions the Commission eliminates the contract demand reduction option in former § 284.10(c) of its regulations but in order to maintain some meaningful access to transportation for sales customers, the Commission retains the contract conversion option in former § 284.10(d) of its regulations.

The Commission will request the Court's permission to make this interim rule effective immediately upon issuance of the Court's mandate or leave of the Court. The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues. The Commission is also requesting comments on this interim rule and intends to issue a final rule based on those comments. Numerous persons have already filed comments with the Commission. While those comments have not served as a basis for this interim rule, they will be made a part of the record and will be considered in the final rule.

II. Background

A. Order No. 436

In Order No. 436, the Commission fundamentally altered the way in which it regulates natural gas pipelines in light of regulatory and economic developments in the natural gas industry that began with Congress' enactment of the Natural Gas Policy Act of 1978 (NGPA). The Commission found that, despite the increasingly competitive nature of the wellhead natural gas market under the NGPA, interstate pipelines retained market power over the transportation of natural gas.[5] Although many purchasers were seeking to purchase gas directly in the field at prices lower than pipelines' weighted average cost of gas, the Commission found that pipelines generally declined

[1] No. 85–1811, *et al.*

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), 50 FR 42408 (October 18, 1985), (Reg. Preambles 1982–1985) FERC Stats. & Regs. ¶ 30,665 (October 9, 1985), *modified*, Order No. 436–A, 50 Fed. Reg. 52217 (December 23, 1985), (Reg. Preambles 1982–1985) FERC Stats. & Regs. ¶ 30,675 (Dec. 12, 1985), *modified further*, Order No. 436–B, 51 FR 6398 (February 24, 1986), III FERC Stats. & Regs. ¶ 30,668 (February 14, 1986), *reh'g denied*, Order No. 436–C, 34 FERC ¶ 61,404 (February 14, 1986), *reh'g denied*, Order No. 436–D, 34 FERC ¶ 61,405 (March 28, 1986), *reconsideration denied*, Order No. 436–E, 34 FERC ¶ 61,403 (March 28, 1986).

[3] Slip op. at 124.

[4] *See Mid-Tex Electric Cooperative Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985).

[5] Order No. 436, 50 FR at 42419.

to transport gas in competition with their own sales (except where the customer desiring the transportation could switch to alternative fuels at little or no cost.) Otherwise, the transportation could displace their own sales. This displacement, the pipelines reasoned, could cause them to incur increased liability under take-or-pay contracts which the pipelines had entered into previously during the gas shortages of the late 1970's and early 1980's. Those contracts frequently required the pipelines to pay relatively high prices for a minimum amount of gas each year, generally based on the deliverability of the producers' wells, even if the pipelines did not take the gas. The Commission further found that the pipelines' refusal to transport gas was discriminatory and caused increased costs to consumers by denying them access to gas at the lowest reasonable prices. The refusal to transport therefore was adversely affecting the economy and the nation. It also frustrated the goal of the NGPA of moving toward a competitive wellhead market.[6]

In light of these findings, the Commission in Order No. 436 exercised the broad jurisdiction over transportation, which it retained under the NGA and the NGPA, to revise its regulations governing the interstate transportation of natural gas. First, the Commission required that all pipelines performing self-implementing transportation, either pursuant to blanket NGA section 7(c) certificates or pursuant to NGPA section 311 (other than certain transportation under grandfathered authorizations), provide that transportation on a nondiscriminatory basis, and thereby become open access pipelines. This nondiscriminatory access condition generally applies the prohibition of NGA sections 4 and 5 against the granting of any undue preference. Furthermore, the Commission held that a pipeline's refusal to transport gas because it would displace its own sales or because it had not obtained relief from its take-or-pay contracts with producers would be unduly discriminatory.

Second, the Commission required that open-access pipelines determine their rates based on certain principles designed to eliminate built-in rate incentives which favored the pipelines' merchant function over their transportation function by allocating more costs to be recovered from the transportation services. Third, the Commission required that open-access pipelines agree to allow their firm sales customers to adjust their "contract demand" (CD) (the maximum amount of gas the customer is contractually entitled to purchase), either to reduce the level or convert it from firm sales to firm transportation. These options were intended to allow full requirements and other customers of a pipeline to take advantage of transportation by purchasing gas from another supplier and either having it transported over the pipeline or over another pipeline. The CD reduction option also was intended to free up the pipeline's presently contracted firm capacity so that the transmission capacity could be available to willing shippers. Fourth, the Commission adopted optional procedures for granting certificates for new facilities, services and operations. These procedures were intended to ease a pipeline's entry into new markets to compete with existing suppliers and thereby give local distribution companies who are now limited to one pipeline access to other pipelines. Fifth, the Commission provided for expedited abandonment of gas subject to reduced takes.

Finally, despite the urging of a number of commenters, the Commission did not take specific, new action in Order No. 436 to relieve pipelines from the burden of their high-priced take-or-pay contracts. The Commission did, however, reaffirm its April 1985 policy statement and interpretative rule on payments to buy ot the take-or-pay liabilities under those contracts. In that policy statement and interpretative rule the Commission held, among other things, that buyout payments do not violate NGPA Title I ceiling prices and that the Commission would evaluate the pipeline's recovery of buyout and buydown costs in individual rate filings. The Commission, also stated that it would consider any requests for abandonment necessary to carry out a settlement of a take-or-pay obligations on an expedited basis.

B. The Court's Decision

Numerous parties appealed Order No. 436, leading to the Court decision which has prompted the action the Commission is taking here. In that decision, the United States Court of Appeals for the District of Columbia Circuit generally upheld the substance of Order No. 436. Specifically, it upheld the Commission's authority under the NGA and the NGPA to require that all pipelines performing self-implementing transportation must do so on a nondiscriminatory basis. The Court also upheld the rate provisions of Order No. 436 and the optional certificate procedures. Thus, the Court affirmed the heart of Order No. 436.

Although largely upholding the Commission's actions, the Court did find three problems with Order No. 436. First, the Court held that the Commission's decision not to take direct action with respect to the take-or-pay problems of pipelines, other than reaffirming the 1985 policy statement and interpretative rule, failed to meet the requirements of "reasoned decisionmaking." [7] The Court found that the Commission had not convincingly answered the contention of many parties that Order No. 436 would exacerbate pipelines' take-or-pay problems and thereby harm many consumers. First, the Court stated that the Commission had not shown that its finding, that a pipeline's refusal to transport new gas without relief from take-or-pay liabilities under old contracts constitutes undue discrimination, would not reduce pipeline leverage over producers by depriving them of one of their primary bargaining chips in settling take-or-pay liability. Secondly, the Commission had not shown that the CD reduction and conversion option by permitting many customers of the pipeline to reduce or cease purchases, would not affect the pipeline's ability to market gas and increase its take-or-pay liability. Furthermore, the Court expressed concern that, as each firm sales customer exercised the option, the costs borne by the others could increase, thereby increasing the incentive for them to stop purchasing from the pipeline. The remaining sales customers of the pipeline unable to purchase alternative supplies, such as small local distribution companies, and the consumers who purchase from them would be left with the high priced gas. This would defeat the purpose of Order No. 436 and the consumer protection purposes of the NGA.

The Court also stated that the Commission had given insufficient reasons for rejecting two proposals advanced by participants in the rulemaking for mitigating the problems presented by the take-or-pay contracts. These were (1) that the Commission use its power under NGA section 5 to modify take-or-pay provisions in jurisdictional contracts or (2) that the Commission allow pipelines to condition producer access to transportation on allowing some measure of take-or-pay relief. The Commission had rejected action under NGA section 5 on the ground that it would be ineffective and inequitable since it would only affect a

[6] *Id.* at 42420–1.

[7] Slip op. 95.

portion of the problem contacts—those that remained subject to the Commission's Natural Gas Act jurisdiction. However, the Court found this reasoning unconvincing because the Commission had failed to determine what proportion of take-or-pay problems arise under jurisdictional contracts.

The Commission had rejected the conditioning option on the ground that it would be unduly discriminatory for a pipeline to refuse transportation service under Order No. 436 merely because the producer and pipeline could not agree on take-or-pay relief in another contract. Such discrimination would harm not only the producer but also the would-be purchaser. However, given the fact that the producer-pipeline contracts are a significant part of the problem that precipitated Order No. 436, the Court found the Commission's argument concerning undue discrimination unpersuasive. Furthermore, the Court observed that any fear that such a condition would give pipelines a veto power over transportation of each producer's gas "underestimates the Commission's power to impose both procedural and substantive limits on pipeline use of any conditioning power." [8]

Finally, while the Court held that the Commission had given inadequate reasons for failing to take stronger action on take-or-pay, the Court found "powerful" the Commission's concern about impairing the ability of parties to rely on private contracts, particularly when Congress decided in the NGPA to move toward a deregulated wellhead market.[9] However, the Court also observed that given the fact that producers' access to transportation under Order No. 436 is dependent on government intervention, conditioning that access on take-or-pay relief is "hardly identical to raw governmental abrogation of contracts." [10] Furthermore, the Court noted, pipelines entered into the take-or-pay contracts in part in reliance on the then existing regulatory environment.

The Court found additional problems with the Commission's adoption of the CD conversion and reduction option beyond the adverse effect of that option on take-or-pay. The Court held that to the extent the Commission required the CD conversion and reduction options to transportation as an exercise of its authority to condition NGA section 7(c) certificates, the Commission had failed to ground the option on adequate authority under the NGA. The Commission's reliance on its NGA section 7(e) conditioning authority, the Court held, improperly circumvented the requirement of NGA section 5 that, when modifying a pipeline contract, the Commission must first find that the existing contract is unjust and unreasonable. The Court also found that reliance on NGA section 7(b) was inappropriate in that this section only relates to a pipeline's obligation to serve and does not support a finding which relieves customers of their contract obligations. The Court did find, however, that the Commission had properly relied on its conditioning authority under NGPA section 311(c) as legal authority to attach the CD adjustment requirements to transportation authorized under NGPA section 311.

In addition to its consideration of the Commission's legal authority to adopt the CD adjustment options, the Court considered the adequacy of the Commission's reasoning in support of exercising that authority. The Court found that the Commission's reasoning in support of the CD conversion option was adequate. The Court agreed with the Commission that existing contracts binding local distribution companies to purchase gas from pipelines are a product of pipeline market power and that sales customers must be given the opportunity to convert from purchasing gas from the pipeline to obtaining transportation over the pipeline, if the goal of nondiscriminatory access to transportation is to be achieved. While such conversions may result in some shifting of costs to customers least able to purchase from a supplier other than the pipeline, circumstances limit the pipline's ability to shift costs since a customer's cost of purchasing gas elsewhere provides a celing on what the pipeline can charge its customers.

However, the Court found that the Commission's reasoning in support of the CD reduction option was inadequate since the Commission had not provided evidence showing that access to transportation over pipelines other than that from which they now purchase is necessary to permit local distribution companies to purchase competitively priced gas. The Court also stated that the Commission had not adequately justified the broad remedy of giving all firm sales customers of all pipelines the CD reduction option in order to free up committed pipeline capacity. Furthermore, the Court found that the Commission had not confronted the possibility that cost-shifting which resulted from CD reductions may be a problem for certain captive customers.

Finally, the Court held that the Commission had failed to explain adequately some of its decisions concerning the grandfathering of certain preexisting blanket certificates and authorizations under NGA section 7 and NGPA section 311. In particular, the Court stated that the Commission should explain more fully why some NGA section 7 certificates can be grandfathered for periods of as long as ten years without violating Congress' direction to prevent undue discrimination.

III. Pipeline Take-or-Pay Problems

A. Overview of the Commission's Actions

The causes of the pipelines' take-or-pay problems are many and complex. It is undoubtedly true that some pipelines imprudently entered into contracts incorporating both high prices and high take-or-pay levels. At the same time, pipelines entered into contracts, which were based on the anticipated demands of their customers, and whose terms reflected those which producers were able to obtain under the then prevailing market conditions. In many instances, pipeline take-or-pay obligations mounted because of reduced purchases by their customers due to purchases from alternative suppliers, fuel switching by industrial users due to lower fuel oil prices, reduced levels of economic activity, and conservation. The Commission recognizes that it is difficult to assign blame for the pipeline industry's take-or-pay problems. In brief, no one segment of the natural gas industry or particular circumstance appears wholly responsible for the pipelines' excess inventories of gas. As a result, all segments should shoulder some of the burden of resolving the problem.

The Commission in this interim rule is taking a series of interrelated actions designed to substantially mitigate the effects of the instant rule on pipeline take-or-pay problems and to provide some relief from take-or-pay problems not related to or aggravated by the transportation regulations. In addition the Commission will require that pipelines submit to the Commission certain information relating to their take-or-pay problems, and hereby requests information from producers in order to assist the Commission in developing a final rule.

In order to permit pipelines to reduce the incurrence of take-or-pay liability under their existing take-or-pay

[8] Slip op. at 92.
[9] *Id.* at 88.
[10] *Id.* at 89.

contracts because of transportation under their regulations, a producer seeking to have gas transported must offer credits against the pipeline's take-or-pay liability. The credit would operate by treating volumes of gas transported as though they were volumes of that producer's gas purchased by the pipeline under pre-June 23, 1987, take-or-pay contracts, with certain exceptions. The pipeline may apply the credit as though the volumes were purchased in the contract year in which the gas is transported or in any previous calendar year, commencing on or after January 1, 1986, in which the pipeline transported gas under their regulations. Requiring producers to offer these credits will enable pipelines to minimize aggravation of, and in many cases to reduce previously accrued take-or-pay liabilities under uneconomic gas purchase contracts because of transportation under Part 284 of the Commission's regulations. Where the pipeline's sales are displaced by the transportation, the take-or-pay liability incurred due to the loss of the sale will generally be offset by the credit.

The Commission recognizes that the credits that producers must offer for their gas to be eligible for transportation will not eliminate all previously accrued take-or-pay liability, nor will it completely eliminate the potential for the incurrence of future liability. Accordingly, the Commission expects that pipelines and producers will continue to negotiate settlements to extinguish take-or-pay obligations incurred before the pipeline commence transportation under this rule and to reform or terminate contracts. The Commission is therefore adopting in this rule a policy concerning acceptable mechanisms for interstate pipelines to pass through such costs.

In order to give pipelines greater flexibility, the Commission adopts as a matter of policy two acceptable passthrough mechanisms that pipelines may use for prudently incurred costs. The basic mechanism, permitted for all pipelines, is that a pipeline will be permitted commodity rate treatment for all take-or-pay costs. An alternative mechanism will be permitted only for pipelines that transport on a nondiscriminatory basis under Part 284 of the Commission's regulations. Under this mechanism, if a pipeline is willing to absorb some of its take-or-pay buyout and buydown costs (anywhere from 25 percent to 50 percent), then it will be permitted to recover an equal amount from its customers through a fixed take-or-pay charge. Additional amounts, up to 50 percent of the pipeline's total buydown or buyout costs, may be billed through a commodity surcharge, or a volumetric surcharge on pipeline throughput.

Finally, in order to prevent future take-or-pay problems the Commission is adopting as a matter of policy certain principles on which pipelines may base future gas supply service charges to be included in their rates. These principles are intended to establish the parameters under which pipelines may file to recover the costs of maintaining supply for their customers. The charges that flow from the principles are not required in this rule, but are a permissive option with a view toward possible mandatory implementation at a later time.

B. Transportation Credits

In Order No. 436, the Commission held that it would be unduly discriminatory for a pipeline to refuse transportation service under Order No. 436 merely because the producer and the pipeline cannot agree on take-or-pay relief in another contract. The Court in *AGD* expressed concern that this holding deprived pipelines of one of their prime bargaining chips in mitigating take-or-pay liability—the ability to trade transportation access for take-or-pay relief. However, the Court also recognized that, because of pipelines' market power, granting pipelines an unrestricted ability to refuse transportation in the absence of take-or-pay relief could give pipelines a veto power over the transportation of each producer's gas. The Court suggested that this problem could be avoided by imposing both procedural and substantive limits on pipeline use of any conditioning power.

In order to respond to the Court's concern about the pipelines' loss of bargaining power *vis-a-vis* producers, without giving pipelines veto power over transportation, and in order to mitigate pipeline take-or-pay liabilities under pre-June 23, 1987 contracts because of transportation under this rule, the Commission is amending §§ 284.8 and 284.9 of the regulations to limit producer eligibility for transportation. Pipelines need not transport a particular producer's gas unless that producer signs an affidavit offering to credit the transported gas against the pipeline's take-or-pay liability to that producer as provided in this rule. In general, this rule provides that, for each unit of gas transported, the pipelines may obtain a credit for the volumes transported as though they were volumes purchased under pre-June 23, 1987 take-or-pay contracts. The pipelines must treat the volumes as though purchased in the contract year the gas is transported or any previous calendar year, beginning on or after January 1, 1986, in which the pipeline was an open access transporter. Two categories of gas will be eligible for transportation without credits. These are: (1) Gas presently not committed to the pipeline by contract but which the pipeline previously purchased under a contract which has been terminated, or (2) gas released from a contract containing a market-out clause that allows the pipeline to terminate the contract at its discretion.

1. *Reasons for Adopting Crediting Mechanism.* The Commission believes that the credits provided by this rule will enable pipelines to reduce any aggravation of their take-or-pay liability under uneconomic pre-June 23, 1987,[11] gas purchase contracts because of transportation under this rule. Generally, when a sale is displaced, because of transportation of the gas of a producer to whom the pipeline owes take-or-pay liability, the lost sales volumes will be offset by a credit of the gas transported against take-or-pay liability. Indeed, the credit could enable the pipeline to avoid more take-or-pay obligations than the lost sale would have. This is because the quantities credited could be applied against high-cost contracts. However, if the pipelines made the sale, the volumes actually sold would be spread over all the pipeline's gas purchase contracts, both high and low cost.

It should also be observed that the pipeline need not demonstrate a displacement of sales to obtain the credit. Thus, to the extent the pipeline receives credits with respect to transportation which does not displace sales, the credit will reduce the pipeline's liability below what it would have been in the absence of transportation under Part 284, rather than simply minimizing the adverse effects. Furthermore, a pipeline's right to apply the credits as though the volumes were purchased in any previous contract year, commencing after January 1, 1986, in which the pipeline performed open access transportation should enable it to reduce past as well as present liability incurred because of this rule. Take-or-pay liability incurred during a year

[11] The Commission does not provide for credits with respect to take-or-pay obligations arising under gas purchase contracts entered into after June 23, 1987, the date of the *AGD* decision. The Commission believes that, by that date certainly, pipelines should no longer have been entering into new contracts with uneconomic take-or-pay clauses. Accordingly, there is no justification for granting credits with respect to take-or-pay obligations arising under such contracts.

when the pipeline performed no transportation under this rule could not have been caused by such transportation and thus the pipeline will not be authorized credit in that situation.[12]

It is possible that, in certain circumstances, sales displacements could occur without credits. For example, if the transported gas is owned by a producer who has no pre-June 23, 1987 take-or-pay contracts with the pipeline, then the pipeline would receive no credit for the transportation. In addition, as noted above, the pipeline must, without obtaining credits under this rule, transport (1) gas presently not committed to the pipeline by contract which it previously purchased under a terminated take-or-pay contract and (2) gas it released from a contract containing a market-out clause that allows the pipeline to terminate the contract at its discretion. These exceptions should encourage producers to agree to the buyout of existing uneconomic take-or-pay contracts and to the inclusion of market-out clauses in existing contracts, since such actions would assure producers that they can obtain transportation of gas formerly subject to or released from such contracts without providing credits against take-or-pay liability. In addition, these exceptions would afford similar treatment to producers who have already released pipelines from take-or-pay or onerous pricing provisions.

2. *The Mechanics of Crediting.* No gas shall be eligible for transportation under Part 284 of the Commission's regulations unless the pipeline and shipper or producer agree, or an affidavit is submitted to the pipeline offering the pipeline take-or-pay credits as provided by this rule. If an interstate pipeline purchases natural gas owned by a producer [13] on June 23, 1987, under a pre-June 23, 1987 take-or-pay contract (hereinafter "qualifying contract") and the gas to be transported was owned by the same producer on that date, the pipeline is entitled to credits under this rule as follows. For each unit of gas transported, the pipeline may receive credit for volumes transported as though they were volumes of gas owned by that producer, or its assignee, that the pipeline purchased under a qualifying contract. If the pipeline has more than one qualifying contract with the producer, the pipeline may select the qualifying contract to be credited. The pipeline may apply the credits as though the volumes were purchased in the contract year in which the gas was transported or in any previous contract year commencing on or after January 1, 1986 in which the pipeline was an open-access transporter. However, transportation prior to the effective date of this rule would not generate any credits. If the pipeline has no take-or-pay contracts under which it purchases gas which on June 23, 1987, was owned by the same producer who owned the gas to be transported, crediting would not be required. In addition, as described above, the pipeline must transport gas which is presently uncommitted to the pipeline but which it formerly purchased under a terminated take-or-pay contract without any credits. The pipeline also must transport gas released from a contract containing a market-out clause that allows the pipeline, at its discretion, to terminate the contract.

Unless the parties agree otherwise, the affidavit described above must be submitted in order to render gas eligible for transportation. The affidavit must identify the gas made eligible for transportation through its filing. The producer whose gas is being transported, and any other producer required to offer take-or-pay credits in connection with the transportation of that gas, must sign the affidavit.[14] The affidavit need not specify the crediting arrangements offered. It need only state that the producers in question offer credits as provided in this rule. The affidavit must also state that the offer is irrevocable and will, upon acceptance by the pipeline, result in a contract binding on the producers signing it and their assignees. Finally, the affidavit must state that the producers in question agree to abide by any Commission determination concerning how the provisions of this rule on crediting should be interpreted. Even when no crediting is required under this rule, the affidavit nonetheless must be submitted to the pipeline in order to render the gas eligible for transportation, unless the parties agree otherwise. Since the affidavit only offers crediting as provided in this rule, and no crediting would be required by the rule in such a situation, the purpose of this requirement is to remove uncertainty that the gas is eligible for transportation.

It should be noted that general affidavits may be submitted covering, for example, all gas owned by a particular producer. Separate affidavits are not required for each individual transportation transaction. This should make compliance with this rule less burdensome. The Commission requests comments on whether it should require that the affidavits contain any other information or statements not described above.

Once the necessary affidavit is submitted to the pipeline, the pipeline must transport the gas on a non-discriminatory basis, regardless of any disputes that might develop among the parties concerning how the crediting should be performed under this rule. Otherwise, achievement of the Commission's goal of non-discriminatory transportation would be seriously jeopardized. The parties should address disputes concerning the interpretation of this rule which they are unable to resolve to the Commission. As stated above, the producers must agree to abide by the Commission's determination. Disputes not involving the interpretation of this rule should be resolved in court like any other contract dispute.

The Commission has structured the eligibility condition in terms of gas owned by a particular producer on June 23, 1987, the date of the Court's decision in *AGD*, in order to avoid the possibility that producers could circumvent the credit requirement by transferring leases to others. Once the *AGD* decision was issued, the possibility the Commission might adopt some form of conditioning was readily apparent, since the Court spoke favorably of such an action. If transfers after that date could affect the pipeline's ability to obtain credits, a producer with pre-June 23, 1987 take-or-pay provisions in gas purchase contracts with the pipeline might, in order to avoid the crediting, transfer a lease where the gas was not under contract to the pipeline to another producer. When that producer sold the gas to its customer, the pipeline would not be able to obtain a credit from the first producer when it

[12] The Commission does not provide for credits against any take-or-pay liability incurred before January 1, 1986. Few pipelines performed transportation under these regulations before January 1, 1986, and that transportation was for only a short period.

[13] For purposes of this rule, the producer is a working interest owner of a lease, not a royalty owner. In addition, affiliates will be considered different producers so long as they have separate corporate identities. The divisions of one corporation will be considered a single producer.

[14] An example of a situation in which a producer other than the one who owns the transported gas could be required to offer credits is the following. On June 23, 1987, Producer A owned some gas committed to a take-or-pay contract with the pipeline. It also owned some uncommitted gas. After June 23, Producer A transfered the gas committed to the pipeline to Producer B, but Producer A retained the uncommitted gas. The credits provided by this rule in connection with the transportation of A's uncommitted gas would be with respect to the pipeline's take-or-pay obligations under the contract covering Producer B's gas. Of course, in the case of committed gas transferred after June 23, 1987, the credit is available against the producer which owned the gas as of June 23, 1987.

transported the gas. Similarly, circumvention could occur where the first producer, instead of transferring the gas not under contract to the pipeline, transferred to another person the gas sold under the pre-June 23, 1987 gas purchase contract. Structuring the eligibility condition in terms of gas owned on the date of the Court decision makes it difficult for any such circumvention to occur. It is unlikely that transfers occurring before June 23 would have been for purposes of circumvention, since that was when the Court directed the Commission to reassess various actions to address the take-or-pay problem.

It should also be observed that the eligibility requirement is structured in terms of gas owned by a particular producer regardless of whether that producer is a signatory party to the contracts under which the gas is sold. If the pipeline could only receive credits for gas sold under a contract signed by the same producer who signed the pre-June 23, 1987 gas purchase contract with the pipeline, then a producer desiring transportation of its gas to a purchaser other than the pipeline could circumvent the eligibility provision of the rule by arranging to have someone else, such as a co-owner of the lease or the operator, sign the contract under which that gas is sold. The producer could also sell the gas through a broker or marketer.

The fact that the eligibility requirement is structured in terms of gas owned by a particular producer means that where the piepline is requested to transport gas owned by several producers sold under a single contract and the pipeline has a pre-June 23, 1987 take-or-pay contract with only one of those producers, the pipeline may obtain a credit only for transporting that producer's gas. This result avoids denying one producer transportation of its gas because of a pipeline's unrelated take-or-pay problems with another producer's gas. Similarly, where the pipeline is requested to transport gas owned by only one producer and has a pre-June 23, 1987 gas purchase contract covering both that producer's gas and a second producer's gas, the pipeline may obtain credits only with respect to its take-or-pay obligations to the first producer for transportation of that producer's gas. The rule does not require the second producer to credit the transported gas against the pipeline's take-or-pay obligations, since the second producer receives no benefit from the transportation.

If a pipeline is requested to transport gas not owned by any producer on June 23, 1987, because not under lease on that date, the pipeline may seek take-or-pay credits from the producer selling the gas to be transported. However, the Commission requests comment on whether pipelines should receive any credits with respect to the transportation of this gas. Specifically, the Commission requests comment on the effects of such credits on exploration and development of new reserves.

The credits provided under this rule may be applied at the pipeline's discretion, as though the volumes were purchased in the contract year in which the gas was transported or in any previous contract year, commencing on or after January 1, 1986, in which the pipeline transported gas under this rule.[15] Moreover, the pipeline may have several pre-June 23, 1987 gas purchase contracts under which it purchases gas owned by the producer whose gas is to be transported by the pipeline. These contracts may contain different pricing and take-or-pay provisions. The pipeline may, in its discretion, determine to which contract any credits shall be applied.

The Commission recognizes that, as part of an agreement to release gas, the parties may have negotiated some method of crediting transported released gas toward the pipeline's take-or-pay liability. Nevertheless, in order for the released gas (other than that released from contracts containing market-out clauses allowing the pipeline to terminate the contract) to be eligible for transportation, the producer must offer the pipeline credits pursuant to the provisions of this rule unless the pipeline expressly waives its rights under this rule. However, if the pipeline chooses to receive credits under this rule rather than under the release agreement, it must discharge the producer from other crediting arrangements agreed to as part of the release or otherwise provided in the contract. In addition, for purposes of determining the pipeline's take-or-pay liability under the released contract, the pipeline may not claim that the annual deliverability of gas under the released contract is reduced by the volumes credited against another contract. This is necessary in order to avoid the pipeline's receiving double credits. Furthermore, to the extent the pipeline allocates the credits to a contract other than that which included the released gas, and as a result of the release the pipeline cannot exercise its contract make-up rights for gas for which it has made prepayments, the producer must, at its option, either repay the prepayments associated with volumes which now cannot be made up because of the release, or deliver a like quantity of gas from either the contract which was credited or some other source. This is necessary because, as a result of the release, there may be insufficient gas under the release contract to permit make-up.

There may be situations in which several pipelines are needed to transport the gas to market. When the gas is transported by more than one pipeline and the gas was released from a contract between the producer and one of the transporting pipelines, only the pipeline which is a party to the contract from which the gas is released may receive credit under this section. No other pipelines providing the transportation may receive a credit. In all other cases of multi-pipeline transportation, the credit is to be applied to the take-or-pay obligations of all the pipelines engaged in the transaction and is not required to exceed the amount of the gas transported. The pipelines may agree among themselves how to allocate the credit among their various take-or-pay liabilities. However, any failure by the pipelines to agree to a particular allocation will not render the gas ineligible for transportation under this rule. The pipelines cannot receive any credit until they agree on an allocation formula, but once they agree on a formula they may receive credits for all gas transported since the commencement of the transportation. The Commission requires the pipelines to agree on an allocation of the credits and does not itself provide an allocation formula. However, the Commission requests comments on whether it should adopt a formula and if so what formula it should adopt. The Commission specifically requests comments on the allocation of credits.

For existing transportation, producers must provide credits in the same circumstances as credits are required for new transportation. Accordingly, if on the effective date of this rule, a pipeline is transporting gas owned by a producer on June 23, 1987, that gas will cease to be eligible for transportation on the first day of the second month after the effective date of this rule, unless the pipeline and producer agree or an affidavit has been submitted to the pipeline offering the pipeline credits as

[15] The pipeline need only have performed the transportation at some point during the relevant contract year, not during the whole year. This rule is necessary since it is not practicable to provide for credits during only part of a contract year. This is because the pipeline's minimum take requirement generally is stated in terms of gas to be taken during the whole contract year, rather than during any lesser period of time.

provided in this rule. If the transportation is continued and credits are required, the credits shall commence from the date the affidavit is submitted.

The eligibility requirements for transportation established by this rule are transitional measures and should not continue indefinitely. Therefore, the Commission specifically requests comments as to when the eligibility requirement should expire.

Finally, the Commission again emphasizes that this rule is only an interim rule. The Commission invites comment on the crediting mechanism adopted here, as well as on additional or alternative approaches. More particularly, the Commission believes that factual data reflecting industry-wide conditions would be helpful to review further the approach taken here and perhaps other possible approaches, and specifically requests such data from commenters. The Commission also may implement reporting requirements to assess the effectiveness of the crediting, and requests comments on what information should be obtained for this purpose.

3. *Commission Action under NGA section 5.* The Court directed that the Commission reassess its decision not to invoke its power under NGA section 5 to modify or set aside jurisdictional contracts with troublesome take-or-pay provisions. The Commission is undertaking such an inquiry.

In order to make this reassessment, the Commission needs more information to analyze fully how effective and appropriate action under section 5 would be in mitigating pipeline take-or-pay problems. To this end, the Commission intends to exercise its authority under NGA sections 10 and 14 and NGPA sections 501 and 508 to send to each interstate natural gas pipeline company a data request to determine the extent and nature of the pipelines' take-or-pay obligations with respect to the various NGPA pricing categories. Pipelines will be required, with respect to each of their contracts, to specify, for example, (1) how any minimum take requirements are calculated, (2) the nature of any make-up rights, (3) what the pricing provisions are, (4) whether there are market-out clauses and what they provide. All this information must be broken out by NGPA pricing category. Pipelines also will be required to provide a complete history of their experience under each take-or-pay contract, including the quantity of gas they were actually required to take, the quantity they actually took, and the quantity they released with take-or-pay credits. Pipelines also will be asked to summarize their total take-or-pay liabilities under each contract, the amount settled, and the nature of the settlement, and they will be asked to provide information as to contract reformations.

Pipelines will be required to respond to the data request, in a format to be set forth in the request, within thirty days of the date the request is mailed. Pipelines failing to respond will be subject to civil penalties under NGPA section 504(b). After receiving the data responses the Commission may make random audits in order to assure the accuracy of the information submitted. Pipelines may request confidential treatment of their responses. *See* 18 CFR § 388.110 (1987). Producers are hereby requested to provide data in a similar format.

The Commission will aggregate the data submitted and analyze it promptly. If the information demonstrates that action under NGA section 5, or any other action (such as rescinding the incentive ceiling price for tight formation gas established under NGPA section 107(c)(5)), would contribute to solving pipeline take-or-pay problems, the Commission will then consider such action.

C. Mechanism for Passthrough

As part of this interim rule, the Commission is adopting acceptable passthrough mechanisms that pipelines may use to recover take-or-pay buyout and buydown costs under existing contracts. These procedures are being adopted in light of comments received in response to the proposed take-or-pay policy statement issued by the Commission on March 5, 1987, in Docket No. PL87-3-00.[16]

The principal features of the acceptable passthrough mechanisms are as follows. Pipelines may recover all prudently incurred costs in their sales commodity charges. However, pipelines that transport under this rule and volunteer to assume an equitable share of their take-or-pay costs may request alternative rate treatment for the remaining costs. Under this provision, pipelines may elect to absorb from 25 to 50 percent of their take-or-pay costs and may apply to recover an equal share of costs through a fixed charge. The remaining amounts, not to exceed 50 percent of the total buyout and buydown costs, may be billed through a commodity surcharge or a volumetric surcharge on total pipeline throughput.

The March 5 proposed policy was based on an underlying premise of equitable apportionment of buyout and buydown costs. The Commission provided that in cases where a pipeline agreed to assume an equitable share of cost, that pipeline would be permitted to recover the remaining share from its firm sales customers through a demand surcharge. In the proposed policy statement, the Commission considered a 50–50 cost sharing between the pipeline and its customers to be equitable based on the nature, extent and causes of the take-or-pay problem. The Commission further determined that each customer's demand surcharge should be based on its cumulative deficiency of purchases in recent years measured in relation to that customer's purchases during a representative base period prior to the accrual of take-or-pay liabilities.

In formulating the proposed policy, the Commission consciously sought to avoid, to the extent possible, lengthy and potentially complex hearings involving an attempt to quantify and ascribe blame for the accumulation of pipeline take-or-pay liabilities. In the Commission's judgment, the principal objective should be to design and implement procedures to deal quickly, effectively, and positively with the take-or-pay problem. To this end, the Commission proposed a rebuttable presumption that a pipeline's agreement to assume an equitable share of take-or-pay costs would be sufficient to take account of any imprudence on the part of that pipeline in incurring take-or-pay liability. Intervening parties were not precluded from raising the prudence issue, but the Commission stated that a showing of imprudence sufficient to negate recovery of customer allocated buyout and buydown costs would be difficult.

The proposed policy statement provided for the allocation of an equitable share of take-or-pay buyout and buydown cost to firm sales customers of pipelines through a demand surcharge; it did not attempt to prescribe the manner in which those costs would, in turn, be allocated by the pipeline's customers to end users. Most pipeline firm sales customers are local distribution companies (LDCs) whose rates are regulated exclusively by state regulatory authorities. The proposed policy statement provided that the method and extent of flowthrough by LDCs would be determined by the responsible state regulatory authorities.

Notice of the proposed policy statement was issued in the **Federal Register** on March 11, 1987, providing for comments to be filed by interested parties on or before April 10, 1987. Approximately 160 comments were received from all segments of the natural gas industry including

[16] 52 FR 7478 (March 11, 1987); 38 FERC ¶ 61,230 (March 5, 1987).

producers, pipelines, distributors, state regulatory agencies, consumer representatives, marketers and end users. These comments strongly support the Commission's efforts to address the current take-or-pay problem, but most comments suggest, in varying degrees, that the proposed policy was inequitable, impractical, or even unlawful and should be modified or clarified, or both, prior to final issuance.

Principal among those objections are that the proposed policy statement (1) effectively precluded pipelines from recovering all of their prudently incurred take-or-pay costs by requiring them to absorb an equitable share of such cost in order to qualify for demand rate treatment; (2) was unsuitable due to its failure to provide for a flexible take-or-pay recovery mechanism which may be necessary depending on the facts and circumstances of particular cases; (3) impermissibly shifted to objecting parties the burden of proving pipeline imprudence, whereas under the requirements of the NGA pipelines are required to prove the prudence of their claimed costs; (4) improperly failed to assess take-or-pay costs against interruptible, transportation and small volume customers of pipelines; and (5) would result in the charging of a disproportionate share of pipeline take-or-pay costs to high priority "captive" customers. A number of commenters also argued that only pipelines which have agreed to the open access requirements of Order No. 436 should be eligible for the cost recovery procedures incorporated in the proposed policy statement.

Based on a careful review of the objections and suggestions set forth in the comments, the Commission has determined that the basic features and underlying principles of the proposed policy statement are sound and should be adopted. The Commission also agrees, however, that the comments demonstrate the need to modify the policy statement to set forth appropriate mechanisms for passthrough that meet valid policy objectives as well as the legitimate expectations and practical needs of the industry as a whole. We discuss the previously-outlined issues in turn.

1. *Opportunity to Recover Prudent Costs.* Numerous pipelines alleged that the proposed policy would deprive them of the opportunity to recover their prudently-incurred costs, since in order to be eligible for the demand surcharge, pipelines would be required to absorb 50 percent of their take-or-pay costs. These allegations are unfounded. It is true that the Commission's current policy, and one of the flowthrough mechanisms found acceptable in this rule, is that take-or-pay buyout and buydown costs are expenses related to the acquisition of gas supplies and should therefore be classified as production related and recovered through the pipeline's commodity rates. It is also true that such classification exposes costs to the risk of under-collection due to the effect of market forces (and thereby provides an incentive for the pipeline to minimize its costs). The Commission, however, is not required to guarantee cost recovery; rather it must provide a reasonable opportunity for pipelines to recover their prudently incurred costs. In the Commission's judgment, commodity rate treatment fulfills that obligation. *See Transwestern Pipeline Co. v. FERC,* Nos. 85–4597, *et al.*, slip op. at 4917–4918 (5th Cir. July 7, 1987); *Tennessee Gas Pipeline Co. v. FERC,* No. 85–1644, slip op. at 4–5 (D.C. Cir. July 24, 1987).

For pipelines that transport under Part 284 of the Commission's regulations, another recovery mechanism is warranted. These pipelines, who are making the transition from merchants to transporters, will find it more difficult to recover their take-or-pay costs in their sales commodity rates because they will be making fewer sales as they transport more. For these pipelines, the Commission is providing another alternative, described in greater detail below.

2. *Apportionment and Recoupment of Take-or-pay Costs.* Virtually all commenters addressed the core provisions of the proposed policy, which provided for a 50 percent sharing of costs by pipelines in return for demand surcharge recovery of the remaining 50 percent. Interstate Natural Gas Association of America as well as a number of individual pipelines oppose the cost sharing requirement and propose instead that pipelines be permitted to recover 50 percent of all prudently incurred costs through a demand charge, with the remaining 50 percent to be billed in a volumetric surcharge on all throughput volumes. Other commenters recommend that all prudent costs be recovered through a volumetric surcharge. The majority of commenters, however, oppose recovery of pipeline take-or-pay costs exclusively through either 100 percent demand or 100 percent volume surcharges and emphasized the need for flexibility to permit a combination of both methods. A number of parties commented that the proposal to base customer demand surcharges on historical gas purchase levels constitutes unlawful retroactive ratemaking [17] and would penalize those parties who relied on Commission orders in pursuing a least-cost gas purchasing strategy. A number of commenters argue that the Commission should automatically disallow recovery by pipelines of any buyout or buydown cost paid to an affiliated producer.

The Commission reaffirms the underlying premise of its proposed policy: That there should be an equitable sharing of take-or-pay costs among all segments of the industry, including producers, pipelines, distributors and consumers. The sharing of costs can be accomplished in two ways, namely through voluntary agreement of the pipeline or through the use of market sensitive rates designed to permit but not guarantee recovery of costs. The proposed policy statement provided a general standard for cost apportionment and recovery. Pipelines were expected to assume 50 percent of their buyout and buydown costs in return for guaranteed recovery of the remaining 50 percent through a demand surcharge.

The Commission remains of the view that 50–50 sharing combined with fixed rate recovery is reasonable. However, the Commission recognizes that this approach may lack sufficient flexibility in some circumstances to assure that it will contribute sufficiently toward resolving the take-or-pay problem. The Commission believes it is necessary to expand the proposed mechanism to provide for sharing of take-or-pay cost through market forces as well as through voluntary agreement. The purpose in doing so is to give pipelines (and their customers) more flexibility to develop take-or-pay cost recovery proposals which meet the objective of fair and reasonable cost apportionment under different and widely varying circumstances such as exist between one pipeline and another.

Accordingly, the cost apportionment and recovery procedures set forth in the proposed policy statement are modified as follows. The requirement that pipelines agree to assume 50 percent of their take-or-pay settlement cost is not adopted. Instead, pipelines may in their discretion agree to assume anywhere from 25 to 50 percent of their costs; provided, however, that a pipeline may not claim recoupment through a fixed charge of any amount in excess of that

[17] The NGA bars pipelines from "collecting a rate other than the one filed with the Commission and prevents the Commission itself from imposing a rate increase for gas already sold." Arkansas-Louisiana Gas Co. v. Hall, 453 U.S. 571, 578 (1981).

which it is willing to absorb.[18] The pipeline may seek to recover the remaining amounts, not to exceed 50 percent of total take-or-pay costs, at its option, through a commodity rate surcharge or a volumetric surcharge on total pipeline throughput. Thus a pipeline agreeing to absorb 50 percent of its take-or-pay cost would be entitled to claim the remaining 50 percent through a fixed charge as provided for under the proposed policy statement. Another pipeline might agree to absorb only 25 percent of its take-or-pay costs, in which case it would be entitled to claim 25 percent from its customers through a fixed charge; the remaining 50 percent would be recoverable through a commodity or a volumetric surcharge. The Commission believes the 25 percent minimum requirement for pipeline assumption of take-or-pay costs is reasonable to ensure that a pipeline cannot claim more than 50 percent of take-or-pay costs under either a fixed or volumetrically-based surcharge. This will serve to ameliorate the adverse impact a 100 percent volumetric allocation method could have on particular customers or classes of customers.

The Commission rejects assertions that the cumulative deficiency method of allocation based on historical sales data constitutes retroactive ratemaking. There is nothing in the Commission's proposal which would retroactively change the rates pipelines have charged their customers in the past or which would involve imposing a rate increase for gas already sold. Rather, the proposed allocation method would enable pipelines to recover in their future rates costs which they have actually incurred but have not recouped. Nor does the Commission believe the proposal unfairly prejudices parties who followed a least-cost gas purchasing strategy. Commission actions that enabled pipeline customers to purchase gas from alternative sources at lower prices may have resulted in an increase in pipeline take-or-pay obligations. The Commission therefore believes it is reasonable that the beneficiaries of Commission initiatives to increase competition in the natural gas industry should share in the transition costs which accompany the industry's restructuring.

The Commission declines to rule at this time concerning whether a pipeline may recover take-or-pay costs paid to producer affiliates. Pipelines and their affiliates should have resolved such matters long ago. The Commission also has serious reservations about whether any such costs should be borne by pipeline customers. Therefore, the Commission will address the issue if it arises in a future case and will address whether take-or-pay buyout and buydown payments to affiliated producers should be automatically or summarily denied.

3. *Prudence and Burden of Proof.* Numerous commenters allege that the proposed policy statement unlawfully shifts the burden of proof as to the prudence of claimed take-or-pay costs from the pipeline to its customers or other opposing parties. This shift is alleged to occur as the result of the rebuttable presumption that if a pipeline agrees to absorb 50 percent of its take-or-pay costs, the remaining 50 percent will be deemed prudently incurred.

These comments appear to represent for the most part a misinterpretation or mischaracterization of the proposed policy statements. Section 4(e) of the NGA provides that "[a]t any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural gas company * * *." Therefore under the NGA the pipeline has the burden of proof; the Commission has not proposed to shift that burden. A presumption of prudence is reasonable under the circumstances [19] and does not constitute a departure from normal practice. As with any other expense or investment sought to be charged by a pipeline, if that cost is challenged, it is up to the pipeline to demonstrate its reasonableness. In the absence of any challenge, however, the cost properly may be approved since it is assumed that utility managements operate in a reasonable and prudent manner absent information or evidence to the contrary. *West Ohio Gas Co.* v. *P.U.C. of Ohio*, 294 U.S. 63 (1935); *Violet* v. *FERC*, 800 F.2d 280 (1st Cir. 1986.)

In formulating the proposed policy the Commission sought to discourage prudence hearings and to encourage settlement of take-or-pay claims based on the policy statement guidelines. Notwithstanding the Commission's intent, the comments make clear that many parties desire or feel compelled to litigate the prudence issue. In view of this fact, the Commission believes it will be helpful to state the policy it intends to follow in the event prudence hearings are required. The Commission continues to believe, for reasons stated in the proposed policy statement and restated here, that the solution to recovery of take-or-pay costs can be best achieved through settlement rather than through the process of costly and protracted litigation. To that end, the Commission intends to exercise its authority to the full extent permitted by the NGA in approving take-or-pay settlements presented to it. The Commission intends to approve uncontested take-or-pay settlements which are consistent with this policy and found to be in the public interest. The Commission will also, if it appears reasonable and permissible to do so, approve contested settlements as to all consenting parties and initiate separate hearings as to opposing parties. *See, United Municipal Distributors Group* v. *FERC*, 732 F.2d 202 (D.C. Cir. 1984). Alternatively, the Commission will approve contested settlements on the merits if supported by substantial evidence in the record. *Mobil Oil Corp.* v. *FPC*, 417 U.S. 283 (1974). Furthermore, in any cases where hearings are held, the Commission will permit a pipeline the opportunity to recover from litigating parties its proportionate share of all of the pipeline's take-or-pay costs found to be prudent even if the amount allowed is greater than the amounts initially claimed by the pipeline. This is reasonable in view of the fact that any claimed costs found to be imprudent would be disallowed. The Commission requests comments concerning how upward and downward rate adjustments resulting from prudence hearings should be made.

4. *Interruptible, Transportation and Small Volume Customers.* Numerous commenters challenge the proposed policy statement for its failure to levy take-or-pay costs against interruptible sales, transportation and small volume "SGS" customers. They argue that the Commission's assumption that pipelines did not acquire long-term gas supplies for the purpose of serving interruptible customers is erroneous and unsupported. Commenters supporting assessment of take-or-pay costs against transportation and small volume sales customers argue variously that both sales and transportation customers have contributed to pipeline take-or-pay problems, that recovery of all take-or-pay costs should be made subject to the "market test," that all customers being served by a pipeline should pay a share

[18] In its proposed policy statement the Commission used the term "demand surcharge" to describe the recovery mechanism for customer-allocated take-or-pay costs. It was the Commission's intent that this charge would be a fixed dollar charge which would be separately stated in each customer's monthly bill. Based on a review of the comments, the Commission believes that it would be more accurate and less confusing to refer to this charge as a fixed take-or-pay charge rather than a demand surcharge.

[19] *See* Panhandle Producers and Royality Owners Assoc. v. Economic Regulatory Admin., No. 86-1058 (D.C. Cir. June 30, 1987).

of its take-or-pay costs, and that volumetric billing would insulate residential and commercial consumers from shouldering the full burden of the take-or-pay problem.

The Commission believes there is some merit in these comments, as evidenced by the previously-discussed changes in the proposed policy related to the issues of cost apportionment and recovery mechanisms. In the Commissio's judgment, the more costs a pipeline is willing to absorb, the greater its entitlement to assured recovery of remaining costs. This principle supports billing through a fixed charge of amounts equal to the costs absorbed. At the same time, there is a reasonable basis for charging all customers served by a pipeline, whether firm, interruptible, sales or transportation, a share of take-or-pay costs. This is so for various reasons, depending on the customers involved and the type of service each receives, and also because volumetric billing serves to spread the costs on a broad basis.

The Commission expects transportation service to increase as more pipelines convert to service under the new program in light of the significant modifications adopted in this rule in response to *AGD*. It is likely that most transportation service will be performed by pipelines for their LDC sales customers in light of the right of those customers under the terms of this rule to convert (but not reduce) the CD obligations to firm transportation service. It is these customers who will be responsible for both fixed charges and volumetric surcharges. It appears that while there obviously will be some shifting of cost responsibility among LDCs depending on the recovery mechanism (or combination of mechanisms) employed, the change in the cost-apportionment and recovery mechanism adopted in this order will affect not so much the level of costs allocated to LDCs but rather the ability of pipelines fully to recover those costs under competitive market conditions.

The Commission also concludes that transportation customers which were not previously firm sales customers of the pipeline may reasonably be held responsible for volumetric transportation surcharges. Such customers could not realize the benefits of transportation in the absence of this rule. Therefore, it is appropriate for these customers, who benefit from the pipelines' functioning as transporters, to contribute toward easing the pipelines' transition from their role as primarily merchants to transporters. These transportation customers should accept a reasonable share of pipeline take-or-pay costs to the extent permitted by market forces.

The same conclusion obtains with respect to a pipeline's sales to interruptible customers. Pipelines have historically made only about five percent or less of their sales to jurisdictional customers under interruptible rate schedules. Most of the remaining interruptible sales have been made by LDCs with gas purchased from pipelines under firm rate schedules. Pipelines are currently making virtually no interruptible sales. The application of a volumetric surcharge to interruptible sales will therefore have little overall effect. Upon further consideration of this matter in light of the comments filed, the Commission concludes that it is reasonable to permit pipelines, if they so choose, to apply a volumetric surcharge to interruptible sales. While pipelines may not have actually purchased long-term gas supplies to serve interruptible customers, such customers were in fact served with gas available under long-term contracts and not required to meet firm sales obligations. Additional justification exists in the general policy that all classes of customers should share in the cost of solving the take-or-pay problem. The same arguments support eliminating the proposed exemption for small volume "SGS" customers. In doing so, however, the Commission notes that there may be valid reasons of practicality and rate administration which would suggest these very small customers be made exempt from the described rate surcharges for take-or-pay costs. The Commission will permit such exemptions in particular cases where it is agreeable to the parties.

In summary, the Commission concludes that while fixed charges and volumetric surcharges represent inherently different cost recovery mechanisms, there are conceptual, equitable, legal and policy justifications for both methods. The Commission therefore accepts the proposition that pipeline take-or-pay costs should be permitted to be recovered either through fixed charges or volume-based surcharges, or through a combination of both, in the manner provided for by this rule. It is the Commission's intention that all firm sales customers (including those with one-part rates) will be liable for both fixed and volume-based surcharges depending on their historical and current levels of service. Interruptible sales and transportation customers will be responsible only for volumetric charges depending on the volumes of gas sold or transported to them.

5. *Captive Customers.* A number of State commissions and consumer representatives express the concern that the proposed policy would discriminate against captive residential and other high priority consumers by disproportionately saddling them with take-or-pay costs permitted to be recovered through a demand surcharge. This is alleged to occur because apparently most LDC rates are designed to recover pipeline demand costs from residential and commercial customers, whereas the rates of lower-priority LDC customers are based on the pipeline commodity rate plus an increment to recoup a share of the LDC's fixed costs. Several state commissions also express concern over the Commission's reference to *Nantahala Power Light Co.* v. *Thornburg*, 106 S. Ct. 2349 (1986).

As previously noted, the proposed policy statement does not attempt to prescribe the methods by which approved pipeline take-or-pay costs are to be allocated at the state level. However, it is the Commission's view that there should be an equitable sharing of take-or-pay costs among all segments of the industry. The issue therefore is whether there exists any basis to expect that state agencies will be able to effect a sharing of pipeline take-or-pay costs as between LDCs and their customers.

The Commission does not believe that *Nantahala* precludes state regulators from designing LDC rates, or, in appropriate circumstances, from reviewing the prudence of LDCs' purchasing decisions insofar as they affect take-or-pay costs. It must be recognized that a fixed charge for take-or-pay costs is based on the need for assured recovery in light of a pipeline's agreement to absorb a comparable share of its take-or-pay costs. It is not based on the fact that the costs included in the charge are fixed costs. As the Commission has noted, take-or-pay settlement costs are actually related to the acquisition of gas supply and are considered as production-related. Therefore the Commission believes state regulators could consider reclassifying take-or-pay costs billed as a fixed charge as commodity costs and incorporating such costs into LDC sales or transportation rates, or both, thereby spreading such costs to the maximum possible extent as well as subjecting them to market forces. Alternatively, state agencies may wish to consider the option of not reclassifying fixed take-or-pay charges and instead allocating such charges to the LDC's customers based

on their cumulative purchase deficiencies.

The Commission can exercise its jurisdiction only within its legitimate sphere, which in this instance involves establishing cost allocation procedures and rates for recovery by pipelines of take-or-pay costs from their jurisdictional customers. The development of cost allocation procedures and rates for the LDCs are matters to be determined by state regulatory authorities.

6. *Eligibility Condition.* Several commenters recommend that recovery of take-or-pay costs outside of the general commodity rate treatment for prudent costs should be granted only on condition the pipeline agrees to become an open-access transporter.

The Commission adopts this suggestion. Unlike pipelines that remain merchants, pipelines that change their role from merchant to transporter under this rule may need a mechanism such as outlined here to make that transition. A pipeline that remains a merchant is in a better position to recover its take-or-pay costs through its sales commodity rates than a pipeline that becomes a transporter under Part 284 and faces more competition from other gas suppliers in its market areas. In addition, it is for the pipelines that transport under Part 284 that the Court in *AGD* directed the Commission to find a means to ease the take-or-pay squeeze that results from the Commission's transportation regulations. The changes in Order No. 436 adopted in this rule pursuant to *AGD*, as well as the take-or-pay cost recovery mechanisms here adopted, provide substantial relief to these pipelines for both past and future take-or-pay obligations. Finally, many pipelines have claimed that inadequate take-or-pay relief has been the major deterrent to adoption of the terms and conditions of Order No. 436. The Commission believes the time has come to proceed with the orderly, expeditious implementation of open access transportation so that the ultimate objective of increased access to competitively-priced gas can be realized. Limiting the eligibility of pipelines for recovery of take-or-pay costs through the rate mechanisms outlined in this order on acceptance of open access transportation is a reasonable means of accomplishing that goal.

7. *Other issues.* A number of comments were received concerning various technical and procedural aspects of the proposed policy. The Commission will address several of these issues for the purpose of clarifying, and in some cases modifying, the proposed policy.

Several commenters request clarification as to whether a pipeline filing under NGA section 4(e) to recover take-or-pay costs may limit its filing to the costs claimed, or whether it must file a "complete" general rate application concerning all of its costs, services and rates. A pipeline will be permitted to file a rate increase application limited to its take-or-pay buyout and buydown costs. The Commission will review each such filing to determine whether good cause exists to waive the normal rate filing requirements of section 154.63 of the regulations. Waiver will be granted in cases where the pipeline demonstrates that its existing rates, adjusted for take-or-pay costs, would be just and reasonable. However, in cases where it appears that a pipeline's existing rates are not reasonably representative of that pipeline's actual costs, volumes or other underlying rate determinants, the pipeline will be required to refile its claimed take-or-pay costs as part of a general rate filing.

In its proposed policy statement the Commission provided that downstream pipelines would have the right to flow through approved take-or-pay charges on an "as-billed" basis. Many if not most commenters support the as-billed principle. Upon further consideration of this issue, the Commission believes it is necessary to clarify the as-billed principle as it applies to take-or-pay costs billed through a fixed charge. The term as-billed means that a charge or cost should be flowed through on the same basis as that upon which it was incurred. This could lead to the interpretation that take-or-pay fixed charge should be flowed through in the same manner and extent as ordinary demand charges, especially since in the proposed policy statement the take-or-pay charge was described as a demand surcharge.

However, the Commission believes this would be improper and would lead to unreasonable and inequitable results. Flowthrough based on system demand rates could result in the allocation of take-or-pay costs among the downstream pipeline's customers in a manner which fails to reflect the causation of the downstream pipeline's share of the upstream pipeline's take-or-pay costs. Therefore, the Commission believes that downstream pipelines should be required to allocate the fixed take-or-pay charges of upstream pipelines on the same basis as that upon which they are incurred, namely cumulative purchase deficiencies. This allocation method assures that all of the downstream pipeline's customers (including possibly other pipelines) are charged for take-or-pay costs in proportion to the degree to which they contributed to the incurrence of such costs. The Commission seeks comments concerning whether the cost-sharing requirement outlined in this order should be applied with respect to fixed take-or-pay charges billed to each downbtream pipeline.

Certain commenters oppose the feature of the proposed policy statement which would permit pipelines to submit a single take-or-pay rate filing based on an estimate of the total cost of buying out and reforming their existing contracts with producers. They argue that pipelines should be permitted to file only for take-or-pay costs actually incurred and that the Commission should not approve recovery of any amounts based solely on estimates. While the single filing approach was necessarily predicated on an estimate of a pipeline's total take-or-pay cost, pipelines would not have been authorized to collect amounts reflecting anything other than actual payments to producers. Nevertheless, the Commission believes there is merit to the opposing comments on this issue. The single-filing approach admittedly poses certain questions as to both substance and procedure. It is somewhat novel and would undoubtedly require further development and clarification in the context of individual proceedings. There will be less uncertainty and confusion if pipeline filings are limited to the recovery of actually-incurred and known costs, and we will therefore not adopt the single filing proposal.

In the proposed policy statement the Commission stated that pipelines filing rate applications to recover take-or-pay buyout and buydown costs would be permitted to select a reasonable period over which to amortize the costs being recovered. The Commission requests comments concerning whether a uniform or "standard" amortization period, such as four or five years, should be adopted.

Several commenters suggest that any cost recovery mechanisms ultimately adopted should be available only for a limited period. They argue that adoption of such a "sunset" provision would provide an impetus for parties to resolve their take-or-pay problems without unnecessary or undue delay. The Commission believes this a reasonable and sound suggestion which can be expected to have a beneficial effect in resolving the take-or-pay problem. As stated in the proposed policy statement, "take-or-pay represents possibly the last

and most significant deterrent to the realization of the Commission's goal of removing, as far as possible, obstacles to the establishment of orderly competitive markets for natural gas sales and services." [20] It goes almost without saying that it is desirable that the take-or-pay deterrent to competitive natural gas markets and services be eliminated as quickly as possible. Accordingly, the Commission will adopt the sunset recommendation. As a matter of judgment, the Commission believes that a period of approximately one and one-half years from the effective date of this order should provide all parties with a reasonable period within which to resolve their take-or-pay problems and to file for recovery of the resulting costs. The Commission will therefore provide that the alternative passthrough mechanisms established by this order shall be available to pipelines for filings made on or before December 31, 1988.

The proposed policy statement established a "one time only" provision under which a pipeline would be entitled to alternative treatment for buyout or buydown costs only one time per contract. A number of commenters suggest that while this requirement is well-intentioned, it is likely to prove counterproductive since as a practical matter it will frequently require more than one settlement per contract to resolve take-or-pay problems. Upon review of this matter, the Commission agrees that the one time only provision may unnecessarily restrict the latitude of parties in settling their take-or-pay problems. This is especially true in light of our decision to incorporate a sunset provision. This provision will therefore not be adopted.

D. Future Gas Supply Charges

To enable pipelines to avoid the future recurrence of take-or-pay problems, the Commission is adopting, as a matter of policy, certain principles for the design of pipeline rates. These principles are intended to establish the parameters in which pipelines may file to recover the costs of maintaining supply for their customers. As set forth in new § 2.105 of the Commission's regulations, the principles are as follows:

(1) An interstate natural gas pipeline that transports under Part 284 of the Commission's regulations may include in its tariff a charge, not related to facilities, for standing ready to supply gas to sales customers.

(2) The pipeline may not recover take-or-pay or similar charges from suppliers by any other means.

(3) The pipeline must allow its sales customers to nominate levels of service freely within their firm sales entitlements or otherwise employ a mechanism for the renegotiation of levels of service at regular intervals.

(4) The pipeline must announce prior to nominations by the customers a firm price or pricing formula for the service, and hold that price or pricing formula firm during the interval arranged in number (3) above.

(5) By nominating new levels of service lower than its current level, a customer would be consenting to any abandonment sought by the pipeline commensurate with the difference between the current level of service and the nominated level.

The Commission is adopting these principles as a matter of policy to give pipelines and their customers and suppliers insight into its direction on new rate design. As such, the principles do not establish any requirements, but only the basis for permissive filings.[21] However, as described in greater detail below, the Commission is seeking comments on the principles in order to determine whether they should serve as minimum requirements for future rate filings.

In its recent proposed policy statement on pipeline recovery of take-or-pay buyout and buydown costs, the Commission stated its intent to design rates that would help pipelines restructure their service obligations to customers and their purchase obligations to producers so as to reflect the realities of anticipated future operations and prevent future take-or-pay problems. The need for such rate design, as well as the basis for the Commission's adopting certain principles in this rule, is apparent from a general examination of current rate design.

With existing one-part purchase gas rates, a pipeline must contract for supplies and stand ready to satisfy its sales customers' contract requirements, but its customers are not required to pay for this service on a current basis. In current sales rates, the demand component consists only of costs for transportation facilities. The gas sales reservation component is paid, perhaps years later, in the form of passed-through take-or-pay charges.[22]

The billing of retrospective take-or-pay settlement costs in current sales rates is not good regulatory policy for the future, since costs may be charged to customers who did nothing to cause the problem. The principles for designing new gas supply charges adopted here are intended to avoid that by making a pipeline's system supply customers more careful in nominating their demand, because they will pay on a current basis for excessive nominations. Conversely, the pipeline will have reason to be more careful in contracting for long-term supplies for which no one is willing to pay on a current basis.

The Commission believes that gas sales rates should be prospective, in the sense that charges are known to the customers in advance, and which customers can take into account when they nominate levels of service, which may be substantially below current sales entitlements. Such charges for gas are not the same as capacity or demand charges for transportation. Although they are similar in concept and theory, the actual costs and service are for the most part separable and distinct. A gas inventory charge also is separate from the gas commodity charge and would be based on the amount of service requested. The inventory charge would be paid when the pipeline holds in "inventory" gas or rights to gas that the customer can call on for delivery at a specific time. Because such gas is available for potential use by the customer, the charge for this service is properly characterized as a fixed charge (like a demand charge) for standing ready to serve. It is not based on an actual commodity purchase. The customer pays the commodity charge only if it actually buys the gas.

Traditionally, pipelines have billed their customers for take-or-pay costs, *i.e.*, the costs of maintaining inventories, well *after* the customer had to make the decisions as to whether it was more economical to purchase from the pipeline or from alternative suppliers. Because take-or-pay charges are not known until after the purchase decision, the customer may have unknowingly chosen the more expensive alternative. By contrast, any new charges following the principles adopted here are intended to compensate a pipeline currently for contracting for a gas supply to meet its

[20] 38 FERC ¶ 61,230 at 61,726.

[21] Appendix A to this rule is a description of two examples of charges which would follow the principles and hence be suitable for such filings.

[22] The minimum commodity bill was an attempt to deal with this problem, but its design did not work well as competition increased. One central problem was that the minimum bill was not the result of a voluntary selection from a menu of services that enabled the customer to obtain exactly the level of supply security it desired at a charge known in advance. The principles underlying future gas supply charges, as adopted here, are intended to remedy this problem.

customers' requirements. A necessary adjunct of this is that such charges should be the only means of collecting the future take-or-pay or similar costs. Otherwise, the purpose of allowing the customer to make an informed choice and select the least-cost mix of supply would not be achieved. That is, the pipeline, in return for new gas supply charges waives the right to recover *future* take-or-pay costs [23] by any mechanism other than those charges.

Under these principles, the new rate design option will be available to any interstate pipeline transporting under Part 284 of the Commission's regulations, and may be implemented as part of the pipeline's rate case. The Commission is aware of a need for transition between the operation of the take-or-pay buyout or buydown passthrough policies (which deal with *past* take-or-pay costs and uneconomic contracts) as discussed above, and the principles embodied in the new rate design which is intended to be forward-looking, and deal with *future* take-or-pay costs. The new rate design is intended as a future-looking mechanism to recover the costs of contractually committing gas service that has been tailored to meet the customer's nominations whenever fewer than nominated volumes (or a reasonable percentage of nominated volumes) are taken by a customer, who is fully aware that such charges would be *currently* assessed on a monthly basis, based on its own service nomination. In brief, the Commission is seeking to establish a rational, efficient pricing structure for the pipeline merchant function with emphasis on reciprocity and consideration of service obligations under the increased options available to a pipeline's sales customers.

As stated earlier, the Commission seeks comments on the principles adopted here with a view toward establishment of a mandatory rate design mechanism in the future. For the interim period of this rule, however, their implementation will be voluntary and permissive for any pipeline transporting under Part 284 of the Commission's regulations. Specifically, the Commission seeks comments on (1) whether eligible (Part 284) pipelines should be required to offer full CD reduction and/or conversion in order to put the future gas supply charges into effect; (2) whether eligible pipelines should be allowed to profit from these services; (3) whether the PGA process should be phased out for eligible open-access pipelines transporting under Part 284 of the Commission's regulations; and (4) what the future role of system supply and the obligation to serve on an open-access pipeline may be.

[23] "Future" take-or-pay costs are future accruals of take-or-pay costs under existing or new contracts, commencing from the effective date of this rule.

IV. Contract Demand Adjustments

The CD reduction and conversion provisions of former § 284.10 of the Commission's regulations were designed as transitional measures to enable pipelines and their customers to make the transition over a five year period to the new environment created by the Commission's regulations without waiting for their existing sales contracts to expire.[24] Through the exercise of the CD conversion option, firm sales customers, primarily LDCs, could convert from sales to firm transportation and thereby obtain access to competitively-priced gas supplies on a year-round basis. Through the exercise of the CD reduction option, sales customers could readjust their required service levels, thus facilitating their use of other pipelines and generall providing them a greater choice of services. The reduction option was also intended to allow customers with unrealistically high CDs to adjust them so as to make capacity available for others. In addition, with the implementation of peak pricing, both of these options were important to enable customers who did not want to pay peak prices to give up capacity to those who value it more highly.

The exercise of both of these options by a pipeline's customers, however, can potentially aggravate the pipeline's take-or-pay liability. Even so, the Court in *AGD* found that the conversion option was a necessary transitional measure to provide pipeline firm sales customers with immediate access to competitively-priced gas. However, the Court found that the reduction option had not been adequately justified.

A. CD Reductions

The Commission has decided not to repromulgate the cd reduction option in the interim rule. For the reasons stated above, the Commission continues to believe that the original objectives of the CD reduction option remain valid. But the Commission finds it difficult in this interim rule to satisfy the Court's finding that the current record does not justify that option on a generic basis. Specifically, the record developed in the Order No. 436 docket does not contain enough information concerning the amount of cost-shifting to captive customers that might result from the CD reduction provision to enable the Commission to balance that potential impact against the potential gains to be achieved from the option.[25] Nor can the Commission rely on the record created thus far to demonstrate that implementation of the CD reduction option will ultimately result in lower rates.[26] The Commission requests comments as to how the Court's concerns may be met, including what additional information may be necessary to support CD reduction.

Even though the Commission is not retaining the CD reduction option in this interim rule, the Commission believes that in the short term the goals it hoped to accomplish with that option, in large part, may be achieved through other means. Thus, the industry may obtain some of the benefits of CD reductions while the Commission is considering whether it is possible to repromulgate that option in some form on a permanent basis. The CD conversion option, which the Commission is retaining in this interim rule, should, in most cases, enable firm sales customers of the pipeline to obtain alternative firm supplies, and the nondiscriminatory access provision should allow access to alternative interruptible supplies. Thus, many customers will have access to competitively priced gas for the short term even if immediate CD reduction is not an option.

In addition, CD reductions can still occur during the period this interim rule is in effect. Pipelines and their customers may still voluntarily renegotiate their contracts that have unrealistic CDs. The Commission encourages them to do so, in pending and new rate cases. This will allow other customers, including customers not currently on the system, to obtain more firm capacity, and will facilitate the transition to open access transportation. With the expiration date of many of the firm service agreements approaching, the Commission expects that such voluntary renegotiations increasingly will take place. (See Appendix B.) The Commission has already received filings by pipelines (*e.g.*, Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Company) to reallocate excess firm capacity held by existing customers to

[24] On July 2, 1987, the Commission stayed § 284.10 until the effective date of dispositive Commission action in light of the Court's decision, subject to leave of Court. On July 17, 1987, the Court granted that leave. *AGD*, No. 85-1811 (D.C. Cir. July 17, 1987) (mem.). This interim rule is dispositive Commission action for the purpose of terminating the stay order.

[25] *See* slip op. at 73.

[26] *See* slip op. at 71-72.

new customers as part of settlements. In addition, if circumstances warrant, either upon complaint or as a result of a Commission initiated investigation, the Commission could direct the reduction of CDs on a particular pipeline and the Commission will consider such a remedy in an appropriate case.

B. CD Conversions

The Commission has decided to retain the CD conversation option. If a pipeline is going to provide non-discriminatory transportation then it must allow its sales customers the option to make use of that transportation through the CD conversion option. This is necessary because sales contracts negotiated before the pipeline became a transporter (*i.e.*, when the pipeline was primarily a merchant) restrain the sales customers' ability to make use of firm transportation in a meaningful way. Because the pipeline's capacity is fully booked under the sales contracts, customers can only obtain interruptible transportation and not firm transportation. Yet all but perhaps the largest LDCs need firm transportation in order both to obtain access to the competitive gas commodity market and to fulfill their basic service obligations.

The CD conversion option is the only effective means by which a pipeline's firm sales customers may have a realistic opportunity for immediate access to competitively-priced gas supplies available from alternative suppliers. Both the nondiscriminatory access provision and the CD conversion provision prevent the pipeline from utilizing its market power to require its sales customers to take the pipeline's system gas instead of alternative competitively-priced supplies. In providing for the CD conversion option the Commission is making certain that firm sales customers have the same meaningful access to transportation as other customers, consistent with the Court's decision in *Maryland People's Counsel v. FERC.*[27]

The Commission recognizes that, in general, CD conversions also can exacerbate a pipeline's take-or-pay liability. Customers that convert buy less pipeline system supply than they would otherwise. However, with the crediting mechanism of this rule the adverse impact on pipelines is lessened because transportation using converted CD capacity can result in a credit to the transporting pipeline's take-or-pay liability.

In addition, § 284.10 of the Commission's regulations provides that the pipeline may file for abandonment of its sales service to the extent that a customer has converted its CD to transportation. A presumption that the abandonment is in the public convenience and necessity exists under § 284.10 in that case. Such abandonments will make it easier for pipelines to manage their gas supplies and avoid take-or-pay liability where conversion rights have been exercised. These sales abandonments will enable pipelines to renegotiate their supply contracts to reflect market realities at the distribution end of their systems. Additionally, the Commission seeks comment on whether it should adopt abandonment procedures for conversions similar to those proposed in the rulemaking in Docket No. RM87–16–000.[28]

The Court in *AGD* stated that if the Commission modifies its disposition of producer-pipeline contracts, the Commission may wish to reconsider the phase-in of the conversion option.[29] In the context of the Court's discussion of Maryland People's Counsel's request that the Commission provide 100 percent immediate CD conversions, the Court appeared to be suggesting that if the Commission provides the proper take-or-pay relief at the wellhead, 100 percent immediate conversions may be appropriate. However, the Commission declines to disturb the balance between the rights of pipelines and their wholesale customers by altering the phase-in schedule for CD conversions. The Commission will consider accelerating or slowing down the phase-in schedule in the future if circumstances warrant.

The Court also noted that in Order No. 436, the Commission never explicitly addressed proposals, such as that offered by the Department of Public Service of the State of New York, that LDC customers should be required to give notice of their future gas purchase plans, with some sort of sanction for deviation from projections.[30] The Commission is considering such proposals and has adopted them to some extent already. The D–2 annual volume nomination process used in setting rates for some pipelines (*e.g.*, Natural Gas Pipeline Company and Texas Eastern Transmission Corporation) and the purchase commitments underlying the future gas sales service charges described above involve customers' estimating future requirements. The Commission requests comments on the extent to which these and any other procedures address the concerns of the Court.

C. Legal Authority and Basis for Findings

As the Commission found in Order No. 436, and the Court in *AGD* affirmed, the natural gas transportation network is highly monopolistic in some markets and fairly competitive in others.[31] The combination of the existing sales contracts and the pipelines' exercise of monopoly power over transportation (by refusing to transport in displacement of their sales) has denied LDCs the ability to purchase competitively-priced gas from other sources.[32] The Commission finds these practices unduly discriminatory and preferential under section 5 of the NGA. To remedy this problem the Commission requires that pipelines which offer transportation under a blanket certificate must allow their firm wholesale customers the right to convert their CDs to firm transportation in accord with the phase-in schedule contained in § 284.10 of the Commission's regulations repromulgated by this order. As discussed above, this will enable pipeline customers to obtain the access to firm alternative supplies they need to meet their service obligations.

The Commission recognizes that the CD conversion option partially denies pipelines the benefits of their sales contracts. But it does so only because those contracts "are vestiges of their monopoly power."[33] The Commission requires the CD conversion option only in order to correct the consequences of that power. As the Commission has found previously, and as recognized by the Court, failure to provide for a CD conversion option would be to condone the undue discrimination which the NGA intended to prohibit.[34]

The Commission also repromulgates § 284.10 of its regulations, as amended, pursuant to the Commission's authority under section 311 of the NGPA, which gives the Commission broad authority to prescribe "terms and conditions" for transportation permitted under that section. As the Court in *AGD* found, provision for the CD conversion option properly implements traditional regulatory principles applicable to NGPA section 311 transportation to protect the public from market dominance by natural gas companies.[35]

[27] 761 F.2d 780, 789 (D.C. Cir. 1985).

[28] Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated or Modified Contracts, IV FERC Stats. and Regs. ¶ 32,441 (1987).

[29] Slip op. at 75.

[30] Slip op. at 74–75 n. 23.

[31] Order No. 436, at 31,474; *AGD*, slip op. at 67.

[32] Order No. 436, at 31,488, 31,499–31,500.

[33] Slip op. at 68.

[34] *Id.*

[35] Slip op. at 69.

V. Grandfather Provisions

The Court in *AGD* expressed concern that the Commission had failed to explain adequately some of its grandfathering decisions in Order No. 436. The Court remanded the issue to the Commission for further consideration. Upon examination of the rationale for the grandfathering provisions, the Commission will repromulgate the grandfathering provisions in §§ 284.105 and 284.223 of its regulations. As will be discussed below, the transportation being provided under these provisions is short-term, involves relatively few transactions, moves small amounts of gas, and involves, in many cases, transportation of self-help gas. Since continuing this transportation has not and will not discourage pipelines from commencing nondiscriminatory transportation, the Commission believes the public interest will be best served by allowing the parties' expectations of continued transportation to continue.

Order No. 436 grandfathered various existing transportation transactions in order to ensure a smooth transition from on-going transportation programs to the Order No. 436 program. Specifically, Order No. 436 grandfathered NGPA section 311 transactions [36] and transportation for high-priority end users under blanket certificates that were in effect on October 9, 1985. Existing NGPA section 311 transportation arrangements were permitted to continue until the earlier of the expiration of the term of the underlying transportation agreements or October 9, 1987. Blanket transportation for high-priority end users pursuant to Order No. 319 certificates [37] was allowed to continue for the full term of the transportation agreements.[38] Under the Commission's regulations these blanket certificates were authorized for up to five years for purchased gas [39] and for up to ten years if the gas to be transported was produced and developed by the high-priority end user.[40]

The Court noted that the issue of grandfathering NGPA section 311 transportation was nearly moot since the grandfathering provisions expire on October 9, 1987.[41] The Court was concerned, however, that the term of the grandfathered transactions for high-priority users created an incentive for pipelines to resist nondiscriminatory transportation. The Court concluded that the Commission's explanation as to why it was allowing NGA section 7 transportation for high-priority end users to continue for five-and ten-year terms was inadequate. As a result, a discussion of the basis for the grandfathering provisions and an explanation as to why the previously authorized NGA section 7 blanket certificates for high-priority users should continue for the full term of the certificate follows.

The Commission authorized the grandfathering of previously authorized transportation to balance the goal of upholding the parties' expectations of continued transportation against the goal of promptly providing transportation under Order No. 436. Accordingly, the decision whether to allow blanket transportation authority for high-priority end users to continue for the full term of the respective certificates involves such considerations as: (1) The equities to the parties; (2) the term of the transportation at issue; (3) the volume of gas being transported under grandfathered transactions; (4) the number of transactions involved; and (5) the effect that grandfathering transportation would have on open access transportation under Part 284 of the Commission's regulations.[42] The Commission has also examined its record (as discussed below) to determine the scope of the grandfathered transactions. Based on this analysis, the Commission concludes that the public interest is best served by allowing the grandfathered high-priority transactions to continue for the full term.[43]

The Court expressed concern that the transactions at issue would extend into the mid-1990s. Alhtough § 157.209(a) of the Commission's regulations, as it was effective when Order No. 436 was issued, provided for ten-year certificates, reports filed with the Commission indicate that all transactions authorized under this section were for terms of five years or less. As such, all transportation under this authority will end by 1990. Moreover, a review of the Commission's records indicates that the impact of these grandfathered transactions is declining:

Period	Number of expiring transactions	Estimated daily volumes (Mcf)
6/87-6/88	17	44,000
6/88-6/89	17	16,000
6/89-6/90	19	43,500
6/90-10/90	28	52,000

The Court also expressed concern that grandfathering creates an incentive for pipelines to resist nondiscriminator transportation under Order No. 436. However, the amount of transportation performed under blanket certificates for high-priority end users is realtively small. Only 81 transactions, representing approximately 155,000 Mcf of natural gas transported daily, remain in effect under their grandfathered NGA section 7 certificates. By comparison, approximately 3,000 self-implementing transactions are ongoing and approximately 30,000,000 Mcf of gas is transported daily on a self-implementing basis. Also, 14 of the 17 pipelines engaged in grandfathered high-priority transportation have also participated in the Order No. 436 program.[44] The remaining three pipelines engaged in grandfathered NGA section 7 transportation are small entities moving small volumes of gas.[45]

[36] The grandfathered NGPA 311 transactions include the 311-type transactions that were actually established through NGA section 7 blanket certificates available to interstate pipelines under form § 284.221 (Order No. 60) and to Hinshaw pipelines and distribution companies under former § 284.222 (Order No. 63) of the Commission's regulations.

[37] Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificates, Order No. 319, 48 FR 34875 (Aug. 1, 1983); [Reg. Preambles 1982-1985] FERC Stats. & Regs. ¶ 30,477.

[38] 18 CFR 284.233(g)(1) (1985).

[39] 18 CFR 157.209(a)(1) (1985).

[40] 18 CFR 157.209(a)(c)(11) (1985).

[41] Slip op. at 118.

[42] The Commission notes that in Maryland People's Counsel v. FERC (MPC II), the U.S. Court of Appeals for the D.C. Circuit "applauded" Order No. 319 as it applied to LDCs and high-priority end users. 761 F.2d 780, 783 (D.C. Cir. 1985). The court's discussion of Order No. 319 in MPC II further supports the decision to allow this limited transportation program to continue.

[43] A high-priority end use consists of any use of gas an essential agricultural use; in a hospital or school, for plant protection, or for process and feed stock needs.

[44] The following pipelines that transport under Order No. 319 are participating in transportation under the Order No. 436 regulations: Arkla Energy Resources, Columbia Gas Transmission Corporation, Consolidated Gas Transmission Corporation, Lawrenceburg Gas Transmission Corporation, Michigan Gas Storage Company, Mountain Fuel Resources, Inc., Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, United Gas Pipe Line Company, and Williams Natural Gas Company. Transcontinental Gas Pipe Line Corporation has also transported under the Order No. 436 regulations, although the company discontinued that transportation on June 19, 1987.

[45] The following pipelines transporting under Order No. 319 have not transported under the Order No. 436 regulations: Midwestern Gas Transmission Company, National Fuel Gas Supply Corporation, and Williston Basin Interstate Pipeline Company.

As noted by the Court, the Commission has the power to grandfather existing transportation arrangements. Since the parties have relied on the NGA section 7 grandfathering provisions for nearly two years, the Commission believes it may create hardship to discontinue this authorization. This is especially true because this high-priority transportation involves, in many cases, implementation of self-help measures encouraged by the Commission to counteract the interstate gas supply shortages of the late 1970's and early 1980's. Upon balancing the benefits created by allowing the expectations of the parties to continue against the slight incentives that ending the grandfathering provision would create for a pipeline to commence nondiscriminatory transportation under Order No. 436, the Commission concludes that the NGA section 7 grandfathering provisions should remain in effect for the full term of the certificates, as provided in the instant rule.

VI. Administrative Findings and Effective Date

The Commission is adopting a rule prior to providing notice and obtaining written comment, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553 (b) and (c) (1982), for any rulemaking proceeding.[46] The Commission is invoking exceptions to this requirement for the particular reasons related to the immediate necessity for this interim rulemaking. This proceeding is designed to establish an interim rule that (1) repromulgates regulations vacated by the Court because of flaws in a few aspects, (2) promulgates immediately effective measures to ameliorate pipelines' accrued take-or-pay liabilities, and (3) eliminates the CD reduction provisions of Part 284 of the Commission's regulations, which the Court found supported by an inapposite statutory basis and lacked a rationale. Thus, the interim rule repromulgates the Order No. 436 regulations, as amended, so that near-term transportation through the approaching winter heating season is not disrupted to the detriment of consumers and other industry participants now dependent on the open-access transportation established by those regulations.

The rule adopted here is intended to be in effect for an interim period while the Commission studies the issue related to contract demand adjustments and the build-up of take-or-pay liability under producer-pipeline contracts, which formed the basis for the Court's remand in the *AGD* decision. The Commission is requesting comments from the public on the interim rule so it may evaluate the effectiveness of the interim measures established here, consider their adequacy in addressing the issues highlighted by the Court and presented in this preamble, and determine what further action may be necessary.

The Court in *AGD* upheld in large part the substance of Order No. 436 and recognized the legitimacy of the Commission's policy objectives, but remanded the matter to permit the Commission to correct problems in a few of the Order's components. These components, in large measure, involve the issue of the treatment of the take-or-pay liabilities of interstate pipelines, which issue has already generated an extensive comment record in response to the Commission's proposed take-or-pay policy statement in *Recovery of Take-or-Pay Buy-Out and Buy-Down Costs by Interstate Natural Gas Pipelines* in Docket No. Pub. L. 87–3–000,[47] as well as in the comment record of Order No. 436 itself. To a considerable degree, then, the need for implementation of an interim rule to act on these issues is already supported by a substantial comment record as well as the Court's directive.[48]

Most importantly, the Commission is making a special effort to implement this interim rule promptly in order to minimize and lessen the growth of take-or-pay liabilities of pipelines due to the operation of Part 284 of its regulations—one of the central concerns of the Court in the *AGD* decision—while at the same time ensuring that the transportation arrangements needed to serve consumers in the coming winter season remain intact. The Commission believes that this interim rule is required to ensure rational administration of transportation arrangements through the winter heating season. At the same time, it immediately provides means for pipelines to alleviate the difficult transition in which the Court found them. The rule's purpose then is to remove Order No. 436–related take-or-pay pressures on pipelines which the Court pointed out, while at the same time not blocking the operation of the orders' pro-competitive transportation reforms (which the Court affirmed) in the winter season when they are most vitally needed. The period of interim implementation will permit consideration of other alternatives for addressing other relevant take-or-pay issues which will require more study to formulate, as well as comments on the interim procedures themselves. The Commission seeks comments therefore not only on the interim, immediately necessary measures promulgated here, but also on how it might develop further rules that would narrowly and specifically identify the particular "price and take-or-pay provisions that unduly thwart the Commission's purpose in Order No. 436 and its duty under the NGA to protect consumers." [49] The Commission does not seek comment on those provisions of Order No. 436 which were upheld by the Court and are being repromulgated here without change.

For the above reasons, the Commission finds good cause to issue this rule without additional prior notice and comment. The public interest is best served in this instance by the immediate promulgation of an interim rule consistent with the Court's concerns about lessening the take-or-pay pressure on pipelines which may be exacerbated by the operation of Order No. 436, while at the same time preventing the termination of nondiscriminatory transportation arrangements during the period of peak winter demand when the stability of the nascent transportation infrastructure will be critical. It therefore would be impracticable, and contrary to the public interest, to delay repromulgation of the regulations promulgated by Order No. 436, as amended, until after completion of all notice and comment procedures.[50]

In addition, the Commission finds good cause to make this rule effective immediately upon issuance of the Court's mandate or upon leave of the Court, without a thirty day delay following publication in the **Federal Register** generally required by the

[46] With the exception of the revisions made to Parts 2 and 284, the interim rule represents the same general approach, and will have the same general effects, as the rule adopted by Order No. 436. The Commission is therefore adopting its Order No. 436 certification under the Regulatory Flexibility Act, 5 U.S.C. 601 through 612 (1982), that the rule will not have a significant economic impact on a substantial number of small entities. *See* 50 FR 42476–42477 (October 18, 1985). This determination was not reversed by the Court in Associated Gas Distributors v. FERC and, moreover, the changes effected by this interim rule are required by the Court's decision.

[47] *Supra* note 16.

[48] The future supply service charge principles may also be considered integral to interim amelioration of the pressing take-or-pay problems of pipelines, which action is also supported by the existing broad comment record on take-or-pay. In addition, those principles are being adopted as a matter of policy, and as such are exempted from the APA notice and comment requirements by 5 U.S.C. 553(b)(A), as well as by the "good cause" exemptions of the APA (5 U.S.C. 553(b)(3)(B) and 553(d)(3) (1982)).

[49] Slip op. at 18, 93.

[50] 5 U.S.C. 553(b) (1982).

Administrative Procedure Act.[51] The Court, while finding the Commission's policy rationales were sound, found the take-or-pay pressures, to which pipelines are subject, to be so pressing as to warrant vacating the regulations and remanding the Order so that the Commission might address them. Inasmuch as there is at least a sufficiency of record comment on these issues in this docket as well as others, and in view of the Court's focus on take-or-pay burdens as a central impediment to implementation of the valuable policy goals of the Order, the Commission believes the public interest is further served by the crediting mechanism established here in addition to the acceptable passthrough mechanisms specified here, and adopting principles for future gas supply charges at the customer end, so that the beneficial policies supported by the decision may be reestablished as soon as possible, and not suffer any disruption to the detriment of the consuming public. The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues.

VII. Paperwork Reduction Act

Any information collection requirements herein are subject to review and approval under the Paperwork Reduction Act [52] and will be submitted to the Office of Management and Budget (OMB) for its approval under that Act and OMB's regulations.[53] Once the OMB approves the information collection provisions it will assign to them one or more control numbers. The Commission will in turn publish notice that it has received OMB approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Peg Covello (202) 357-5407). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VIII. Public Comment Procedures

Interested parties are invited to submit written comments on the interim rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should refer to Docket No. RM87-34-000 on the outside of the envelope and on all documents submitted to the Commission. Fourteen copies should be submitted with the original.

To facilitate the Commission's analysis, the Commission urges commenters to provide a 3-5 page executive summary of their positions on the issues raised. Additionally, commenters should double space their comments, and provide a concise description identifying themselves. When persons submitting comments urge an approach different from the interim rule, a specific alternative provision with appropriate legal or empirical support should be submitted.

All comments received by the Commission by October 13, 1987 will be considered prior to the promulgation of a final rule. Copies of the written comments may be obtained from the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. Comments are available for public inspection during business hours at the same location. Copies of comments will be available for purchase.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing the Commission amends Parts 2 and 284, Chapter I, Title 18, *Code of Federal Regulations* as set forth below.

By the Commission. Commissioners Sousa and Stalon concurred with separate statements attached.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142; Federal Power Act, 16 U.S.C. 792-825r (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C 2601-2645 (1982); and the National Environmental Policy Act, 42 U.S.C. 4321-4361 (1978); unless otherwise indicated.

2. New §§ 2.104 and 2.105 are added to read as follows:

§ 2.104 Mechanisms for passthrough of pipeline take-or-pay buyout and buydown costs.

(a) *General Policy.* The Commission as a matter of policy will provide two distinct mechanisms for passthrough of take-or-pay buyout and buydown costs of interstate natural gas pipelines. The first is pursuant to existing Commission policy and practice. Under this method, pipelines may pass through prudently incurred take-or-pay buyout and buydown costs in their sales commodity rates. The second method is available to pipelines which agree to an equitable sharing of take-or-pay costs and which transport under Part 284 of this chapter (other than under the grandfather provisions of § 284.105 or § 284.223). Qualifying pipelines may utilize the alternative passthrough mechanisms described in this section. Where a pipeline agrees to absorb from 25 to 50 percent of take-or-pay buyout and buydown costs, the Commission will permit the pipeline to recover through a fixed charge an amount equal to (but not greater than) the amount absorbed. Any remaining costs up to 50 percent of total buyout and buydown costs may be recovered either through a commodity rate surcharge or a volumetric surcharge on total throughput.

(b) *Cost allocation procedures.* A pipeline's volume-based surcharges must be based on the volumes which underlie its most recent Commission-approved rates. Fixed charges must be based on each customer's cumulative deficiency in purchases in recent years (during which the current take-or-pay liabilities of the pipelines were incurred) measured in relation to that customer's purchases during a representative period during which take-or-pay liabilities were not incurred. The allocation formula employed must incorporate the following guidelines:

(1) A representative base period must be selected. The base period must reflect a representative level of purchases by the pipeline's firm customers during a period preceding the onset of changed conditions which resulted in reduced purchases and growth of the take-or-pay problem.

(2) Firm purchases by each customer during the base year under firm rate schedules or contracts for firm service must be determined.

(3) Firm sales purchase deficiency volumes for each subsequent year must be determined.

[51] *Id.*

[52] 44 U.S.C. 3501 through 3520 (1982).

[53] 5 CFR 1320.14 (1987).

(4) A fixed charge based on each customer's cumulative deficiencies as compared to total cumulative deficiencies must be derived. The filing pipeline will be free to select for rate calculation and filing purposes a reasonable amortization period for buyout and buydown costs being recovered through fixed charges or volumetric surcharges. The pipeline will be entitled to interest at the rate set forth in Part 154 of this chapter on unamortized amounts.

(c) *Implementing procedures.* (1) Pipelines acting pursuant to this section may submit on or before December 31, 1988, a non-PGA rate filing under section 4(e) of the Natural Gas Act. Pipelines may include in their filings a fixed charge and a volumetric surcharge to recover buyout and buydown costs actually paid as of the date of filing plus similar costs which are known and measurable within the following nine months. Detailed support for the amounts claimed and for the calculation of customer surcharges must be provided. In addition, the pipeline must disclose and describe all consideration, both cash and noncash, given to producers in exchange for take-or-pay relief.

(2) In any filings made under this section, pipelines must include proposals for periodic (preferably annual) adjustments to customer surcharges, together with any necessary accounting procedures, designed to assure that revenues recovered by the pipeline remain in balance with buyout and buydown costs covered by the filing and actually incurred by the pipeline.

(d) *Prudence.* (1) The Commission will examine the issue of prudence if it is raised by a party in an individual proceeding. If it is raised, the pipeline will be required to demonstrate the prudence of take-or-pay buyout and buydown costs which it seeks to recover from its customers through both fixed and volume-based charges.

(2) The Commission intends to exercise its authority to the full extent permitted by the Natural Gas Act to approve take-or-pay settlements. The Commission intends to approve uncontested take-or-pay settlements which are consistent with this section and found to be in the public interest. The Commission will also, if it appears reasonable and permissible to do so, approve contested settlements as to all consenting parties and initiate separate hearings to establish the rates for opposing parties. Alternatively, the Commission will approve contested settlements on the merits if supported by substantial evidence in the record. In any case where hearings are held as to the prudence of take-or-pay buyout and buydown costs, the Commission will permit the pipeline the opportunity to recover all take-or-pay costs found to be prudent from the contesting parties on a proportional basis, even if the amount allowed is greater than the amounts initially sought to be recovered by the pipeline.

(e) *Flowthrough by downstream pipelines.* Downstream pipelines must flow through approved take-or-pay fixed charges based on the cumulative purchase deficiencies of their customers. Volumetrically-based surcharges must be flowed through on a volumetric basis. Customers of downstream pipelines have the right in connection with either PGA or general rate filings to challenge the purchasing practices of such pipelines. Remedies for purchasing practices found by the Commission to be imprudent will be determined on a case-by-case basis.

(f) *Ongoing proceedings.* Pipeline rate proceedings pending on the effective date of this order [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues] may be utilized as a forum for implementing the approved cost recovery mechanisms set forth in this section. Permission will be granted in cases where implementation of this policy in pending proceedings appears feasible, will not result in inordinate delay, or can be expected to result in unnecessary or cumulative rate filings with the Commission. In the event permission is granted, the presiding judge(s) will allow pipelines to supplement their filings to the extent necessary to assure compliance with the filing and data requirements set forth herein. The presiding judges shall also establish any procedures necessary to protect the rights of all parties. Any rates established pursuant to this section will be permitted to become effective only prospectively upon Commission approval.

(g) *Scope.* This section does not go beyond the Commission's determination in the April 10, 1985, policy statement (Docket No. PL85-1-000) that take-or-pay buyout and buydown costs do not violate the pricing provision of the Natural Gas Policy Act of 1978 (NGPA). It is not intended to affect take-or-pay prepayments made by pipelines and included in account 165 and in their rate bases. Nor does it address the issue of whether take-or-pay prepayments to a producer for gas not taken and which cannot be made up violate the Title I pricing provisions of the NGPA. This policy statement applies only to buyout and buydown costs paid by pipelines that are transporting under Part 284 of this chapter, under existing contracts, and is not intended to disturb in any way take-or-pay settlements previously entered into between pipelines and their producer suppliers.

§ 2.105 Gas supply charges.

An interstate natural gas pipeline that transports under Part 284 of this chapter may include in its tariff a charge, not related to facilities, for standing ready to supply gas to sales customers in accordance with the following principles:

(a) The pipeline may not recover take-or-pay or similar charges from suppliers by any other means.

(b) The pipeline must allow its sales customers to nominate levels of service freely within their firm sales entitlements or otherwise employ a mechanism for the renegotiation of levels of service at regular intervals.

(c) The pipeline must announce prior to nominations by the customers a firm price or pricing formula for the service, and hold that price or pricing formula firm during the interval arranged in paragraph (b) of this section.

(d) By nominating a new level of service lower than its current level, a customer has consented to any abandonment sought by the pipeline commensurate with the difference between the current level of service and the nominated level.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142.

4. In § 284.8, a new paragraph (f) is added to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(f)(1) *Transportation credits.* Natural gas is eligible for transportation by interstate pipelines under this part only if:

(i) The pipeline and the shipper or producer agree, or

(ii) An affidavit has been submitted to the pipeline satisfying the requirements of paragraph (f)(2) of this section.

(2) An affidavit to satisfy this section must:

(i) Identify the gas made eligible for transportation through the filing of the affidavit,

(ii) Be signed by the producers and all other persons who own the gas required to offer take-or-pay or take-and-pay credits under this section in connection with the transportation of the subject gas, and

(iii) Constitute an irrevocable offer, which upon acceptance by the pipeline will result in a contract binding on the producers and their assignees, to grant the pipeline any credits under this section in connection with the transportation of the subject gas and to agree to abide by any Commission determination concerning the interpretation of this section. The requirements of this section may be satisfied by a general affidavit applicable to all transportation transactions involving the subject gas.

(3) Once the affidavit required by this section is submitted to the pipeline, the pipeline must transport the gas, subject to the conditions of this part, notwithstanding any dispute concerning how the crediting is to be performed.

(4) If a pipeline is requested to transport gas which on June 23, 1987, was owned by a producer who on that date owned gas sold to the pipeline under a contract or contracts executed before June 23, 1987, which contain take-or-pay or take-or-pay provisions, and receives the affidavit required by paragraph (f)(2) of this section, the pipeline may receive credits as follows:

(i) For each unit of gas transported that is owned by that producer on June 23, 1987, the pipeline will receive credit for the volumes transported as though they were volumes of that producer's gas purchased by the pipeline under any contract existing on or before June 23, 1987, which contains a take-or-pay or take-and-pay provision.

(ii) The selection of the contracts against which the credits will apply will be at the discretion of the pipeline.

(iii) The pipeline may, at its discretion, apply the credit as though the volumes were purchased in the contract year in which the gas was transported or in any previous calendar year, commencing on or after January 1, 1986, in which the pipeline transported natural gas pursuant to the non-discriminatory access provisions of §§ 284.8(b) and 284.9(b) of this part.

(iv) When a pipeline has released gas from a gas purchase contract and, as part of the release agreement, the parties have agreed to a crediting of the released gas against the pipeline's take-or-pay or take-and-pay liability under that contract, the releasing pipeline nonetheless may, at its discretion, receive credits pursuant to this section for transporting the released gas. However, the pipeline may not receive more than a volume for volume credit. Therefore, if a pipeline chooses to receive credits under this section, it must discharge the producer from all other crediting arrangements agreed to in the release agreement or otherwise provided in the gas purchase contract. In addition, for purposes of determining the pipeline's take-or-pay liability under the released contract, the pipeline may not claim that the annual deliverability of gas under the released contract is reduced by the volumes credited against another contract.

(v) If, as a result of the release, there are insufficient gas reserves subject to the release contract to allow the pipeline to receive delivery of gas for which it has made prepayments pursuant to the released contract, the producer must, at its option, either repay the prepayments to the extent of any insufficiency caused by the release or satisfy any make up rights of the pipeline under the contract through delivery of a like quantity of gas from either gas committed to the contract which was credited or some other source.

(vi) If the transported gas was not owned by any producer on June 23, 1987, the pipeline may receive credits, as provided in this section.

(5) When the gas is transported by more than one pipeline and the gas was released from a contract between the producer and one of the transporting pipelines, only the pipeline which is a party to the contract from which the gas is released may receive credit under this section. No other pipeline providing transportation may receive a credit. In all other cases, when more than one pipeline is requested to transport the same gas, the credit is to be applied to the take-or-pay or take-and-pay obligations of all the pipelines engaged in the transaction but is not required to exceed the amount of the gas transported. The pipelines may agree among themselves how the credits should be allocated among their prepayment obligations. Failure by the pipelines to agree as to such an allocation of the credits will not render the gas ineligible for transportation. If transportation begins before the pipelines agree on an allocation formula, the allocation formula subsequently agreed upon will apply from the date transportation commenced.

(6) If on the effective date of this rule [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues], a pipeline is transporting gas owned by a producer on June 23, 1987, that gas will cease to be eligible for transportation under this part on the first day of the second month after the effective date of this rule unless the pipeline and the shipper or producer agree, or unless an affidavit has been submitted to the pipeline, as provided under paragraph (f)(2) of this section, offering the pipeline credits. Such credits shall commence from the date the affidavit is submitted.

(7) Notwithstanding the above provisions, a producer is not required under this section to provide credits with respect to take-or-pay or take-and-pay obligations in order to obtain transportation of:

(i) Gas which:

(A) The producer formerly sold to the transporting pipeline under a contract which contained a take-or-pay or take-and-pay provision and which has been terminated and

(B) Is not currently subject to a gas purchase contract between the pipeline and the producer, or

(ii) Gas which has been released from a gas purchase contract which contains or is subject to a market-out clause giving the purchaser the right to terminate the contract at the purchaser's discretion.

5. In § 284.9, a new paragraph (f) is added to read as follows:

§ 284.9 Interruptible transportation service

* * * * *

(f)(1) *Transportation credits.* Natural gas is eligible for transportation by interstate pipelines under this part only if:

(i) The pipeline and the shipper or producer agree, or

(ii) An affidavit has been submitted to the pipeline satisfying the requirements of paragraph (f)(2) of this section.

(2) An affidavit to satisfy this section must:

(i) Identify the gas made eligible for transportation through the filing of the affidavit,

(ii) Be signed by the producers and all other persons who own the gas required to offer take-or-pay or take-and-pay credits under this section in connection with the transportation of the subject gas, and

(iii) Constitute an irrevocable offer, which upon acceptance by the pipeline will result in a contract binding on the producers and their assignees, to grant the pipeline any credits under this section in connection with the transportation of the subject gas and to agree to abide by any Commission

determination concerning the interpretation of this section. The requirements of this section may be satisfied by a general affidavit applicable to all transportation transactions involving the subject gas.

(3) Once the affidavit required by this section is submitted to the pipeline, the pipeline must transport the gas, subject to the conditions of this part, notwithstanding any dispute concerning how the crediting is to be performed.

(4) If a pipeline is requested to transport gas which on June 23, 1987, was owned by a producer who on that date owned gas sold to the pipeline under a contract or contracts executed before June 23, 1987, which contain take-or-pay or take-and-pay provisions, and receives the affidavit required by paragraph (f)(2) of this section, the pipeline may receive credits as follows:

(i) For each unit of gas transported that is owned by that producer on June 23, 1987, the pipeline will receive credit for the volumes transported as though they were volumes of that producer's gas purchased by the pipeline under any contract existing on or before June 23, 1987, which contains a take-or-pay or take-and-pay provision.

(ii) The selection of the contracts against which the credits will apply will be at the discretion of the pipeline.

(iii) The pipeline may, at its discretion, apply the credit as though the volumes were purchased in the contract year in which the gas was transported or in any previous calendar year, commencing on or after January 1, 1986, in which the pipeline transported natural gas pursuant to the non-discriminatory access provisions of §§ 284.8(b) and 284.9(b) of this part.

(iv) When a pipeline has released gas from a gas purchase contract and, as part of the release agreement, the parties have agreed to a crediting of the released gas against the pipeline's take-or-pay or take-and-pay liability under that contract, the releasing pipeline nonetheless may, at its discretion, receive credits pursuant to this section for transporting the released gas. However, the pipeline may not receive more than a volume for volume credit. Therefore, if a pipeline chooses to receive credits under this section, it must discharge the producer from all other crediting arrangements agreed to in the release agreement or otherwise provided in the gas purchase contract. In addition, for purposes of determining the pipeline's take-or-pay liability under the released contract, the pipeline may not claim that the annual deliverability of gas under the released contract is reduced by the volumes credited against another contract.

(v) If, as a result of the release, there are insufficient gas reserves subject to the release contract to allow the pipeline to receive delivery of gas for which it has made prepayments pursuant to the released contract, the producer must, at its option, either repay the prepayments to the extent of any insufficiency caused by the release or satisfy any make up rights of the pipeline under the contract through delivery of a like quantity of gas from either gas committed to the contract which was credited or some other source.

(vi) If the transported gas was not owned by any producer on June 23, 1987, the pipeline may receive credits as provided in this section.

(5) When the gas is transported by more than one pipeline and the gas was released from a contract between the producer and one of the transporting pipelines, only the pipline which is a party to the contract from which the gas is released may receive credit under this section. No other pipeline providing transportation may receive a credit. In all other cases, when more than one pipeline is requested to transport the same gas, the credit is to be applied to the take-or-pay or take-and-pay obligations of all the pipelines engaged in the transaction but is not required to exceed the amount of the gas transported. The pipelines may agree among themselves how the credits should be allocated among their prepayment obligations. Failure by the pipelines to agree as to such an allocation of the credits will not render the gas ineligible for transportation. If transportation begins before the pipelines agree on an allocation formula, the allocation formula subsequently agreed upon will apply from the date transportation commenced.

(6) If on the effective date of this rule [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues.], a pipeline is transporting gas owned by a producer on June 23, 1987, that gas will cease to be eligible for transportation under this part on the first day of the second month after the effective date of this rule unless the pipeline and the shipper or producer agree, or an affidavit has been submitted to the pipeline, as provided under paragraph (f)(2) of this section, offering the pipeline credits. Such credits shall commence from the date the affidavit is submitted.

(7) Notwithstanding the above provisions, a producer is not required under this section to provide credits with respect to take-or-pay or take-and-pay obligations in order to obtain transportation of:

(i) Gas which:

(A) The producer formerly sold to the transporting pipeline under a contract which contained a take-or-pay or take-and-pay provision and which has been terminated and

(B) Is not currently subject to a gas purchase contract between the pipeline and the producer, or

(ii) Gas which has been released from a gas purchase contract which contains or is subject to a market-out clause giving the purchaser the right to terminate the contract at the purchaser's discretion.

6. The suspension of § 284.10 is removed effective the first day of the second month after the effective date of this rule [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues.] and the following amendments are made: The title is revised, paragraph (a) is revised, paragraphs (c) and (e) are removed, paragraphs (d) and (f) are redesignated as paragraphs (c) and (d), respectively, the title of newly redesignated paragraph (c) is revised, and newly designated paragraphs (c)(2), (c)(3)(ii), (d)(1), and (d)(2) are revised to read as follows:

§ 284.10 Conversion to firm transportation.

(a) *General rule.* An interstate pipeline must offer its firm sales customers the option set out in paragraph (c) of this section, if it:

* * * * *

(c) *Procedures.* * * *

(2) *Notice.* Unless the pipeline agrees otherwise, a customer that wishes to exercise its option under this paragraph must provide the pipeline written notice not later than 60 days before the proposed conversion.

(3) *Level of Conversion.*

(i) * * *

(ii) A pipeline subject to this section may, at any time, permit a firm sales customer to convert to firm transportation by more than the amount provided in the schedule in paragraph (c)(3)(i) of this section.

* * * * *

(d) *Abandonment.* (1) If a firm sales customer gives notice of an intent to exercise a conversion option under paragraph (c) of this section, the pipeline may file under § 157.18 of this chapter to abandon sales service to the extent of the conversion.

(2) Notice of an intent by a customer to exercise an option under paragraph

(c) of this section constitutes consent by that customer to the proposed abandonment under this paragraph.

* * * * *

Note: These appendices will not be published in the Code of Federal Regulations.

Appendix A—Examples of Future Gas Supply Charges under § 2.105 of the Commission's Regulations

Under the principles adopted in § 2.105, a pipeline may design charges similar to those already widely used in other commodity markets, as described below. What follows are only examples and a pipeline could design other charges consistent with these principles.

1. Forward Supply Service Charge

A pipeline providing a forward supply service charge must commit itself to sell, and the customer must commit itself to purchase, the quantities of natural gas nominated by the customer at a specified posted price on some future date certain. Customers could nominate to take quantities up to (but not exceeding) their firm sales entitlements under any firm sales agreement with the pipeline. Pipelines could offer additional services of varying contract duration, but the posted rates would be guaranteed by the pipeline during the future period for which they are posted.

2. Options Service Charge

The pipeline providing an options service charge would charge a two-part rate. The first part, a gas inventory (or reservation) charge, would be similar to an option to reserve natural gas inventory for purchase at a particular price during a certain period of time. The second part, a gas commodity charge, would be incurred if the customer exercises the gas inventory option at the agreed price and time. Thus, the customer must pay the gas inventory charge on *all* quantities of natural gas reserved under that service, but the customer need pay the gas commodity charge only for gas it actually purchases from the inventory reserved.[1]

[1] In deregulated commodity markets, the commodity price under the options approach converges to the near-month futures price and to the spot price as the actual transaction nears. At the time the customer must decide whether to take the gas or not, if the commodity price under the option contract is higher than the spot price, then the buyer switches to the spot market, choosing not to exercise the option. However, the customer would still pay the options charge. The benefit of the options price rate design is that it separates the two charges more cleanly and resembles transactions that are well established in deregulated commodity markets.

3. Operation of Forward Supply Service and Two-Part Option Service in Combination

In planning for future purchases, customers would have a menu of at least two basic commodity services—one the forward supply service for quantities a customer is almost certain it will require, the other the option service that reserves quantities of gas the customer may need during the period. Additional services of varying time duration could also be made available.

The sales process for these new services and charges could proceed as follows:

(a) By a particular time (for example, between July and September), the pipeline would present a gas sales tariff to its customers. The tariff would contain monthly maximum gas commodity rates for the future supply service and for the exercise of the option service over next 6 months or year. It would also contain a per-unit inventory (or option) charge for the amount of gas reserved under the option service. The rates could vary from month to month.

(b) Next, the pipeline's resale customers would nominate the maximum peak day and average day quantities for each month of the next period (for example, October through September). The nominated amounts could vary from month to month. Nominations for the forward supply service and the options service could not exceed the customers firm sales entitlements under any firm sales agreements with the pipeline. The levels nominated by a customer would be the pipeline's service obligation for that service to that customer over the specified period.[2]

(c) In each billing cycle, the customer would receive two gas commodity charge bills and an inventory charge bill.

Steps 1 and 2 may need to be repeated several times to allow the pipeline to bring the commitments from supplies and nominations from customers into balance.

In sum, a pipeline would post a price and customers would sign up for gas sales service at a customer nominated level. By this process, customers could evaluate their future purchase needs and determine the benefits and risks of purchasing from the pipeline as opposed to obtaining gas from other suppliers through nondiscriminatory transportation.

[2] To the extent these obligations are less than current firm sales obligations, the pipeline would file to abandon obligations in excess of its customers combined nominations. Such abandonment would permit the pipeline to then shed gas supplies not needed to meet its obligations.

If the pipeline chooses, it can include a make-up service as part of the forward supply service. The make-up service would be subordinate to current forward supply service and option service for deliveries. This service would allow a make-up period (or balancing period) for the customer to take gas that it has previously paid for under the forward supply service. No additional charges would be assessed for this service, because the customer would have already paid for this gas. Throughout all of this process, it is important that the rate design allows customers to make informed voluntary choices concerning the level of services they wish to reserve. Pipelines may offer additional services with varying contract duration, but the posted rates must be maintained by the pipeline. The customer, for its part, must pay for its nominations at the posted rates.

The relationship between and level of these charges depends on many factors, but some general relationships can be hypothesized. In general a risk-neutral producer would make the following evaluation in choosing the service it will tender to the pipeline:

$c_b = v_o + pc_o + (1-p)dc_f$

where:

c_b = per unit commodity price of baseload
c_o = per unit commodity price of option gas
v_o = per unit inventory price of option gas
p = probability that option gas would be bought
c_f = per unit expected future commodity price of gas
d = discount factor

A producer that is not risk-neutral would make the following evaluation:

$c_b < c_o + v_o$—when the producer values highly a guaranteed cashflow, gas is subject to drainage, or the producer expects lower future prices.

$c_b > c_o + v_o$—when the producer expects higher future prices and/or is a gambler or risk seeker.

Under the assumption of constant real future prices and moderate risk aversion, the relationship would probably be:

$v_o < c_b < c_o + v_o$

4. Impact on Current Contractual Arrangements

The current pipeline contractual arrangements, both at the supplier end and at the customer end, may require some readjustment before the proposed future gas supply rate design may be fully integrated into a pipeline's menu of services. Most current producer contracts with pipelines could probably

be adjusted to fit into this process. For example, casinghead gas contracts would seem to match the forward supply contract. Since pipelines may still serve a beneficial role as middlemen, some contracts may have to be renegotiated to some degree to allow the producer contracts to better reflect the services offered by the pipeline. Some contract reformation may therefore be desirable via private negotiations to conform. The decision of a producer to sell gas into the forward supply pool or the option pool would be based on expected opportunity costs and the amount of risk a producer is willing to assume. The forward supply pool offers an assured cash flow and an assured take. This should prevent drainage, loss of other rights, or reservoir damage. The option pool may result in temporarily shut-in gas that could be resold on the spot market or may be shut-in and sold later at the producer's discretion.

The pipeline's customer would also have choices to make in subscribing to the new services. The forward supply contract would offer an overall cheaper service than the options service. This cheaper service must be balanced with the obligation to pay for the entire nominated level. This service may be appropriate for levels of service that have a high probability of realization. To plan for more uncertain demand, for example, service for a colder than normal period, the potentially more expensive but less risky option service may be appropriate.

5. Difference Between Minimum Commodity Bills and Future Gas Supply Charges

These new gas supply charges can be readily distinguished from minimum commodity bills. Minimum commodity bills bundled transportation and sales costs. They were tied to CD levels and to long-term city-gate sales. In addition, the minimum commodity bills tied the take levels and non-take levels together. In contrast, these new services would not be bundled or tied to CD levels and would allow more frequent adjustments of sales levels separate from transportation levels.

Minimum commodity bills were imposed only on partial requirement customers, were not optional, and generally had no make-up provisions. These new services would be for all customers, would be optional, and could have make-up provisions. In addition, the minimum commodity bills collected costs not incurred whereas the new services would keep accounts current with refunds if costs were not incurred. Finally, minimum commodity bills inhibited competition. In contrast, these new services would stimulate competition with the advance notice of prices that are held firm and the alternative services available because the pipeline would be an open-access transporter.

APPENDIX B—FIRM JURISDICTIONAL VOLUME BY EXPIRATION DATE OF CONTACT

Expiration date	Annual CD [a]		Annual sales [b]	
	Bcf	Cumulative percent	Bcf	Cumulative percent
Pre 1987	1,883	11	664	12
1987	775	15	358	18
1988	1,409	23	471	26
1989	3,649	43	993	44
1990	4,175	67	1,256	66
1991	2,771	83	891	82
1992	923	88	360	88
1993	257	89	115	90
1994	299	91	72	92
1995	219	92	71	93
1996	19	92	3	93
1997	0	92	0	93
1998	0	92	0	93
1999	79	93	32	93
2000	1,303	100	374	100
Total	17,762	100	5,660	100

[a] Composite of 20 major interstate pipeline companies.
[b] Composite of 23 major interstate pipeline companies.
SOURCES: 1986 Forms 2, relevant Index of Purchasers, relevant Statements G and selected Service Agreements.

[Docket No. RM87-34-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued August 7, 1987.

Sousa, Anthony G., Commissioner, *concurring:* I concur with and support this Interim Rule which is part of the Commission's ongoing program to provide open-access transportation services by jurisdictional pipeline companies. Continuation of this program is essential so that the many benefits of competitive gas pricing accorded by open-access transportation to all sectors of the nation's natural gas industry and consumers are not denied.

Nevertheless, I am concerned that the Interim Rule may not provide sufficient incentives for producers and pipelines to renegotiate their problem natural gas contracts. In my concurring statement in Order No. 380, issued June 4, 1984,[1] I recognized the need for direct Commission action to address problem gas contracts, and urged rulemaking proceedings. No direct action has been taken to date.

[1] Docket No. RM83-71-000, Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 27 FERC ¶ 61,318 (1984).

I look forward to reviewing data to be submitted by pipelines and producers under the Interim Rule which are intended to provide a basis to proceed promptly under Section 5 of the Natural Gas Act to deal with problem take-or-pay contracts.

An additional concern relates to the Commission's failure to address the issue of the underlying negotiation by producers and pipelines in determining pass-through of these costs. The pipeline sharing concept is meaningless unless the Commission finds that the underlying transaction or bargain is itself reasonable.[2]

My final concern relates to the concept of a gas inventory charge for dealing with future take-or-pay problems. Although this concept as described in the Interim Rule is both new and experimental, it appears to permit direct pass-through to downstream consumers of take-or-pay liability under existing contracts on a current basis. If this observation is correct, it could serve as a disincentive to renegotiation.

Anthony G. Sousa,

Commissioner.

[Docket No. RM87-34-000

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued August 7, 1987.

Stalon, Commissioner, *concurring:* I concur on the issuance of this Order because it is necessary that the Commission have rules in place to replace those that were promulgated in Order No. 436 and will be vacated upon the issuance of the Court's mandate. I would have preferred more emphasis in the Order on encouraging the producers and pipelines to renegotiate existing contracts by limiting direct billing to 25 percent of buy-out and buy-down costs and less emphasis on strengthening the passthrough mechanism so that such costs could be passed downstream. However, the efficacy of this Order as a tool in pursuing Order No. 436 objectives will be determined principally by what the Commission does as a result of the data requests included in many places in this Order. Therefore, as a step, this Order is a necessary one and I must vote for it.

Charles G. Stalon,

Commissioner.

[FR Doc. 87-18519 Filed 8-13-87; 8:45 am]

BILLING CODE 6717-01-M

[2] The United States Court of Appeals for the District of Columbia Circuit, in *Associated Gas Distributors* stated that:

"It [the Commission] found that pipelines had been able to buy-out substantial portions of their liabilities for about 20¢ on the dollar. J.A. 540. It concluded that these prices were reasonable and that buy-outs were sufficiently widespread to represent a reasonable solution to the problem" (mimeo p. 81).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8151]

Income Tax; Taxable Years Beginning After December 31, 1953; Information Reporting of Allowances, Reimbursements, or Charges For Travel and Other Expenses of Public Employees and Certain Other Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations governing information returns required to be filed by public sector employers and by payors with respect to persons in the service of certain international organizations regarding allowances or reimbursements provided for traveling or other bona fide ordinary and necessary expenses, including an allowance for meals and lodging or a per diem allowance in lieu of subsistence. This action is necessary to clarify existing regulations with respect to information reporting.

These regulations affect employers, employees, certain third-party paying agents, and payors with respect to persons in the service of an international organization.

DATE: These regulations are effective January 1, 1986, and shall apply to information returns required to be filed for calendar years after 1985 without regard to extensions.

FOR FURTHER INFORMATION CONTACT: Renay France of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3829, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1986, the **Federal Register** published proposed amendments (51 FR 985) to the Income Tax Regulations (26 CFR Part 1) under section 6041 of the Internal Revenue Code of 1954. These proposed amendments would clarify the position of the Internal Revenue Service on the reporting of amounts provided to employees and certain other persons as allowances or reimbursements for traveling or certain other business expenses. No public hearing was requested or held. The Internal Revenue Service received a number of comments including several from international organizations indicating that the proposed amendments conflict with certain immunities granted to international organizations.

After consideration of all the comments, the Internal Revenue Service has revised the proposed amendments to avoid this conflict, as discussed below.

In addition, in these final regulations the Internal Revenue Service has made a revision to § 1.6041-3(i) to specify the necessary accounting requirements under existing regulations.

Public Comments

Several international organizations commented that the proposed deletion of § 1.6041-3(n), by which certain international organizations would be subject to reporting under § 1.6041-3(i), would not be consistent with the obligations of the United States Government with respect to international organizations designated by the President of the United States in Executive Orders issued pursuant to 22 U.S.C. 288. Under 22 U.S.C. 288(a), certain organizations have immunities from information reporting because their archives are inviolable. The proposed amendment deleting § 1.6041-3(n) is therefore revised to preserve the existing exemption for such organizations.

Under the proposed amendment, the exemption is not dependent upon whether the recipient is required to account for the amounts received. In the preamble of the notice of proposed rulemaking on these regulations, the Internal Revenue Service stated that the exemption available to public sector employers under § 1.6041-3(j) is subject to an implicit accounting requirement. Paragraphs (j) and (n) of § 1.6041 appear to be comparable provisions. As a result, some international organizations might misconstrue the proposed amendment of § 1.6041-3(n) (redesignated as § 1.6041-3(m)) as containing an implicit accounting requirement. Therefore, the proposed amendment makes clear that the exemption is not subject to an accounting requirement.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis, therefore, is not required.

Regulatory Flexibility Analysis

It is hereby certified that this rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Renay France of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service.

However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.6001–1–1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6041–3 also issued under 26 U.S.C. 6041(a).

Par. 2. Section 1.6041–3 is amended as follows:

1. Paragraph (i) is amended by removing the words "paragraph (b)(4) of § 1.162–17" and by adding in their place the words "§§ 1.162–17(b)(4), 1.274–5(e)(4), or 1.274–5T(f)(4), whichever is applicable".

2. Paragraph (j) is removed.

3. Paragraph (k) is redesignated as paragraph (j).

4. Paragraph (l) is redesignated as paragraph (k).

5. Paragraph (m) is redesignated as paragraph (l).

6. Paragraph (n) is redesignated as paragraph (m).

7. Paragraph (o) is redesignated as paragraph (n).

8. Paragraph (p) is redesignated as paragraph (o).

9. Paragraph (q) is redesignated as paragraph (p).

10. Paragraph (m) as redesignated is revised to read as set forth below:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

* * * * *

(m) Amounts paid as an allowance or reimbursement for traveling or other bona fide ordinary and necessary expenses, including an allowance for meals and lodging or a per diem allowance in lieu of subsistence, to persons in the service of an international organization (without regard to whether there is a requirement to account for such amounts) if—

(1) The organization is designated as an international organization by the President of the United States in Executive Orders issued pursuant to 22 U.S.C. 288, and

(2) The organization has immunity with respect to the inviolability of its archives pursuant to an international agreement having full force and effect in the United States;

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: July 29, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–18608 Filed 8–13–87; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal, Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1987.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the

table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{∞}
•		•			•			•		•			•		•	
September 1987...	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 4th day of August 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-18592 Filed 8-13-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Management of Wild Free-Roaming Horses and Burros

AGENCY: Forest Service, USDA.

ACTION: Completion of review of existing regulation.

SUMMARY: In compliance with Executive Order 12291 and Departmental regulations, the Forest Service has reviewed its rules at 36 CFR Part 222, Subpart B and has concluded that the rules require no revision.

FOR FURTHER INFORMATION CONTACT: Questions about this review should be addressed to Don Nelson, Range Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 235-8142.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12291 and Department Regulation 1512-1, the Forest Service has reviewed its mpc rules at 36 CFR Part 222, Subpart B, which set forth how the Forest Service protects, manages, and controls wild free-roaming horses and burros on National Forest System lands. The rules also instruct the Chief of the Forest Service to maintain vigilance in ensuring the welfare of wild free-roaming horses and burros that wander or migrate from National Forest System lands. If these animals use lands administered by the Bureau of Land Management, the Chief is instructed to cooperate with the Department of Interior through the Bureau of Land Management in administering the animals.

Notice of intent to review the rules was published in the **Federal Register** on April 19, 1984, at 49 FR 15737 as part of the Department of Agriculture's Semiannual Regulatory Agenda. Review of these existing rules was conducted by contacting Regional and Forest-level personnel, who were asked to identify any needed changes in the regulations as a result of dealing with persons interested in wild free-roaming horses and burros and implementing the existing regulations. Additionally, the Washington Office Range Management Staff made an indepth review of the regulations. Based on this internal review, the Forest Service has determined that the regulation does not impose economic or regulatory burdens on the public, sufficiently guides the protection, management, and control of these animals on National Forest System lands, and should be retained in its present form.

Allan J. West,

Acting Chief, FS.

August 10, 1987.

[FR Doc. 87-18615 Filed 8-13-87; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[OA-FRL-3244-9]

Revisions to Statement of Organization and General Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document updates the statement of organization and general information under Subpart B—Headquarters for §§ 1.37(a,e), 1.45(b), 1.47(d), and 1.49(g) to reflect the current organization of the U.S. Environmental Protection Agency. This is intended to advise the public of recent changes.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Petruccelli, Director, Management and Organization Division, Office of Administration 202-382-5000.

List of Subjects in 40 CFR Part 1

Organization and functions (Government agencies).

Dated: July 29, 1987.

C. Morgan Kinghorn,

Acting Assistant Administrator for Administration and Resources Management.

Part 1 of Title 40 of the Code of Federal Regulations is revised as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: 5 U.S.C. 552.

2. Section 1.37 is amended by revising paragraphs (a) introductory text, and (e) to read as follows:

§ 1.37 Office of External Affairs.

(a) *Office of Federal Activities.* The Office of Federal Activities is headed by a Director who reports to the Assistant Administrator for External Affairs and supervises all the functions of the Office. The Director acts as national program manager for five major programs that include: (1) The review of other agency environmental impact statements and other major actions under the authority of Section 309 of the Clean Air Act, (2) EPA compliance with the National Environmental Policy Act (NEPA) and related laws, directives, and Executive policies concerning special environmental areas and cultural resources, (3) compliance with Executive policy on American Indian affairs and the development of programs for environmental protection on Indian lands, and (4) the development and oversight of national programs and internal policies, strategies, and procedures for implementing Executive Order 12088 and other administrative or statutory provisions concerning compliance with environmental requirements by Federal facilities. The Director chairs the Standing Committee on Implementation of Executive Order 12088. The Office serves as the Environmental Protection Agency's (EPA) principal point of contact and liaison with other Federal agencies and provides consultation and technical assistance to those agencies relating to EPA's areas of expertise and

responsibility. The Office administers the filing and information system for all Federal Environmental Impact Statements under agreement with the Council on Environmental Quality (CEQ) and provides liaison with CEQ on this function and related matters of NEPA program administration. The Office provides a central point of information for EPA and the public on environmental impact assessment techniques and methodologies.

* * * * *

(e) *Office of Community and Intergovernmental Relations.* The Office of Community and Intergovernmental Relations is under the supervision of a Director who serves as the principal point of contact with public interest groups representing general purpose State and local governments, and is the principal source of advice and information for the Administrator and the Assistant Administrator for External Affairs on intergovernmental relations. The Office maintains liaison on intergovernmental issues with the White House and Office of Management and Budget (OMB); identifies and seeks solutions to emerging intergovernmental issues; recommends and coordinates personal involvement by the Administrator and Deputy Administrator in relations with State, county, and local government officials; coordinates and assists Headquarters components in their handling of broad-gauged and issue-oriented intergovernmental problems. It works with the Regional Administrators and the Office of Regional Operations to encourage the adoption of improved methods for dealing effectively with State and local governments on specific EPA program initiatives; works with the Immediate Office of the Administrator, Office of Congressional Liaison, Office of Public Affairs, and the Regional Offices to develop and carry out a comprehensive liaison program; and tracks legislative initiatives which affect the Agency's intergovernmental relations. It advises and supports the Office Director in implementing the President's Environmental Youth Awards program.

3. Section 1.45 is amended by revising paragraph (b) to read as follows:

§ 1.45 Office of Research and Development.

* * * * *

(b) *Office of Environmental Engineering and Technology Demonstration.* The Office of Environmental Engineering and Technology Demonstration (OEETD) under the supervision of a Director, is responsible for planning, managing, and evaluating a comprehensive program of research, development, and demonstration of cost effective methods and technologies to: (1) Control Environmental impacts associated with the extraction, processing, conversion, and transportation of energy, minerals, and other resources, and with industrial processing and manufacturing facilities; (2) control environmental impacts of public sector activities including publicly-owned waste water and solid waste facilities; (3) control and manage hazardous waste generation, storage, treatment, and disposal; (4) provide innovative technologies for response actions under Superfund and technologies for control of emergency spills of oils and hazardous waste; (5) improve drinking water supply and system operations, including improved understanding of water supply technology and water supply criteria; (6) characterize, reduce, and mitigate indoor air pollutants including radon; and (7) characterize, reduce, and mitigate acid rain precursors from stationary sources. Development of engineering data needed by the Agency in reviewing premanufacturing notices relative to assessing potential release and exposure to chemicals, treatability by waste treatment systems, containment and control of genetically engineered organisms, and development of alternatives to mitigate the likelihood of release and exposure to existing chemicals. In carrying out these responsibilities, the Office develops program plans and manages the resources assigned to it; implements the approved programs and activities; assigns objectives and resources to the OEETD laboratories; conducts appropriate reviews to assure the quality, timeliness, and responsiveness of outputs; and conducts analyses of the relative environmental and socioeconomic impacts of engineering methods and control technologies and strategies. The Office of Environmental Engineering and Technology Demonstration is the focal point within the Office of Research and Development for providing liaison with the rest of the Agency and with the Department of Energy on issues associated with energy development. The Office is also the focal point within the Office of Research and Development for liaison with the rest of the Agency on issues related to engineering reseach and development and the control of pollution discharges.

* * * * *

4. Section 1.47 is amended by adding paragraph (d) to read as follows:

§ 1.47 Office of Solid Waste and Emergency Response.

* * * * *

(d) *Office of Underground Storage Tanks.* The Office of Underground Storage Tanks, under the supervision of a Director, is responsible for defining, planning, and implementing regulation of underground storage tanks containing petroleum, petroleum products, and chemical products. In particular, this Office is responsible for overseeing implementation of Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended. The Office develops and promulgates regulations and policies including notification, tank design and installation, corrective action, and State program approvals. It also plans for an oversees utilization of the Underground Storage Tank Trust Fund established by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

5. Section 1.49 is amended by adding paragraph (g) to read as follows:

§ 1.49 The Office of Water.

* * * * *

(g) *Office of Wetlands Protection.* The Office of Wetlands Protection, under the supervision of a Director, administers the 404/Wetlands Program and develops policies, procedures, regulations, and strategies addressing the maintenance, enhancement, and protection of the Nations Wetlands. The Office coordinates Agency issues related to wetlands.

[FR Doc. 87-18092 Filed 8-13-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 228

[OW-4-FRL-3246-4]

Ocean Dumping; Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the alternative dredged material disposal site in the Atlantic Ocean offshore Morehead City, North Carolina ("the site") as an EPA approved ocean dumping site for the dumping of dredged material. The Morehead City site includes that part of the existing site that is greater than 3 nautical miles (nmi) from shore and an adjacent area seaward. This site is chosen so as to decrease the possibility of interference with fisheries and recreational use of the ocean. This action is necessary to provide an acceptable ocean dumping

site for the current and future disposal of dredged material.

DATE: This designation shall become effective on September 14, 1987.

ADDRESSES: The file supporting this site designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460
EPA Region IV, 345 Courtland Street NE., Atlanta, GA 30365

FOR FURTHER INFORMATION CONTACT: Christopher Provost, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act") gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is within Region IV and is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977, (42 FR 2461 *et seq.*), and was extended on August 19, 1985 (50 FR 33338). The list established the Morehead City site as an interim site.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this [39 FR 16186 (May 7, 1984)].

EPA has prepared a draft and final EIS entitled, "Environmental Impact Statement—Morehead City Ocean Dredged Material Site Designation."

On Friday, February 8, 1985, a notice of availability of the Final Morehead City EIS for public review and comment was published in the **Federal Register** [48 FR 5423 (February 8, 1985)]. The public comment period on the final EIS closed March 11, 1985. Anyone desiring a copy of the EIS may obtain one from the address above.

The final EIS consists of supplemental information to the draft EIS and must be attached to the draft EIS to povide a full document.

C. Coastal Zone Management and Endangered Species Coordination

By letter of October 18, 1984, the State of North Carolina concurred with EPA's conclusion that this site designation is consistent with the State Coastal Zone Management Plan. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of this disposal site will not affect the endangererd species under their jurisdiction.

D. Site Designation

Morehead City is one of only two deep water ports in North Carolina. Morehead City supported shipping commerce of 3 million tons in 1980. Consequently, maintenance of this port for navigation is vital to the state and local economies.

Boundary coordinates for the Morehead City site are as follows:

34°38'30" N, 76°45'0" W;
34°38'30" N, 76°41'42" W;
34°38'09" N, 76°41'0" W;
34°36'0" N, 76°41'0" W;
34°36'0" N, 70°45'0" W.

On June 4, 1987, EPA proposed this final site designation in the **Federal Register** [52 FR 21082 (June 4, 1987)]. The preamble to this proposed rule change presented the characteristics of the site in terms of the eleven specific factors identified in Section 228.5 of the Ocean Dumping Regulations which, taken together, constitute an assessment of the site's suitability as a repository for dredged material.

That assessment concludes that this site is appropriate for final designation. One letter of comment was received on the proposed rule. That comment, from the North Carolina State Ports Authority, supported the designation of the Morehead City site as proposed.

E. Action

The designation of the Morehead City dredged material disposal site as an EPA Approved Ocean Dumping Site is being published as final rulemaking. Management authority of these sites will be the responsibility of the Regional Administrator of EPA Region IV.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this final rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget Review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This final rulemaking notice represents the Record of Decision required under regulations promulgated by the Council on Environmental Quality for Agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 3, 1987.

Lee A. DeHihns III,

Acting Regional Administrator, Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of Title 409 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. secs. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) the words and coordinates "Morehead City

Harbor-Maintenance Dredging Hopper Dredge Disposal Area" 3 miles x 3 miles; approximate latitude and longitude, bounded north 34°40'00", south 34°38'30", east 76°41'00", west 76°43'00", and by adding paragraph (b)(31) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(31) Morehead City, North Carolina, Dredged Material Disposal Site-Region IV.

Location: 34°38'30" N., 76°45'0" W.; 34°38'30" N., 76°41'42" W.; 34°38'09" N., 76°41'0" W; 34°36'0" N., 76°41'0" W., 34°36'0" N., 76°45'0" W.

Size: 8 square nautical miles.

Depth: Average 12.0 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the Morehead City Harbor, North Carolina area. All material disposed must satisfy the requirements of the ocean dumping regulations.

[FR Doc. 87-18316 Filed 8-13-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 412

[BERC-329-FC]

Medicare Program; Payment Adjustments for Sole Community Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule changes Medicare prospective payment regulations for inpatient hospital services in order to allow an adjustment to the payment amounts (if warranted) under the prospective payment system for sole community hospitals that experience a significant increase in inpatient operating costs attributable to the addition of new inpatient services or facilities. In addition, in accordance with section 9302(e)(4) of the Omnibus Budget Reconciliation Act of 1986, we are extending certain payment provisions for sole community hospitals.

DATES: *Effective Date:* These final regulations are effective on September 14, 1987.

Comment Period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 13, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-329-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-329-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Ed Rees, (301) 597-6403.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, established a prospective payment system for Medicare payment of inpatient hospital services, effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs), and the payment rate is adjusted by a weighting factor for the DRG to which each discharge is assigned.

Section 1886(d)(5)(C)(ii) of the Act requires that the special needs of sole community hospitals (SCHs) be taken into account under the prospective payment system. The statute specifies a special payment formula for hospitals so classified and further provides for additional payments to SCHs experiencing a significant volume decrease (more than a five percent decrease in total discharges of inpatients) because of extraordinary circumstances beyond their control. (These additional payments were time-limited in that they were available for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1986. However, as discussed below, the period was extended by legislative action.) Section 1886(d)(5)(C)(ii) of the Act defines SCHs as those hospitals that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), are the sole source of inpatient hospital services reasonably available to Medicare beneficiaries in a geographic area. Regulations governing the special treatment of SCHs under the prospective payment system are set forth in section 42 CFR 412.92.

As noted above, section 1886(d)(5)(C)(ii) of the Act provides that unlike other short-term acute-care hospitals that are paid under the prospective payment system, SCHs are to be paid under a unique payment formula. Generally, under section 1886(d)(1)(A) of the Act, hosptials paid under the prospective payment system progress through a four-year transition period during which a declining portion of their prospective payment rate is based on their historical Medicare costs, and an increasing portion is based on a Federal rate. However, rather than progressing through the transition period to fully national payment rates, SCHs continue to receive payment rates equal to 75 percent of the hospital-specific rate and 25 percent of the Federal regional rate adjusted by an update factor. Therefore, the hospital-specific portion of the prospective payment rate has a unique significance for SCHs in that it is a permanent feature of their payment formula. Generally, for other hospitals under the prospective payment system, the hospital-specific portion of the rate is a transitional mechanism to provide an opportunity for such hosptials to adjust their operations during the phase-in to fully national rates.

II. Summary of Proposed Rule and of Pub. L. 99-272 and Pub. L. 99-509 Changes

On March 10, 1986, we published a notice of proposed rulemaking (NPRM or proposed rule) (51 FR 8211) to allow for an adjustment (if warranted) to the hospital specific portion of the prospective payment rate for SCHs. Utilizing the Secretary's general exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act, we proposed to provide an additional adjustment for SCHs under certain circumstances. Because such a large portion of the payment to SCHs is based on their individual historical cost experience, we stated that SCHs should be afforded the opportunity to request an adjustment of the hospital-specific portion of the payment rate. Consequently, we proposed to amend § 412.92 to allow SCHs experiencing certain significant cost distortions to

request an adjustment of the hospital-specific portion of their prospective payment rates. Under the proposed rule, SCHs would be required to submit documentation to their fiscal intermediaries detailing the circumstances that gave rise to the cost distortion, the community need for the additional health care services or change in circumstances that had occurred, and its resulting cost impact. We stated that adjustments would not be granted under the proposed rule if the cause of the cost distortion was not related to community medical needs.

To implement the policy, we proposed that the intermediary would forward to HCFA's central office for processing, within 90 days of receipt of the necessary information, all submitted documentation, its analysis of the SCH's claims, a copy of the overall cost data for the base year and the year in which the distortion occurred, and its recommendation for acceptance or rejection of the request. We further proposed that HCFA would determine if an adjustment to the hospital-specific portion was justified based on the overall costs in the year of the cost distortion as compared to the overall base-year costs and, if so, the amount of the adjustment granted. HCFA would then notify the intermediary of the decision within 90 days of receiving all the necessary information. Adjustments granted under this proposed provision would be made on a prospective basis beginning with the first day of the first cost reporting period after a favorable determination.

Subsequent to publication of the NPRM, the Congress passed and the President signed on April 7, 1986 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272). Section 9111 of Pub. L. 99–272 amends section 1886(d)(5)(C)(ii) of the Act to provide that an SCH that experiences a "significant increase in operating costs attributable to the addition of new inpatient facilities or services at such hospital (including the opening of a special care unit)" subsequent to the base year shall receive an adjustment to the payment system as may be necessary to reasonably compensate for such increased costs.

The following are changes being made as a result of the enactment of section 9111 of Pub. L. 99–272 that were not part of the proposed rule. The statutory amendment—

- Is time-limited, that is, payments are applicable for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1989.
- Applies only to the addition of new services or new facilities.
- Applies to the granting of an adjustment to the payment amounts to compensate an SCH reasonably for the increased cost of adding new services or new facilities.

We are incorporating these changes in this final rule, as discussed in our responses to comments below.

In addition, Congress passed and the President signed on October 21, 1986 the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). As noted above, section 9302(e)(4) of Pub. L. 99–509 amends section 1886(d)(5)(C)(ii) of the Act to provide for a two-year extension of the special payment provision for an SCH that experiences a significant volume decrease (more than a five percent decrease in its total discharges of inpatients) because of extraordinary circumstances beyond its control. The special payment is extended for hospitals so classified for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1988 (rather than October 1, 1986). We are amending § 412.92(e)(1) to implement this change.

III. Comments and Responses

A total of three items of correspondence were received timely during the comment period. A summary of the public comments and our responses to the comments are presented below:

Comment: One commenter suggested that we defined too narrowly the events for which an SCH would be granted an adjustment. The commenter cited an example (a management contract for certain patient care or administrative services entered into after the hospital's base period) for which HCFA would not provide an adjustment, according to the NPRM.

Response: We believe it would be inappropriate to grant an adjustment to the payment amounts under section 1886(d)(5)(C)(iii) of the Act, based on a change in the arrangement for providing services, because to do so would weaken the incentives under the prospective payment system to furnish services in the most efficient manner. If we were to provide an adjustment to the payment amounts for changes in an arrangement under which services are provided, we would be reducing the incentive to lower operating costs by subsidizing those changes that result in increased costs. Such payments would be unnecessary and unreasonable under the prospective payment system.

The addition of new inpatient services, whether provided directly or under an arrangement, may be considered in granting an adjustment to the payment amounts (that is, the total prospective payment amounts for a given cost reporting period for an SCH). Thus, in this context, it is the nature of the new services, not the mechanism for providing those services, that would determine whether an adjustment is warranted.

We further believe that the legislative history of the amended section 1886(d)(5)(C)(ii) of the Act supports our position. Given that this statutory amendment was enacted subsequent to our publication of the proposed rule, we believe that Congress deliberately narrowed the range of cost-distorting events occurring after the base period (to the addition of new services or facilities) that should be considered for purposes of a payment adjustment to SCHs.

Accordingly, we are amending § 412.92 by adding a new paragraph (f) to provide for an adjustment to an SCH's prospective payments as may be necessary to reasonably compensate SCHs to take into account the addition (subsequent to the base year) of new inpatient facilities or new services (including, for example, the opening of a special care unit) that result in a significant increase in operating costs.

Comment: One commenter suggested that, using the authority under section 1886(b)(4)(A) of the Act, we should provide an adjustment to SCHs for extraordinary circumstances or events beyond a hospital's control, such as the need to pay premium wages to recruit and retain highly skilled hospital personnel.

Response: For cost reporting periods beginning on or after October 1, 1983, the provisions for granting an exception from the ceiling on the rate of hospital cost increases, under section 1886(b)(4)(A) of the Act and implementing regulations at § 413.40(g)(2), apply only to hospitals not subject to the prospective payment system. In defining the hospital-specific portion of the prospective payment rates, section 1886(d)(1)(A) of the Act refers only to section 1886(b)(3) of the Act. Exceptions and adjustments authorized under section 1886(b)(4) were not explicitly incorporated into the prospective payment system.

However, the operating costs of a new inpatient facility or service would include the salary costs of personnel hired to staff the new facility or furnish the added service. To the extent that it is necessary for an SCH to pay premium wages to recruit highly skilled personnel necessary to provide services not previously available, it is possible that

an SCH could qualify for an adjustment under § 412.92(f) of these final regulations. SCHs encountering such situations should submit the necessary documentation in accordance with the new § 412.92(f).

Comment: One commenter requested that an adjustment be made to the hospital-specific rate of SCHs for the costs associated with new or advanced technologies that enhance patient care.

Response: The prospective payment system is designed to account for changes that enhance patient care. Through the establishment of the applicable percentage change to the prospective payment rates, which incorporates a policy target adjustment factor (productivity, cost-effective technologies, and improved practice patterns), much of the cost associated with new technology is already recognized in the prospective payment rates. In addition, section 9302(e)(1) of Pub. L. 99–509 requires annual reclassification and recalibration of DRGs, beginning with discharges occurring in fiscal year 1988, which we believe will further take into consideration the DRG-specific effects of new or advanced technolgoies. However, to the extent that SCHs add new patient care services or facilities that involve the adoption of new technology, the operating costs of such new services or facilities would be considered in an adjustment to the SCH's payments. Of course, since the capital-related costs of new technologies and services continue to be paid on a reasonable cost basis, capital-related costs may not be considered in determining the amount of adjustments to their payments. Hospitals requesting an adjustment to the payment amounts for new patient care services that involve new technologies must make sure that the documentation in their requests clearly delineates capital-related costs from operating costs.

Comment: One commenter requested that adjustments be granted to SCHs for new services for which a certificate of need has been granted.

Response: In applying for a certificate of need that relates only to capital expenditures, a hospital initiates the application process long before the service is actually provided. In some circumstances, because of changing population patterns or changing community medical needs, the service is no longer necessary by the time the certificate is granted. Further, it is possible that in anticipation of future needs (which may or may not materialize), a certificate of need could be granted for hospital expansion for services that are already clearly well beyond current needs.

In addition, since an SCH adjustment under these final regulations applies only to inpatient operating costs, a certificate of need for a capital-related expansion for which a certificate of need is required may not generate additional inpatient operating costs as the new capital may be a substitution for labor or for old capital and as such would not be considered in making an adjustment to an SCH's prospective payment amounts. In those situation, it would be inappropriate and unwarranted for us to provide a special adjustment to the payment amounts to an SCH.

Comment: One commenter agreed with our proposal to use reasonable cost and utilization standards in calculating adjustment amounts. However, the commenter cautioned that the special needs of an SCH may dictate lower utilization levels than is common. Therefore, the commenter urged that utilization standards not be "unreasonably high."

Response: As we pointed out in the NPRM, it is generally recognized that a hospital's initial period costs and utilization for new services may not reasonably reflect ongoing costs per case in future periods. In stating that adjustment amounts would be calculated using reasonable cost and utilization levels, it was not our intention to penalize SCHs. Rather, it is an attempt to protect the program from excessive expenditures in future periods when an SCH's cost would be expected to more nearly approximate efficient levels.

We recognize that many SCHs, by virtue of the fact that they are often located in areas that are sparsely populated, may never achieve utilization levels that are similar to those of hospitals in densely populated urban areas. In approximating reasonable utilization levels, we would generally consider past utilization in a particular hospital and other similarly situated hospitals. SCHs are encouraged to submit detailed information justifying the reasonable cost and utilization levels that they believe are appropriate to be used in determining an adjustment amount. We will evaluate each hospital's submittal in light of the available information. Moreover, since any adjustment to the payment amounts under this provision will be determined and paid on a year-to-year basis, costs associated with a start-up, such as training of staff and the typically lower than average initial utilization, and subsequent changes in inpatient operating costs as the new inpatient service or facility matures should automatically be reflected in the cost per case effects of the added service or facility.

Comment: Two commenters requested that during the application process, if base-year costs have been understated because of an intermediary error or misapplication of the regulations, a retroactive modification be made effective with the cost reporting period during which the error became part of the basis for payment.

Response: The provisions of this final rule apply only in those situations in which new services or facilities are added in an SCH subsequent to its base period. While we will provide for an adjustment (if warranted) to the total prospective payments for SCHs, the base period costs of SCHs are *not* modified if an adjustment is granted under this rule. Separate regulations (§§ 412.71 through 412.73) apply to the determination of base-year costs and the establishment of the hospital-specific rate, and modifications thereto.

Comment: One commenter objected to our proposal to grant adjustments for cost distortions on a prospective basis only. Noting the language of section 9111(b) of Pub. L. 99–272, the commenter suggested that our proposed rule contravenes the clear intent of Congress.

Response: We note the publication of the proposed rule pre-dated the enactment of Pub. L. 99–272. Although we believe that there was support for implementing adjustments to SCHs for cost distorting events on a prospective basis only, we agree that the legislative language of section 1886(d)(5)(C)(ii) of the Act requires revision of our original proposal. That section of the Act provides that "* * * the Secretary shall provide for such adjustment to the payment amounts under this subsection for such cost reporting period and subsequent cost reporting periods as may be necessary to reasonably compensate such hospital for such increased costs."

An adjustment to the payment amounts implies making an—

- Adjustment to the Federal and hospital-specific rates;
- Over-adjustment of the hospital-specific portion only, since the 75 percent blend of the hospital-specific rate would have to provide 100 percent of the reasonable compensation for newly added services or facilities; or
- Adjustment to the final payments under the prospective payment system for a given cost reporting period (that is an end-of-line payment adjustment)

without adjusting the Federal or hospital-specific rates.

Since there is no statutory basis for modifying the Federal (regional) rates, nor do we believe that Congress intended that an over-adjustment be made to the hospital-specific portion, an end-of-line payment adjustment is the easiest and most appropriate method of payment to administer.

We believe that it is appropriate to compare a hospital's total DRG revenue based on DRG-adjusted prospective payment rates (including outlier payments determined under Subpart F of this part, and additional payments made for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.118) to its total Medicare inpatient operating costs as defined under § 412.2(c), since the prospective payments represent payments for inpatient operating costs of all items and services used to furnish inpatient hospital care to Medicare beneficiaries. The inpatient operating costs of new services or facilities would be included in the hospital's total Medicare inpatient operating costs, and any incremental effect of the added services or facilities or revenues (if, for example, the newly added services or facilities result in a change in the hospital's case mix) would be reflected in the hospital's total Medicare prospective payments. Therefore, if the hospital's Medicare prospective payments exceed its Medicare inpatient operating costs, we believe that the hospital would already be reasonably compensated for all items and services furnished to Medicare beneficiaries including the newly added services or facilities.

For the case in which Medicare inpatient operating costs exceed Medicare prospective payments, that portion of the Medicare inpatient operating loss that the hospital can satisfactorily demonstrate to HCFA is attributable to the added service or facility constitutes the amount of the adjustment, not to exceed the inpatient operating loss, that may be paid under § 412.92(f).

We believe that this approach is fair and reasonable in the context of a payment system in which hospitals are paid a predetermined price per discharge regardless of the items and services associated with each discharge. Not only does this approach place all SCHs on an equal basis in that adjustments are available only to the extent necessary to afford hospitals relief from operating losses attributable to the addition of new inpatient services or facilities, but also it is simpler to administer because a determination of whether an SCH is experiencing a Medicare inpatient operating profit or loss is both an unambiguous and objective measure of the reasonableness of Medicare compensation.

Furthermore, we believe that this new provision was not intended by Congress to provide guaranteed profits under the prospective payment system in cases in which new inpatient services or facilities are added. Also, we believe that the only appropriate way to determine whether a hospital is being reasonably compensated after it has added a new service or facility is to compare its total Medicare inpatient operating costs to its total Medicare inpatient operating payments since the payments are for a total package of services needed to provide quality patient care and are not constructed of prices for individual items and services furnished to Medicare beneficiaries. The prospective payment system already provides incentives to hospitals to earn profits with no restrictions on the hospitals as to how the profits may be used. We recognize that in some cases the additional costs incurred for new inpatient services or facilities may be incidental to the total amounts received under the prospective payment system. Therefore, SCHs that continue to profit under the prospective payment system (that is, an SCH's Medicare prospective payment amounts exceed its Medicare inpatient operating costs) when new inpatient services or facilities are added will not be eligible to receive additional payments under this final rule. These SCHs would already be reasonably compensated for all the services they provide to Medicare beneficiaries, including the added services or facilities. Likewise, SCHs that initially experience net operating losses attributable to the addition of new services or facilities, and thus qualify for a payment adjustment, would not continue to be eligible for such an adjustment once that SCHs begin showing a profit.

In further support of this approach, we note that, while the addition of a new service or facility may result in incremental inpatient operating costs to the hospital relative to its inpatient operating costs immediately preceding such addition, those inpatient operating costs prior to the addition of new services or facilities may bear no relationship to the hospital's Medicare payments. That is, the inpatient hospital prospective payment system was established precisely to provide incentives encouraging hospitals to reduce their costs below their payments. To the extent that a hospital has done so, its payments have not been reduced to reflect the operating cost reductions it has effected. It is possible that, in effecting such cost reductions, the hospital has simply become more efficient than it was when its hospital-specific rate was established. It is also possible that the hospital has reduced the services it typically furnishes to inpatients. However, as noted previously, the hospital does not experience a Medicare payment reduction regardless of its actions in reducing inpatient operating costs.

The mere fact that a sole community hospital adds a new inpatient service or facility would not seem to warrant an automatic payment adjustment. The ability of such a hospital to add a new inpatient service or facility and remain profitable under the prospective payment system suggests that the hospital has implemented other offsetting cost reductions or used some or all of its profits to add a new inpatient service or facility. If a hospital is still making profits under the prospective payment system after adding new inpatient services or facilities, it is our position that the hospital is being reasonably compensated for such services or facilities.

Consequently, we have revised our proposal. This final rule (§ 412.92(f)) provides that if an SCH meets the criteria for an adjustment to its prospective payments, the adjustment will be made for the period in which the cost distortion resulting from the addition of new facilities or services was first experienced and for subsequent cost reporting periods beginning before October 1, 1989, for which the adjustment continues to be warranted.

Comment: One commenter requested that we issue, subject to public comment, more specific guidance for use by the fiscal intermediaries and our regional offices on the documentation requirements of § 412.92(f) and the review process.

Response: We believe that § 412.92(f), as issued in this final rule, provides an adequate explanation of the documentation requirements and review process. However, because of the changes resulting from implementation of section 9111 of Pub. L. 99-272, refinements to the documentation requirements an SCH is required to submit and to the HCFA review process, that we had discussed in the NPRM, are necessary.

SCHs that apply for an adjustment to their payments under the prospective

payment system will be required to submit to their fiscal intermediary for review and processing written documentation within 180 days of receiving a final notice of program reimbursement (hospitals may request an interim adjustment prior to receiving a final notice of program reimbursement) to—

- Identify the new inpatient service or facility responsible for the cost increase and the dates the new inpatient service or facility became operational;
- Specify the direct costs of the new inpatient service or facility and the impact of the added service on Medicare payments; and
- Specify the indirect costs attributable to the added new inpatient service or facility. The overall prospective payment rates include indirect overhead costs associated with all services. Therefore, in recognizing any adjustment to payments for indirect overhead costs, we would recognize only actual increases in overhead costs incurred as a result of the addition of the new inpatient service or facility, not merely the reallocation of indirect costs resulting from the cost finding process of the Medicare cost report.

Under the review process, the fiscal intermediary is responsible for verifying that the inpatient services or facilities are actually new and not simply a reconfiguration of previously existing services or facilities. The fiscal intermediary must also verify the incremental direct and indirect costs that occur as a result of adding the new inpatient service or facility. The fiscal intermediary must submit within 60 days of receipt of the SCH's request the following documentation to HCFA for a final determination:

- The SCH's submittal of documentation.
- An analysis and recommendation concerning the SCH's request.
- The Medicare cost report for the cost reporting period in which the distortion first occurs and the prior period's Medicare cost report.

Within 120 days of receiving all the necessary information from the fiscal intermediary, HCFA will make its determination. For the reasons stated above, subsequent cost reporting periods will be evaluated independently using the same process. In making a determination for reasonable compensation to SCHs, HCFA's review process includes but is not limited to—

- Complete analysis of documentation submitted;
- Comparison of costs and utilization of the new inpatient service or facility to the costs and utilization in similar hospitals to determine the reasonableness of the SCH's costs, particularly, the costs of the added service or facility;
- Evaluation of the change in the SCH's financial position from the period immediately prior to the addition of the new inpatient service or facility to the cost reporting period when the new service or facility first became operational, including whether any deterioration in the hospital's Medicare inpatient operating margin is attributable to the addition of the new inpatient service or facility; and
- Determination of an adjustment, if warranted, based on the inpatient operating loss specifically attributable to the newly added service or facility not to exceed the total Medicare inpatient operating loss from the SCH's prospective payments.

We note that each SCH's circumstances must be evaluated on an individual basis; therefore, at this time, it is difficult to establish more specific guidelines. As we gain experience with the payment adjustment, we will consider the necessity of publishing additional guidelines through our instructional issuances system.

Comment: One commenter requested that, because the maximum review period for an adjustment would be 180 days, the adjustment be granted retroactive to the cost reporting period in which the hospital incurs the cost.

Response: As stated in response to a previous comment, we are revising the provisions we had proposed in the NPRM in accordance with section 9111 of Pub. L. 99–272. Adjustments that are granted will be made effective for the cost reporting period in which the additional cost for the new inpatient facility or service initially occurred and for subsequent cost reporting periods (for which the adjustment continues to be warranted) beginning before October 1, 1989. Since an adjustment will be granted effective with the cost reporting period in which the additional cost initially occurred, the maximum 180-day time period for processing requests does not preclude, other than for a temporary period of time, an SCH from receiving reasonable compensation. In addition, we believe that, because of the intermediaries' heavy workloads, up to 60 days is an appropriate period of time to provide for a thorough review of each SCH's request. Similarly, since our workload in central office is also demanding, we believe that a maximum 120-day period is necessary, although we will, of course, review each request as expeditiously as possible.

IV. Regulatory Impact Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to meet criteria for a "major rule". A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a regulatory flexibility analysis in a manner consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we treat all hospitals as small entities.

In the proposed rule published March 10, 1986, we gave reasons why we had not prepared an economic impact analysis under E.O. 12291, or a regulatory flexibility analysis under the RFA. No comments were received on that statement.

As of September 15, 1986, 363 hospitals were classified as sole community hospitals. We expect that a small number of these will meet the criteria for an adjustment based on the addition of new services or facilities resulting in significant increases in operating costs. Additionally, we expect that in most cases the amounts of adjustments will be small relative to total payment for all hospitals. Therefore—

- We do not expect an annual effect on the economy to approach the $100 million threshold.
- The effects on costs or prices for consumers, hospitals and the Medicare program will be small.
- While it is possible that there may be a small effect on employment for those hospitals that qualify for an adjustment, the effect would not be adverse.

In summary, the provisions of this rule are not likely to bring about effects that would qualify it as a major rule. Further, since we expect that a relatively small number of hospitals will apply and qualify for an adjustment under this regulation, the Secretary certifies that

this rule will not result in a significant impact on a substantial number of small entities. Therefore, we have not prepared either an impact analysis under E.O. 12291, or a regulatory flexibility analysis.

V. Other Required Information

A. Waiver of Proposed Rulemaking

We published an NPRM on March 10, 1986 that would allow an adjustment (if warranted) to the payment rates for SCHs that experience certain significant cost distortions subsequent to their base year. After publication of the NPRM, Pub. L. 99–272 was enacted (April 7, 1986). Section 9111 of Pub. L. 99–272 amended section 1886(d)(5)(C)(ii) of the Act to provide that, if an SCH that experiences a significant increase in operating costs attributable to the addition of new inpatient facilities or services subsequent to the base year, the Secretary shall provide such a payment adjustment as is necessary to ensure reasonable compensation for the added service or facility, applicable with cost reporting periods beginning on or after October 1, 1983 and before October 1, 1989.

A number of the changes in this final rule (such as provisions concerning the addition of new inpatient facilities or services, and the time period for which the adjustments may be made) are mandated by section 9111 of Pub. L. 99–272 and require no interpretation. However, because the legislation differs somewhat from the NPRM, and the Secretary is allowed some discretion in implementing section 9111 of Pub. L. 99–272, we ordinarily would publish another NPRM to afford a period for public comment. Nevertheless, we believe that another NPRM is unnecessary, and we find good cause to waive the procedure.

We believe waiving the proposed rulemaking procedure is appropriate in order to allow SCHs that have already experienced cost increases attributable to the addition of new inpatient facilities or services subsequent to the base period to request and, if qualified, to receive reasonable compensation as quickly as possible. Since we believe that some SCHs have already experienced cost increases based on the addition of new inpatient facilities or services, and since we cannot grant them statutorily mandated relief without publication of a final rule, we believe it is appropriate to waive the proposed rulemaking procedure. To require that affected SCHs await publication of a new proposed rule, evaluation of public comments on that proposed rule, and development and publication of a final rule would unnecessarily delay receipt of reasonable compensation and could adversely affect their ability to continue to furnish inpatient care to Medicare beneficiaries. In addition, these final rules will benefit some SCHs and will not disadvantage other SCHs in terms of decreasing their payment amounts. Moreover, we are providing a 60-day comment period for public comment, and we will consider comments concerning the definition of reasonable compensation and the use of an end-of-line payment adjustment (instead of an adjustment to the hospital-specific rate as we had proposed) that we receive by the end of the comment period in determining whether changes to the policy are necessary.

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, as indicated above, if we decide that changes concerning the SCH provisions are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in the preamble of that rule. Should we make further changes in another final rule, we would recompute any adjustments previously granted to accommodate those changes.

B. Paperwork Reduction Act

Section 412.92(f) of this final rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), we are required to obtain OMB approval of "collection of information" requirements that are contained in any regulations published by Federal agencies. OMB regulations (5 CFR Part 1320) require Federal agencies to notify the public that a collection of information requirement has been approved by OMB by issuing a notice in the **Federal Register**, and to display the control number assigned by OMB in the agency's regulations after approval of the requirement. We are updating 42 CFR 400.310 to display the valid OMB control number (0938–0477) assigned for the requirements described in § 412.92(f).

List of Subjects

42 CFR Part 400

Grant programs—Health, Health facilities, Health maintenance organizations (HMOs), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Health facilities, Medicare.

42 CFR Chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Part 400 is amended as follows:

PART 400—INTRODUCTION: DEFINITIONS

1. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is amended by adding, in numerical order by CFR section, the following entry of a section that provides for collections of information and the assigned OMB control number.

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control No.
* * * * *	
412.92(f)	0938–0477
* * * * *	

II. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww).

2. Section 412.92 is amended by revising paragraphs (d) and (e)(1), and adding a new paragraph (f) to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(d) *Determining prospective payment rates for sole community hospitals*—(1) *General rule.* For all cost reporting periods beginning on or after October 1, 1983, the prospective payment rates for sole community hospitals equal 75 percent of the hospital-specific base payment rate (as determined under § 412.73) plus 25 percent of the appropriate regional prospective payment rate (as determined under Subpart D of this part).

(2) *Adjustments to payments.* A sole community hospital may receive an adjustment to its payments to take into

account a significant decrease in number of discharges or a significant increase in inpatient operating costs, as described in paragraphs (e) and (f) of this section respectively.

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease during the transition period.*

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1988, HCFA provides for a payment adjustment for a sole community hospital in any cost reporting period during which the hosptial experiences, due to circumstances as described in paragraph (e)(2) of this section, more than a five percent decrease in its total discharges of inpatients as compared to its immediately preceding cost reporting period.

* * * * *

(f) *Payment adjustment for new inpatient facilities or services*—(1) *General rule.* If a sole community hospital experiences a significant increase in inpatient operating costs resulting from new inpatient services or facilities that were not available in the hospital during its base period and that are necessary for patient care, HCFA may adjust payments made to the hospital to ensure that it is receiving reasonable compensation, as defined in paragraph (f)(2) of this section, for the operating costs of the new inpatient facilities or services (including special care units).

(2) *Definitions.* For purposes of this paragraph—"Reasonable compensation" means that a sole community hospital's total DRG revenue based on DRG-adjusted prospective payment rates (including outlier payments determined under Subpart F of this part, and additional payments made for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.118) are equal to or greater than its Medicare inpatient operating costs as defined under § 412.2(c).

(3) *Documentation.* To qualify for an adjustment to its payment, a sole community hospital must submit documentation, including any additional cost information requested by HCFA within 180 days after a final notice of program reimbursement, to its intermediary to—

(i) Identify the new inpatient facilities or services responsbile for the increase in inpatient operating costs, and the dates that the facilities or services became operational;

(ii) Specify the direct costs of the new inpatient facilities or services and their impact on Medicare payments; and

(iii) Specify the indirect costs attributable to the new inpatient facilities or services that are not already reflected in the Medicare payments received by the hospital.

(4) *Intermediary recommendation.* The intermediary forwards the following material to HCFA within 60 days of receipt from the hospital:

(i) The hospital's documentation and the intermediary's verification thereof;

(ii) Its analysis and recommendation; and

(iii) The hospital's Medicare cost reports for the years in which the increase in costs occurred and the prior year.

(5) *Determination by HCFA.* HCFA determines, within 120 days of receiving all the necessary information from the intermediary, whether an adjustment to the payment amounts is warranted based on, but not limited to—

(i) A complete analysis of the documentation submitted;

(ii) A comparison of the costs and utilization of the new inpatient facility or service to the costs and utilization of a similar facility or service in a similar hospital or hospitals;

(iii) An evaluation of the change in the hospital's financial position from the cost reporting period immediately prior to the addition of the new inpatient service or facility to the cost reporting period when the new service or facility initially became operational;

(iv) A determination that the hospital's Medicare inpatient operating costs exceed its Medicare inpatient operating payments; and

(v) A determination of reasonable compensation equal to the lesser of the hospital's—

(A) Medicare inpatient operating loss attributable to the added services or facilities; or

(B) Total Medicare inpatient operating loss.

(6) *Affected cost reporting periods.* Adjustments that are authorized by HCFA under this paragraph or that are based on an administrative decision (§§ 405.1871 and 405.1875 of this chapter) or a judicial review decision (§ 405.1877 of this chapter) that is no longer subject to review by a higher reviewing authority, are effective for the cost reporting period in which the new services or facilities were added, and for later cost reporting periods, as necessary, beginning before October 1, 1989.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: May 1, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 30, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-18607 Filed 8-13-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Progress Payments on Construction and Architect-Engineer Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: This is an interim rule for lowering progress payment rates, as required by section 9105 of the DoD Appropriations Act of 1987 (Pub. L. 99-591).

DATE: August 1, 1987.

ADDRESS: Interested parties should submit written comments to: Lieutenant Colonel Richard J. Wall, USAF, ODASD(P)/CPF, Room 3C800, Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Richard J. Wall, USAF, (202) 695-9764.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9105 of the DoD Appropriations Act of 1987 required the Secretary of Defense to lower progress payment rates not less than five percentage points. The Act, however, authorized an exemption for military construction, architect-engineer, and shipbuilding contracts, if the Secretary certified to Congress that a progress payment rate reduction would not be justified in these cases. It has been determined that an exemption would not be justified for military construction and architect-engineer contracts. A decision on shipbuilding contracts has been deferred pending completion of a Navy study in this area.

This rule revises an interim rule which was published in the **Federal Register** on December 1, 1986 (51 FR 43210), which included DoD FAR Supplement provisions for payments under fixed-price construction and architect-engineer contracts.

B. Determination to Issue A Temporary Regulation

A determination has been made under the authority of the Secretary of Defense that the regulations promulgated by the Military Departments must be issued as temporary regulations in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended.

C. Regulatory Flexibility Act Information

This rule implements legislative direction contained in the Department of Defense Appropriations Act of 1987. It will impact small business entities, because progress payment rates will be lowered. A Regulatory Flexibility Analysis has been prepared and is available from the Chief Counsel for Advocacy, Small Business Administration, Washington, DC.

D. Paperwork Reduction Act Information

This rule changes rates of progress payments only and not existing procedures; therefore, additional paperwork burden is not involved.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 231 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. Section 232.103 is added to read as follows:

232.103 Progress Payments Construction Contracts.

For DoD the amount of retainage shall not exceed 15 percent.

3. Section 232.111 is amended by adding paragraphs (S–71) and (S–72) to read as follows:

232.111 Contract clauses.

* * * * *

(S–71) The contracting officer shall insert the clause at 252.232–7005, Payments Under Fixed Price Construction Contracts, in lieu of FAR clause 52.232–5, in solicitations and contracts for construction when a fixed-price contract is contemplated.

(S–72 The contracting officer shall insert the clause at 252.232–7006, Payments Under Fixed-Price Architect-Engineer Contracts, in lieu of FAR clause 52–232–10, appropriately modified with respect to payment due dates, in fixed-price architect-engineer contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 252.232.7005 and 252.232.7006 are added to read as follows:

252.232 7005 Payments Under Fixed-Price Construction Contracts.

As prescribed in 232.111(S–71), insert the following clause:

Payments Under Fixed-Price Construction Contracts (Aug. 1987) (Dev.)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets standards of quality established under the contract, as approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if—

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of fifteen percent (15%) of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all remaining withheld funds. Also, on completion and acceptance of each separate building, public work or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(f) The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15).

(g) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

252.232–7006 Payments Under Fixed-Price Architect-Engineer Contracts.

As prescribed in 232.111(S–72), insert the following clause:

Payments Under Fixed-Price Architect-Engineer Contracts (Aug. 1987) (Dev.)

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the

Contractor, as soon as practicable, of eighty-five percent (85%) of the approved amount, less all previous payments; provided, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. If the Government exercises the option under the Option for Supervision and Inspection Services clause, progress payments as provided in (a) and (b) above will be made for this portion of the contract work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

[FR Doc. 87-18573 Filed 8-13-87; 8:45am]

BILLING CODE 3810-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: By this amendment, the National Transportation Safety Board (Board) adds five incidents for which the operator would be required to notify the Board of the occurrence. These five additional incidents are damages of more than $25,000 to property other than the aircraft, and, for large multiengine aircraft, certain failures of the electrical systems or the hydraulic systems, the sustained loss of the power or thrust produced by two or more engines, and an emergency evacuation of the aircraft in which an emergency egress system was utilized. The Board believes that implementing these requirements will result in the Board becoming aware of incidents which can be worthy of investigation.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594 (202-382-6540).

SUPPLEMENTARY INFORMATION: This amendment stems from a notice of proposed rulemaking published in the Federal Register on March 20, 1985 (50 FR 11214). Three comments were received, and they generally supported the proposed amendment of § 830.5.

The proposed amendment would have required notification of the following four occurrences: Damages, based on a preliminary estimate, of $25,000 to property other than the aircraft; and for large multi-engine aircraft (more than 12,500 pounds maximum certificated takeoff weight); (1) complete failure of aircraft electrical or hydraulic systems; (2) sustained loss of the power or thrust produced by two or more engines; and (3) an emergency evacuation of the aircraft.

The first proposal would have required notification of occurrences involving damages, based on a preliminary estimate, of more than $25,000 to property other than the aircraft. The Board recognizes the difficulty of estimating the cost of damages on an expedited basis, and the Board is aware that such an estimation will not always accurately reflect the actual cost of damages. Despite these inherent limitations, the Board believes that the good faith implementation of this requirement will result in the Board becoming aware of incidents which can be worthy of investigation. The nature of the incident and the benefit to aviation safety stemming from an investigation of the incident are factors that are utilized in determining if the operator, who will be required to notify the Board of the incident, will also be asked to file a report of the occurrence and if and to what extent the Board will investigate the incident.

One commentor asked if the cost of repairs includes labor. The estimate of damage for repairs covers the cost of both labor and materials, and this has been spelled out in the final rule. The Board has also added the fair market value of property as a means of calculating damage. In some cases, property will be a total loss in which event the fair market value of such property will represent the valuation of the damage.

One commentor asserted that $25,000 was too low but did not suggest any other figure. The Board believes that $25,000 is a reasonable figure, at least until the Board develops actual experience using a monetary sum as a criteria for requiring notification of aircraft incidents.

All of the following incidents would apply to large multiengine aircraft (more than 12,500 pounds maximum certificated takeoff weight). One commentor believed that aircraft weighting less than 12,500 pounds should not be excluded from these notification requirements. The Board is focusing its interest on large aircraft because the number of small aircraft in commuter operations is declining and probably will continue to decline. In addition, the Board's limited budget and small number of personnel prevent the Board from investigating all of the occurrences if such constraints did not exist. However, the Board will promulgate rules to cover smaller aircraft if warranted. The proposed new incident which elicited the most comment concerned the complete failure of aircraft electrical or hydraulic systems. Although the need for notification of some failures of the hydraulic or electrical systems was acknowledged, the questions in the comments as well as the valid points made by the commentors demonstrated that the descripion of this incident should be refined. One commentor noted that a complete loss of the electrical or hydraulic systems in the new generation air carrier aircraft probably would result in a catastrophic accident because these aircraft are being designed without provision for independent back-up systems. This commentor suggested that this proposed incident should be separated into two incidents and changed to occurrences where an aircraft experiences either successive electrical failures resulting in the aircraft electrical power being supplied by the last primary system or the loss of all but one of the primary hydraulic systems.

The Board agrees that on many of the new developmental and production airplanes, the loss of all hydraulic systems would probably result in an accident and thus the language of this incident as initially proposed should be modified. However, the changes sought in the above comment would result in the notification of some incidents which would not be meaningful. For example, if the Board adopted the commentor's language for this incident, each time an engine is shut down on many two-engine airplanes, an operator would be required to notify the Board and preserve evidence because of the loss of all but the last primary electrical and/or hydraulic system. Similarly, the effect of adopting the commentor's suggestion would be to require operators to notify the Board when a hydraulic line breaks or there is a failure/malfunction of one engine-driven generator on some airplanes.

The Board's main interest is those instances in which the flightcrew must use the only remaining electrical or hydraulic system to retain flight control or to safely land the airplane. Many two-engine airplanes, for example, are designed with a third back-up hydraulic system which operates from a ram air turbine or electric pump to provide an emergency source of hydraulics to the primary flight control systems in the unlikely event that both primary hydraulic systems are lost. This proposed incident, therefore, has been bifurcated into separate final rules on electrical and hydraulic failures and rewritten to apply to in-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a back-up source such as a battery, auxiliary power unit, or air-driven generator to retain flight control or essential instruments and in-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces.

With respect to the proposed incident for the sustained loss of the power or thrust produced by two or more engines, one commentor stated that this proposal was reasonable and another commentor criticized it for not covering the loss of power or thrust to one engine on a two-engine aircraft. Operators are required to report to the FAA specified failures, malfunctions, defects, and mechanical interruptions including in some circumstances an engine failure or shutdown. *See* 14 CFR 121.565, 121.703, 121.705, 125.409, 135.415, and 135.417. This incident is designed to alert the Board to those occurrences which would be of greater investigative interest to the Board, and no change is being made to this incident in the final rule.

An emergency evacuation of large, multiengine aircraft was the last proposed incident. Emergency evacuations can provide important insight into the performance of the crew and equipment and conduct of the passengers, and the lessons learned from the investigations of emergency evacuations have led to improvements in airline operating procedures and aircraft equipment.

One commentor took the position that only those evacuations in which an emergency was declared and an emergency egress system was utilized should be subject to manadatory notification. The Board agrees that this incident should be confined to those instances where the emergency egress system is used. However, the declaration of an emergency is not being made a prerequisite for notification. Passengers have initiated an emergency evacuation when no emergency has been declared or before such an evacuation has been ordered by a crewmember, and these evacuations can provide useful information on the adequacy of the briefing or preparation of the passengers as well as the performance of the crewmembers and the emergency exit features of the aircraft. As is the case of all other incidents for which notification is required by § 830.5(a), a report of the incident need be filed only if requested by a representative of the Board.

Under the criteria of the Regulatory Flexibility Act, the Board has determined that this rule will not have a significant economic impact on a substantial number of small entities because the rule will not result in a marked increase in the number of incidents for which notification must be made, the rule has been tailored to lessen its impact on small entities, and the costs of complying with the rule will not be substantial.

Accordingly, 49 CFR 830.5 is hereby amended by adding paragraphs (a) (6) and (7) as set forth below.

PART 830—[AMENDED]

1. The authority citation for Part 830 continues to read as follows:

Authority: Title VII, Federal Aviation Act of 1958, as amended, 72 Stat. 781, as amended by 76 Stat. 921 (49 U.S.C. 1441 *et seq.*), and the Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 *et seq.*).

2. Amend § 830.5 by adding paragraphs (a) (6) and (7) as follows:

§ 830.5 Immediate notification.

* * * * *

(a) * * *

(6) Damage to property, other than the aircraft, estimated to exceed $25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less.

(7) For large multiengine aircraft (more than 12,500 pounds maximum certificated takeoff weight):

(i) In-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a back-up source such as a battery, auxiliary power unit, or air-driven generator to retain flight control or essential instruments;

(ii) In-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces;

(iii) Sustained loss of the power or thrust produced by two or more engines; and

(iv) An evacuation of an aircraft in which an emergency egress system is utilized.

* * * * *

Signed at Washington, DC, on this 4th day of August 1987.

Jim Burnett,

Chairman.

[FR Doc. 87-18443 Filed 8-13-87; 8:45 am]

BILLING CODE 7533-01-M

Proposed Rules

Federal Register
Vol. 52, No. 157
Friday, August 14, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-088]

Reservation of Space for Quarantine of Animals and Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations for reserving space in quarantine facilities maintained by Veterinary Services (VS) by requiring advance payment for all estimated quarantine-related costs for birds, pigeons, and poultry. Importers have frequently defaulted on payments owed to VS for quarantined birds, poultry, or pigeons, regularly disclaiming responsibility for birds seized by the Fish and Wildlife Service of the U.S. Department of the Interior or some other Federal agency upon their release from quarantine. When importers default on payments, the Federal Government must absorb their quarantine costs. To prevent further losses, we propose that reservation fees for birds, pigeons, and poultry amount to payment in full for the 30-day quarantine period.

DATE: Consideration will be given only to comments postmarked or received on or before October 13, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86-088. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) prescribe, among other things, conditions under which birds, pigeons, and poultry may enter the United States. Upon arrival at a U.S. port of entry, any birds, pigeons, or poultry subject to quarantine requirements must remain for at least 30 days in a quarantine facility, where they are observed and tested by representatives of Veterinary Services (VS). This ensures that only birds, pigeons, and poultry meeting the requirements of the Animal and Plant Health Inspection Service (APHIS) of the United States, posing no threat of introducing communicable animal disease into the United States, are admitted into this country.

Section 92.4(a)(4) requires that every importer planning to use a VS quarantine facility pay, or ensure payment of, a reservation fee equal to 25 percent of the estimated quarantine cost, except that the reservation fee cannot exceed $2,500 for any lot of birds or poultry, nor can it fall below $80.

It has become apparent, however, that quarantined birds, pigeons, and poultry create special financial problems for the Federal Government. Importers have tended to resist paying bills for birds seized by a Federal agency because their importation in some way violated Federal law. Other importers have additionally burdened VS when, confronted with a bill for some reason higher than they had expected, they have forfeited their claim to the imported birds, pigeons, or poultry, leaving VS with the live lot as well as the unpaid account.

Problems continually arise when, in accordance with a Memorandum of Understanding signed with APHIS in 1982, the Fish and Wildlife Service seizes birds illegally brought into the United States. Importers denied right of possession because of these seizures often refuse to accept accountability for quarantine charges. The costs of keeping seized birds in quarantine accrue in the same way as for other birds, pigeons, and poultry. Revising collection procedures as proposed would obviate the need for the Federal Government to absorb these and other losses created by bird, pigeon, and poultry importers who default on quarantine payments.

In sum, prepayment of estimated quarantine costs would preclude the possibility of importers failing to reimburse APHIS for the costs of quarantining birds, pigeons, and poultry not subsequently released into their custody. This suggests the advisability of our implementing a more effective system for collecting accounts receivable.

By equating the amount of the deposit required to reserve space in a quarantine facility with the total quarantine cost estimated by the quarantine facility's veterinarian in charge, APHIS would ensure recovery of these costs. It would prevent repetitions of the 1986 situation, with the Federal Government writing off about $12,000 in accounts receivable for birds seized by the Fish and Wildlife Service.

Miscellaneous

Current § 92.2(e) provides that the provisions in 9 CFR Part 92 which apply to poultry shall apply to pigeons. In order to simplify the regulations, we propose to include pigeons in the definition of the word "poultry," eliminate current § 92.2(e) and the definition of the word "pigeons" in current § 92.1. The definition of the word "birds" in current § 92.1 would be amended to delete the reference to pigeons.

Current § 92.2(b) provides, among other things, that the importation of birds into the United States is prohibited, except as provided in § 92.2 (a), (c), (d), (f), or (j). This list is incomplete and serves no purpose in that current § 92.2(a) provides that no bird shall be brought into the United States except in accordance with 9 CFR Parts 92 and 94. Therefore, we propose to amend § 92.2(b) to eliminate this incomplete and unnecessary portion of § 92.2(b).

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an

effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed billing procedure would require that bird, pigeon, and poultry importers prepay the estimated VS quarantine charges. Total bird quarantine charges would not increase; only the time of payment would change.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would be amended to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. In § 92.1, the definition of the word "birds" would be revised to read:

Birds. All members of the class aves (including eggs for hatching), other than poultry.

3. In § 92.1, the definition of the word "pigeons" would be removed.

4. In § 92.1, the definition of the word "poultry" would be revised to read:

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys (including eggs for hatching).

5. Section 92.2(b) would be revised to read:

§ 92.2 General Prohibitions; exceptions.

(b) Birds from Canada may be imported tin accordance with this section or in accordance with the provisions applicable to importation of poultry from Canada as specified in §§ 92.5(b), 92.19 and 92.26 of this part.

* * * * *

6. Section 92.2(e) would be removed.

7. Section 92.4 would be amended by revising paragraph (a)(4)(i) to read as follows:

§ 92.4 [Amended]

(a) * * *

(4)(i) The importer or importer's agent shall pay or ensure payment of a reservation fee for each lot of animals or birds to be quarantined in a facility maintained by Veterinary Services. For animals other than poultry, the reservation fee shall be 25 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge. This advance payment shall be at least $130 for each horse and $240 for each lot of any other kind of animal except poultry, but shall not exceed $2,500. For birds and poultry, the reservation fee shall be 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge.

* * * * *

Done in Washington, DC, this 11th day of August, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–18612 Filed 8–13–87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 86–124]

Importation of Eviscerated Wild Pheasant and Grouse Carcasses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations on importing the carcasses of wild pheasants and grouse. While specimens of both are hunted as game, they are not migratory birds and for that reason fall into the category we define as "poultry." Treated as "poultry," they cannot be imported under the same conditions as "game birds." Instead, they must be thoroughly cooked before being permitted into the United States. Because the eviscerated carcasses of these hunted birds without heads and feet present a negligible risk of spreading viscerotropic velogenic Newcastle disease (VVND), we propose to relieve import restrictions. To also reflect the general understanding of game, we propose to expand the definition of "game birds" to include wild pheasants and grouse, and to make a corresponding change in the definition of "poultry." We are also proposing to clarify the requirements for importing carcasses of "game birds."

DATE: Consideration will be given only to comments postmarked on or before October 13, 1987.

ADDRESS: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86–124. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Room 805, Federal Building, Hyattsville, MD 20782, 301–436–8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations) restrict the importation of carcasses of all birds, including poultry and game birds, into the United States. These regulations are intended to prevent viscerotropic velogenic Newcastle disease (VVND) and other diseases from spreading into this country.

The current regulations, issued after a serious outbreak of VVND in California in 1972, excluded non-migratory birds from the definition of "game birds." While wild pheasants and grouse, like free-flying quail, are hunted as game, they are not migratory birds and, for that reason, fall into the caregory we

define as "poultry." Treated as "poultry," they cannot be imported under the same conditions as "game birds." Even when hunted as game, carcasses of wild pheasants and grouse must be thoroughly cooked before allowed into the United States. "Game birds," on the other hand, may be imported so long as the heads, feet, and viscera have been removed.

Our definition of "game birds" has, until now, comprehended only migratory birds hunted as game. While we did not change the definition of "game birds" when we revised the regulations in 1980, we did provide for one non-migratory species, free-flying quail, to be imported in the same manner as "game birds." Thus, subject to a border inspector's approval, free-flying quail without heads, feet, and viscera, have been entering the United States. We have received no reports of VVND attributed to those carcasses.

We would expect the case to be the same if the carcasses of wild pheasant and grouse were also imported under the provisions for "game birds." Therefore, we are proposing to revise the definition of "game birds" to include these three species of non-migratory birds. These birds in the wild rarely come into contact with birds likely to carry VVND. Therefore, carcasses of wild pheasants and grouse are unlikely to have VVND, and would not pose a significant risk to poultry in the United States.

In the 15 years since the 1972 outbreak, we have not received any reports of VVND in wild pheasants or wild grouse. The more stringent controls originally imposed on wild specimens no longer seem necessary. We therefore consider it appropriate to redefine "game birds" in the regulations. Because there is no evidence that the carcasses of wild grouse, wild pheasants, and free-flying quail, the non-migratory birds hunted as game birds, pose a greater danger of spreading VVND to U.S. poultry than migratory game birds, there is no longer any reason to exclude these birds, which are hunted as game, from the definition of "game birds." The proposed change in the definition of "game birds" in § 94.6(b)(4) of the regulations accords with the common understanding of "game," that is, wild birds and animals hunted for food or sport. The proposed change would require a corresponding change in the definition of "poultry" in § 94.6(b)(2).

In addition, to clarify the requirements for importing carcasses of "game birds," we are revising the wording of § 94.6(d)(1). There has been some confusion about the eligibility for entry of heads, feet, and viscera after their removal from the carcasses. The proposed revision provides that no heads, no feet, and no viscera of "game birds" may be imported into the United States.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

About 300 to 400 U.S. hunters annually import non-migratory games birds into the United States. The proposed amendment would benefit those who hunt wild pheasants or wild grouse by making it unnecessary to cook those carcasses before bringing them into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR Part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA; PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 would continue to read:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.6, paragraphs (b)(2) and (b)(4) would be revised to read as follows:

§ 94.6 [Amended]

* * * * *

(b) * * *

(2) *Poultry.* Chickens, turkeys, swans, partridges, guinea fowl, pea fowl; non-migratory ducks, geese, pigeons, and doves; commercial, domestic or pen-raised grouse, pheasants, and quail.

* * * * *

(4) *Game Birds.* Migratory birds including certain ducks, geese, pigeons, and doves ("migratory" refers to seasonal flight to and from the United States); free-flying quail, wild grouse, wild pheasants (as opposed to those that are commercial, domestic, or pen-raised).

3. In § 94.6, paragraph (d)(1) would be revised to read as follows:

* * * * *

(d) * * *

(1) Carcasses of game birds may be imported if eviscerated, with heads and feet removed. Viscera, heads, and feet removed from game birds are ineligible for entry into the United States.

* * * * *

Done in Washington, DC, this 11th day of August, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-18611 Filed 8-13-87; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 620 and 621

Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) publishes for comment proposed amendments to Part

620 relating to disclosure of problem loans to senior officers and directors and their immediate families and affiliated organizations and proposed amendments to Part 621 to delete references to the FCA examining classification "vulnerable" in the definition of "other high risk loans." In addition, certain other minor substantive and technical amendments are proposed. The FCA also invites comment on any other technical problems that may have been encountered in applying the regulations.

DATES: Written comments must be received on or before October 13, 1987.

ADDRESSES: Submit any comments (in triplicate) in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Acosta, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020.

SUPPLEMENTARY INFORMATION: The FCA adopted Part 620 as a final regulation on March 13, 1986, 51 FR 8644, and amended it on June 12, 1986, 51 FR 21336, and November 21, 1986, 51 FR 42084, and corrected it on December 12, 1986, 51 FR 44783. Farm Credit institutions continued to express a high level of concern over provisions of the regulation relating to disclosure of problem loans to senior officers and directors and their immediate families as institutions prepared their annual reports to shareholders for 1986. Widespread distress in the agricultural community appears to have resulted in a larger number of loans meeting the disclosure criteria than would ordinarily be the case. Consequently, the Farm Credit Administration Board (Board) held a public hearing on April 7, 1987, at which Farm Credit System (System) representatives expressed their continuing concern with these provisions. In addition, representatives of the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC) and the comptroller of the Currency (OCC) testified about shareholder disclosure requirements of their respective agencies.

Representing System institutions were 6 association directors, 2 bank officers, 2 district directors, and a representative of the Farm Credit Corporation of America.

Only one presenter opposed disclosure of directors' problem loans altogether, giving as reasons for his opposition the difficulty in getting qualified directors from small rural communities, perceived differences in disclosure requirements for commercial banks, and the existence of controls designed to prevent conflicts of interest. The concerns of the rest of the presenters centered around two provisions of the regulation. First, the regulation requires disclosure of loans to senior officers and directors, their immediate family members and affiliated organizations if they involved more than a normal risk of collectibility at any time during the reporting period (fiscal year for which the report is filed to the date of the report) even though the director resigns during the year and does not seek reelection. The presenters recommended that senior officers and directors be allowed a period of time during which to resign or correct the deficiency in the loan and thereby avoid disclosure. The presenters believed such a modification appropriate, even though it would establish a less stringent disclosure standard than other Federal regulators, because Farm Credit institution directors must be borrowers from the institution in order to serve as directors. Therefore, they do not have the option of avoiding disclosure by not borrowing from the institution they serve, as commercial bank directors do. Several presenters believed that the FCA should rely more on its examining and enforcement powers to eliminate conflicts of interest and to get directors and officers to correct problem loans and less on disclosure. In addition, one presenter believed that raising the de minimis exemption from $5,000 to $60,000 would eliminate much required disclosure and hence most of the controversy.

The second major concern expressed at the hearing relates to the requirement to disclose problem loans to members of a senior officer or director's immediate family even if the officer or director has no financial stake in the loan or the operation financed by the loan and no business relationship with the family member. The regulation defines "immediate family" to include spouse, parents, siblings, children, mothers- and fathers-in-law, sons- and daughters-in-law, and brothers- and sisters-in-law. The presenters considered the status of loans of a senior officer or director's immediate family members to be irrelevant to an evaluation of the director or officer's performance when he or she has no financial interest therein and believed that adequate controls are in place to assure that directors do not participate in deliberations on these loans. Furthermore, one presenter believed it unfair to imply through disclosure that the director is accountable for a relative's loan. Another presenter pointed out that the FCA's conflict on interest regulations prohibit a director or officer from participating in deliberations that affect a relative's loan and suggested that the FCA use its examining and enforcement powers to enforce the regulation in lieu of requiring disclosure. This presenter argued that disclosure could damage the individual's business relationships and result in lawsuits against the institution. Another presenter argued that innocent persons could be damaged through mistaken identity as a result of: (1) The lack of a requirement that the immediate family members be identified; and (2) the wide distribution of the annual report to shareholders. Consequently, the presenter argued that disclosure of immediate family member loans should be required to be filed with the Farm Credit Adminstration rather than disseminated to shareholders. Another presenter believed it would be preferable to make disclosures available for shareholders to review in the institution or at the FCA rather than routinely disclose them in the annual report disseminated to shareholders.

In addition to these major concerns, several presenters were concerned that because the regulation defines "greater than normal risk of collectibility" to include all non-performing loans, as defined in Part 621, some loans that are current as to principal and interests would meet the disclosure criteria merely because of a drop in collateral values or lack of documentation in the loan file. The presenters believe that these loans should not be required to be disclosed since they are being repaid according to their terms.

The concerns expressed at the hearing were echoed in several letters from district banks and association directors.

A. Part 620—Disclosure to Shareholders

1. Insider Loan Transactions With Reporting Institution

After carefully considering the comments, the Board continues to believe that disclosure of loans that involve a greater than normal risk of collectibility to senior officers and directors, their immediate family members and affiliated organizations is relevant and material to an evaluation of directors' and officers' performance of their fiduciary duties and should be available to shareholders. The Board

believes that shareholders have a right to know of circumstances that may impair the objectivity and impartiality of individuals who are responsible for making or executing policy for the institution, in order to evaluate whether that has in fact occurred. The Board believes this information is relevant to the evaluation of past conduct, which may be legally actionable, as well as to future evaluations and election decisions. The Board believes that some presenters may have incorrectly perceived the purpose of the regulation to be encourage directors to correct their loan deficiencies or to discourage directors from self-interested conduct. While the regulation may incidentally achieve such a result, this is not the primary purpose of the regulation. Rather, the primary purpose of the requirement is to provide shareholders with relevant and material information so that they can exercise their shareholder rights in a meaningful way.

Nevertheless, the Board recognizes that the fact that directors must be borrowers in order to serve as directors means that they do not have the option of avoiding the potential for conflict and the need for disclosure by borrowing from another institution. As a result, this shrinks the pool of qualified directors by eliminating those individuals who are not willing to undertake the risk that serving as director may expose family members to disclosure of their financial difficulties. The Board has weighed its concern for providing relevant information to shareholders against the need to obtain qualified directors and proposes an amendment to § 620.3(j)(3) of the regulation that attempts to accommodate both concerns.

The proposed amendment would obviate the need for disclosure of a loan involving a greater than normal risk of collectibility to a senior officer or director, his relatives and affiliated organizations if the greater than normal risk of collectibility is removed or the director or officer resigns within 60 days of the determination that the loan involves such a risk, but in no event later than the date of the annual report to shareholders. The proposed exception would apply only to loans required to be disclosed because they involve more than a normal risk of collectibility. The regulation would continue to require loans not made in the ordinary course of business or made on different terms than those available to other borrowers for comparable transactions to be disclosed, even if the director resigned or the terms were changed. The proposed amendment would require any person resigning to avoid disclosure to make the disclosure that would have been required but for the resignation if such person is appointed director, is a candidate for director, or is reemployed within 2 years of the resignation. This proposed provision is designed to prevent circumvention of the regulation by resigning, waiting a year and running for office again and is necessary because the regulation requires disclosure only for the preceding fiscal year to the date of the report. Furthermore, to guard against the potential for a conflict of interest during the period given for correction or resignation, the FCA will closely monitor the actions of any senior officer or director involved in such situations.

The Board disagrees with the argument that the potential for impairment of the objectivity and impartiality of the director or officer is only present when the person has: (1) A financial stake in the operation to which the family member's loan relates; or (2) a business relationship with the family member. Rather, the Board believes that an officer's or director's knowledge of the financial difficulties of close relatives may make it difficult for the individual to adopt policy or take action that would exacerbate those difficulties and therefore that such information is relevant and material to a shareholder's evaluation of the officers' and directors' performance of their fiduciary duties. The FCA's definition of "immediate family" is limited to close relatives—spouse, children, parents and siblings; children, parents and siblings of the spouse; and the spouses of the foregoing. It does not include uncles, aunts, nephews, nieces, grandparents or cousins. This definition is identical to that employed by the SEC, the OCC, and the Federal Home Loan Bank Board (FHLBB) in connection with similar disclosure requirements. However, the Board agrees that the potential for conflict is greater when the director or officer has a financial stake in the loan or the operation being financed or a business relationship with the relative in question. Furthermore, the Board believes that the potential for conflict may be greater when the loan involved is to a distant relative with whom the officer or director has a business relationship than when the loan involved is to a closer relative with whom there is no business relationship.

The Board therefore proposes to amend § 620.3(j)(3) of the regulation to require: (1) Disclosure of loans that do not meet the criteria of § 620.3(j)(3)(i) to *any* relative with which the officer or director has a business relationship in the annual report disseminated to shareholders; and (2) disclosure of such loans to immediate family members *not* having a business relationship with the director or officer to be included as a supplemental schedule to the annual report filed with the FCA. The supplemental schedule would be available to shareholders upon request from the reporting institution or the FCA and the annual report to shareholders would inform them of its availability. Under the proposal, the definition of "immediate family" would be unchanged. The Board believes, based on the testimony of the presenters, that this modification strikes an appropriate balance between the rights of shareholders and the need to obtain qualified directors.

The Board further proposes an amendment to § 620.3(j)(3)(i) to clarify that Federal Land Bank Associations (FLBAs) must disclose loans from the Federal land bank (FLB) to the FLBA's senior officers and directors that do not meet the conditions of the section. This change will reflect more precisely the fact that the FLBA arranges loans with its FLB, which the contractual or "primary" creditor. The Board believes System institutions have understood this to be the intent of the regulation.

2. Transactions Other Than Loans With Reporting Institution

The Board proposes to amend § 620.3(j)(2) to require disclosure of transactions of the reporting institutions other than loans with any relative having a business relationship with a senior officer or director, unless they meet the criteria for nondisclosure contained in that section. This requirement would be in addition to the current requirement to disclose non-loan transactions with immediate family members. The proposed amendment reflects the Board's agreement with System representatives that these transactions may be even more likely to involve conflicts of interest than transactions with family members with whom the senior officer of director has no business relationship.

Further, the Board proposes to amend § 620.3(j)(2) to require disclosure of any such transaction that has occurred since the date of the last annual report to shareholders. The regulation currently requires disclosure of any such transactions occurring since the last annual meeting of shareholders. The amendment is proposed to assure that all such transactions occurring during the year, including those between the date of the annual report to shareholders and the annual meeting, are required to be disclosed.

3. Business Relationship

The Board proposes to add to § 620.1 a definition of "business relationship" that would encompass continuing relationships, not necessarily related directly to the loan, as well as a single transaction, series of transactions or joint venture to which the loan relates, that are entered into in anticipation of financial gain or avoidance of loss by either or both of the parties. The definition would include, but not be limited to, transactions that involve the purchase, sale, lease, ownership or management of real or personal property; services as a real estate agent or broker; the sale or placement of insurance; sales barn activities; the borrowing or lending of money or other things of value (including credit); providing or receiving financial professional or other services; and other similar transactions.

4. Transactions with Other Farm Credit Institutions

As the Board reconsidered the rationale for the insider loan disclosure in the context of the public hearing testimony, it determined to propose for comment an amendment to § 620.3(j) (2) and (3) of the regulation to require disclosure of transactions of senior officers and directors and their associates with other Farm Credit institutions having a supervisory relationship, inasmuch as a potential for conflict is present when an officer or director of a supervising institution has a loan with a supervised institution or vice versa. The proposed amendment would require disclosure of any loan or other transaction meeting the regulation's disclosure criteria with an institution supervised by or under the supervision of the reporting institution to such person, his or her affiliated organization, immediate family member or relative with which such person has a business relationship in the same manner as loans from the reporting institution.

5. Other Changes

The Board proposes to amend the definition of "affiliated organization" in § 620.1(a) by substituting "partner" for the third "director." The proposed change would eliminate from the definition organizations in which the person's only role is to serve as director and would include within the definition organizations in which the person has a partnership interest. This change is proposed because the FCA believe that a person who is a partner has a significant financial stake in an organization, whereas a person may serve as director of many organizations in which he or she has no significant financial interest. However, the Board invites comment on whether the definition should also retain "director" in the definition in order to reach situations in which the potential for conflict may be significant, such as directors of cooperatives serving on the board of the banks for cooperatives that lend to the cooperative.

The Board proposes to make a number of other minor substantive and technical changes and corrections to Part 620. The Board proposes to insert "preceded or" before "accompanied" in § 620.20(c) to clarify that the most recent quarterly report need not be acutally sent with the annual information statement if it has already been sent to shareholders. However, persons who have become shareholders since the most recent quarterly report was disseminated should be provided with a copy of it, either at the time they become shareholders or with the annual information statement.

The Board proposes to amend § 620.3(c) to delete the words "or agency" to clarify that the FCA did not intend this regulation to require routine disclosure of pending enforcement proceedings before the FCA.

The Board proposes to make the following technical amendments and corrections:

Section 620.2(k) would be revised by deleting the "s" in "reports" in the first sentence and inserting "also" before "include" in the third sentence.

Section 620.10(a) would be revised by changing "reporting requirements" to "report" in the last sentence.

Section 620.11(b)(2) would be revised by changing "that" to "than" in the first sentence.

Section 620.11(b)(4) would be revised by changing the second "that" in sentence 2 to "and," and inserting "that" between "accounts" and "have" in sentence 3.

Section 620.20(b) would be revised to correct the citation contained therein from 621.21 to 620.21.

B. Part 621—Accounting and Reporting Requirements

The Board proposes to amend Part 621 to eliminate loans classified "vulnerable" as a result of a periodic credit evaluation from the definition of "other high risk loans." At the time the regulation was promulgated, FCA's examination classification "vulnerable" was defined as "high risk loans still considered collectible but involving probability of loss in the event repayment from available sources does not materialize." Since the regulation was promulgated examination classifications have been revised. As the FCA considered the effect of the revision on the regulation, it began to question the wisdom of substituting a new examination classification for the "vulnerable" classification in definition of "other high risk loans." The FCA believes that most of the loans so classified would meet one or more of the more objective criteria. This change may also address some of the concerns of the presenters at the hearing who believed that including all non-performing loans, as defined in Part 621, in the definition of "greater than normal risk of collectibility," would result in disclosure of loans that are current as to principal and interest but are classified because of circumstances beyond the borrower's control, such as a drop in collateral values, or because of minor problems in documentation not material to the determination of collectibilty. However, the Board notes that a loan that is contractually current may involve more than normal risk of collectibility (especially annual payment loans) inasmuch as the determination is one of ultimate collectibility over the life of the loan. The regulation would continue to require disclosure of such loans, even if the factors causing the problem are outside the borrower's control. The Board reemphasizes that the purposes of the regulation is to make shareholders aware of circumstances that constitute a potential conflict of interest in directing the affairs of the association, not to punish or pressure directors to correct problem loans. The requirement to disclose the reason the loan involves more than a normal risk of collectibility will make it obvious to the shareholder when circumstances beyond the borrower's control have triggered the requirement to disclose. The reporting institution is free to disclose that the loan is current as to principal and interest and the FCA encourages such disclosure.

Therefore, § 621.2(a)(18)(i), which includes "vulnerable" loans in the definition of "other high risk loans," would be deleted and paragraphs 621.2(a)(18) (ii), (iii), (iv), and (v) would be renumbered accordingly. Section 621.2(24), which defines "vulnerable," would be deleted.

The heading of § 621.4 would be revised to correct the spelling of "accrual."

List of Subjects in 12 CFR Parts 620 and 621

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statements,

Accounting and reporting requirements, Report of condition and performance.

As stated in the preamble, Parts 620 and 621 of Chapter VI, Title 12 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 620–DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 continues to read as follows:

Authority: Secs. 5.17(a) and (10), Pub. L. 99–205, 99 Stat. 1678, 12 U.S.C. 2252 (9) and (10).

Subpart A—Annual Reports to Shareholders

2. Section 620.1 is revised to read as follows:

§ 620.1 Definitions.

(a) "Affiliated organization" means any organization, other than a Farm Credit organization, of which a director, senior officer, or nominee for director of the reporting institution is a partner, officer, or majority shareholder.

(b) "Business relationship" means a continuing relationship, a transaction or series of transactions, or a joint venture between or among persons (or such persons' affiliated organizations(s)) entered into in anticipation of financial gain or avoidance of loss by either or both of the parties.

(c) " Immediate family" means spouse, parents, siblings, children, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-laws.

(d) "Institution" means any bank or association chartered by the Act.

(e) "Loan" shall have the same meaning as in Part 621 of this chapter.

(f) "Material." The term "material," when used to qualify a requirement to furnish information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(g) "Normal risk of collectibility" means the ordinary risk inherent in the lending operation. Any loans properly identifiable as "nonperforming" as defined in § 621.2(a)(17) of this chapter shall be deemed to have more than a normal risk of collectibility.

(h) "Related organization" means any Farm Credit Institution that is a shareholder of the reporting institution or in which the reporting institution has an ownership interest.

(i) "Risk funds" means the allowance for loan losses and all capital accounts exclusive of capital stock, participation certificates, and allocated equities.

(j) "Senior officer" means any person designated by the board of directors as responsible for a major management function.

(k) "Shareholder" means a holder of any equity interest in an institution.

3. Section 620.2 is amended by revising paragraph (k) to read as follows:

§ 620.2 Preparing, distributing, and filing the report.

* * * * *

(k) For purposes of this part, each annual and quarterly report of a Federal land bank shall present the financial statements of the Federal land bank and its Distict Federal land bank associations on a combined basis. The annual and quarterly reports of a Federal intermediate credit bank shall present the financial statements of the Federal intermediate credit bank and its district production credit associations on a combined basis. The respective reports shall also include, at a minimum, the statement of condition and statement of income for the bank only. These statements may be in a summary form and shall disclose the basis of presentation if different than the accounting policies of the combined bank and associations statements.

4. Section 620.3 is amended by revising paragraphs (c), (j)(2), and (j)(3)(i) and (ii) introductory text; by adding new paragraphs (iii) and (iv) to paragraph (j)(3); and by adding a new paragraph (j)(4) to read as follows:

§ 620.3 Contents of the annual report to shareholders.

* * * * *

(c) *Legal proceedings.* Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution is a party, of which any of its property is the subject, or which involves claims that the institution may be required, by contract or operation of law, to satisfy. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

* * * * *

(j) *Transactions with senior officers and directors.* * * *

(2) Transactions other than loans. For each person who served as a senior officer or director on January 1 of the year following the fiscal year of which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the date of the last annual report between the reporting institution or any institution having a supervisory relationship with the reporting institution and such person, any immediate family member of such person, any relative with which such person has a business relationship or any organization with which such person is affiliated. State the name of the officer or director who entered into the transaction or whose relative or affiliated organization entered into the transaction, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) Loans to senior officers and directors.

(i) To the extent applicable, state that the institution has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, other relatives having a business relationship with such persons, and any organizations with which such senior officers or directors are affiliated that:

* * * * *

(ii) If the conditions stated in paragraph (j)(3)(i) of this section do not apply to the loan(s) of any person who has served as a senior officer or director since the start of the previous fiscal year, or any relative with which such person has a business relationship, or any organization with which such person is or has been affiliated since the start of the previous fiscal year, state:

* * * * *

(iii) If any loan from the reporting institution to any member of any director's or senior officers' immediate family members is made out of the ordinary course of business, is made on different terms than those available at the time for comparable transactions with other persons or involves more than a normal risk of collectibility, the information required by paragraph (j)(3)(ii) shall be filed as a supplemental schedule to the annual report filed with the Farm Credit Administration ("FCA"). The annual report disseminated to shareholders shall state, in a separate paragraph and in a conspicuous place, that the institution or any institution supervised by the

reporting institution had loans outstanding to immediate family members of the director or senior officer (who shall be named) that were made out of the ordinary course of business, or were made on different terms than those available at the time for comparable transactions with other persons or involved more than a normal risk of collectibility, as appropriate. The annual report shall further state that information concerning such loans is available upon request from the reporting institution.

(iv) If any institution having a supervisory relationship with the reporting institution has had loans outstanding during the last full fiscal year to date to the reporting institution's senior officers and directors, any relative with which such persons have a business relationship or any organization affiliated with such persons, so state. If any such loans were not made in the ordinary course of business, were made on different terms than those available at the time for comparable transactions with other persons, the information required by paragraphs (j)(3)(ii) shall be disclosed for each such loan. If any institution having a supervisory relationship with the reporting institution has had loans outstanding during the last full fiscal year to date to any member of a senior officer's or director's immediate family not having a business relationship with such person that was not made in the ordinary course of business or was made on different terms than those available at the time for comparable transactions with other persons, the information required by paragraphs (j)(3)(ii) shall be included as a supplemental report in the annual report filed with the FCA and shall be available upon request from the reporting institution. Notice of its availability shall be included in the annual report to shareholders in the same manner as for loans from the reporting institution.

(4) Notwithstanding the foregoing requirements of paragraph (j)(3), no disclosure need be made of a loan that would be required to be disclosed because it involves more than a normal risk of collectibility, if the greater than normal risk of collectibility is removed, or the director or officer with respect to which such disclosure is required resigns, within 60 days of the determination by the institution that the loan involves more than the normal risk of collectibility (but in no case later than the date of the annual report to shareholders); *provided*, that if any person who avoids disclosure under this paragraph by resigning is reemployed or is a candidate for director or is appointed director during the period ending two years from the end of the fiscal year for which disclosure would have been required but for the resignation, such disclosure shall be made in the annual report to shareholders, provided that in the case of a person who is a candidate for director, such disclosure shall be made prior to election.

* * * * *

Subpart B—Quarterly Report to Shareholders

5. Section 620.10 is amended by revising paragraph (a) to read as follows:

§ 620.10 Preparing, distributing, and filing the report.

(a) Each institution of the Farm Credit System except Federal land bank associations shall prepare a quarterly report for each fiscal quarter beginning with the quarter ending June 30, 1986, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution. The report shall conform to the requirements set forth in § 620.11.

* * * * *

6. Section 620.11 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

* * * * *

(b)* * *

(2) Interim statements of income. When any major income statement caption is less than 15 percent of average net income for the 3 most recent fiscal years and the amount in the caption has not increased or decreased by more than 20 percent since the corresponding interim period of the preceeding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the 3 most recent fiscal years, the average loss shall be used for purposes of this test.

* * * * *

(4) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to make the interim information presented not misleading. Institutions may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and the adequacy of additional disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure that would substantially duplicate the disclosure contained in the most recent audited financial statements (such as a statement of significant accounting policies and practices), and details of accounts that have not changed significantly in amount or composition since the end of the most recent completed fiscal year may be omitted. However, disclosure shall be provided of events occurring subsequent to the end of the most recent fiscal year that have a material impact on the institution. Disclosures should encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization, including significant new indebtedness or modification of existing financing agreements; and the reporting entity resulting from business combinations or dispostions.

* * * * *

Subpart C—Association Annual Meeting Information Statement

7. Section 620.20 is amended by revising paragraphs (b) and (c) to read as follows:

§ 620.20 Preparing, distributing, and filing the information statement.

* * * * *

(b) The statement shall contain, at a minimum, the information specified in § 620.21 and, in addition, such other material information as is necessary to make the required statement, in light of the circumstances under which they are made, not misleading.

(c) The statement shall incorporate by reference the annual report to shareholders required by Subpart A of this part. In addition, if any institution holds its annual meeting of shareholders more than 134 days after the end of its fiscal year, the statement shall be preceded or accompanied by the most recent quarterly statements required by Subpart B of this part.

* * * * *

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

8. The authority citation for Part 621 continues to read as follows:

Authority: Sec. 5.17 (9) and (10), Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2252(a)(9)(10).

Subpart A—Accounting Requirements

9. Section 621.2 is amended by removing paragraph (a)(18)(i) and redesignating paragraphs (a)(18) (ii), (iii), (iv) and (v) as paragraphs (a)(18) (i), (ii), (iii), and (iv); and by removing paragraph (a)(24).

10. Section 621.4 is amended by revising the heading to read as follows:

§ 621.4 Accrual basis of accounting.

William A. Sanders, Jr.,

Secretary, Farm Credit Administration.

[FR Doc. 87-18510 Filed 8-13-87; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-61-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 series airplanes, that would require inspections of the main landing gear (MLG) support structure. This proposal is prompted by reports of cracks in the MLG support structure. This condition, if not corrected, could lead to collapse of the MLG.

DATES: Comments must be received no later than September 30, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-61-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The Applicable service information may be obtained from British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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 regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. 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 FFA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-61-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition affecting British Aerospace Model BAC 1-11 200 series airplanes. There have been two reports of cracks discovered in the main landing -gear (MLG) rear pintle support beam. The cracks emanate from the bottom forward edge of the lug containing the hole for the bearing cap lower attach bolt. This condition, if not corrected, could lead to the collapse of the main landing gear.

British Aerospace has issued Service Bulletin 57-A-PM5896, Revision 2, dated August 19, 1986, which describes procedures for periodic inspections of the MLG support structure on the Model BAC 1-11 200 series airplanes. The CAA has declared this service bulletin as mandatory. In addition, this service bulletin provides similar inspection and repair procedures for the Model BAC 1-11-400 series airplanes; however, those procedures have been previously addressed in AD 86-04-07, Amendment 39-5235 (51 FR 4588; February 6, 1986).

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require periodic inspections for cracks in the MLG rear pintle support beam, and repair or replacement, if necessary, in accordance with Service Bulletin 57-A-PM5896, Revision 2, dated August 19, 1986.

It is estimated that 31 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,480.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority. 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the collapse of the main landing gear due to cracks in the rear pintle support beam, accomplish the following:

A. Prior to the accumulation of 50,000 landings or within the next 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam in accordance with paragraph 2.1.1. of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, Issue Number 2, dated August 19, 1986. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

If cracks are discovered, before further flight, repair or replace in accordance with paragraph 2.2 of the accomplishment instructions of the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Cerification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 31, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-18535 Filed 8-13-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 87-AWA-32]

Proposed Alteration of VOR Federal Airways and Jet Routes; Massena, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V-203, V-91 and Jet Routes J-567 and J-228 located in the vicinity of Massena, NY. The Canadian Government has requested segments of these airways/routes that cross the United States/Canada boundary be amended to coincide with reorganized terminal airspace in the Montreal/Mirabel, Canada, areas. This action supports that request.

DATES: Comments must be received on or before September 14, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-32, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:00 a.m. and 5: p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in devloping reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-32." The postcard will be date/time stamped and returned to the commenter. All communications recieved before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of VOR Federal Airways V-203, V-91 and Jet Routes J-567 and J-228 located in the vicinity of Massena, NY. The Montreal, Quebec, Canada Regional Office of Transport Canada is reorganizing the terminal airspace associated with the Montreal/Dorval and Montreal/Mirabel Airports. The result to trans-border airspace is the relocation of two air route intersections which will require the realignment of low and high level route segments formed by radials from the Massena, NY, and Plattsburgh, NY, VORTAC's. This action supports Transport Canada's request. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation Safety, VOR Federal airways, Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [AMENDED]

2. Section 71.123 is amended as follows:

V-91 [Amended]

By removing the words "Plattsburgh, NY;" and substituting the words "Plattsburgh, NY; INT Plattsburgh 348°T(003°M) and Montreal, Canada, 154°T(170°M) radials;"

V-203 [Amended]

By removing the words "INT Massena 045° and Montreal, Canada, 188° radials;" and substituting the words "INT Massena 048°T(061°M) and Montreal, Canada, 188°T(204°M) radials;"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [AMENDED]

4. Section 75.100 is amended as follows:

J-567 [Revised]

From Plattsburgh, NY, INT Plattsburgh 348°T(003°M) and Montreal, Canada 154°T(170°M) radials; Montreal. The portion within Canada is excluded.

J-228 [Amended]

By removing the words "From Montreal, Canada;" and substituting the words "From" and by removing the words "The airspace within Canada is excluded."

Issued in Washington, DC, on August 10, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-18577 Filed 8-13-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-3]

Proposed Alteration of Jet Routes, Expanded East Coast Plan, Phase II; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects Airspace Docket No. 87-AWA-3 by adding Jet Route J-52 to the nine routes that are currently described in this proposal. J-52 was inadvertently omitted from this docket when the alignment of J-52 was determined to be satisfactory. However, we have discovered that removing a dogleg was omitted from the description, and this action corrects that mistake.

DATES: Comments must be received on or before September 14, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-3, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Correction to Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC. 20591, or by calling (202) 367-3484. Communications must identify the docket number of this correction. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular N. 11-2 which describes the application procedure.

Correction to the Proposal

Airspace Docket No. 87-AWA-3 was published in the **Federal Register** on July 6, 1987, (52 FR 25243) that described nine jet routes for a proposed realignment. Jet Route J-52 was inadvertently omitted due to a minor change to its current description. This action adds that change to this docket to maintain continuity and tracking.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Correction to the Proposed Amendment

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 87–15136, as published in the **Federal Register** on July 6, 1987 (52 FR 25243), is corrected by adding the following:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 75.100 is amended as follows:

§ 75.100 [Amended]

J–52 [Amended]

By removing the words "INT Columbia 040° and Raleigh-Durham, NC, 288° radials; Raleigh-Durham;" and substituting the words "Raleigh-Durham, NC;"

Issued in Washington, DC., on August 7, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–18576 Filed 8–13–87; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 320 and 340

Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals for Such Determinations

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend Parts 320 and 340 of its regulations, to clarify the handling of claims and reviews and appeals from denials of such claims under the Railroad Unemployment Insurance Act and to provide certain procedures to be followed by the agency in handling erroneous payment decisions under that Act. In addition, the proposed amendment to Part 340 explains when and under what circumstances waiver of recovery of erroneous payments may occur.

DATE: Comments must be submitted on or before October 13, 1987.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Steven A Bartholow, Deputy General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4935 (FTS 386–4935).

SUPPLEMENTARY INFORMATION: Pursuant to the Railroad Unemployment Insurance Act (Act) the Board pays unemployment and sickness benefits to railroad employees who are out of work due to unemployment or sickness. The processing of initial claims for unemployment benefits under the Act is decentralized and the proposed amendments clarify the authority of the different offices of the Board to render decisions. The proposed amendments also clarify the procedures to be followed by claimants in contesting adverse decisions. Finally, the proposed regulations provide for certain procedures to be followed by the Board in handling erroneous payment decision where waiver of recovery might be appropriate under section 2(d) of the Act.

The Board has determined that this is not a major rule for purpose of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

List of Subjects in 20 CFR Parts 320 and 340

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, Title 20 CFR, Chapter II, is proposed to be amended as follows:

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

1. The authority citation for Part 320 continues to read as follows:

Authority: Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362, unless otherwise noted.

2. Section 320.5 is revised to read as follows:

§ 320.5 Initial determinations.

An initial determination shall be made with respect to each claim for unemployment or sickness benefits by the appropriate adjudicating office as provided by § 320.6 of this part. The adjudicating office shall make its determination on the basis of the claimant's application and claim and any other relevant information or evidence. A determination allowing payment of an initial claim shall not establish a presumption that benefits for subsequent claims in the same period of unemployment or sickness are also payable. The Associate Executive Director for Unemployment and Sickness Insurance shall issue instructions with respect to the adjudication of claims and initial determinations on such claims. If it is found that only part of the benefits claimed may initially be paid, a partial payment shall be made prior to an final decision on the whole claim.

3. A new § 320.6 is added to read as follows:

§ 320.6 Adjudicating office.

(a) The term "adjudicating office" means any subordinate office of the Board which is authorized to make initial determinations and reconsideration decisions with respect to claims for benefits. The following paragraphs state which offices of the Board are adjudicating offices and define their authority to make determinations or decisions.

(b) *District offices.* Board district offices are authorized to make initial determinations on the following issues of eligibility for unemployment benefits:

(1) Availability for work;

(2) Voluntary leaving of work, with or without good cause;

(3) Failure to accept work or apply for work or failure to report to an employment office;

(4) Timely registration for benefits;

(5) Receipt of remuneration for claimed days of unemployment;

(6) Mileage of work restrictions and stand-by or lay-over rules;

(7) Whether the claimant's unemployment is due to a strike.

(c) *Regional offices.* Board regional offices are authorized to make determinations on any of the issues listed in paragraph (b) of this section. In addition, regional offices are authorized to make initial determinations on the following issues:

(1) Erroneous payment of benefits, including fraud;

(2) Applicability of the disqualification in section 4(a-2)(iii) of the Railroad Unemployment Insurance

Act if the claimant's unemployment results from a strike against a non railroad employer by which he is employed;

(3) Determination of the amount of the Board's claim for reimbursement from pay for time lost payments under section 2(f) of the Railroad Unemployment Insurance Act or damages for personal injury under section 12(o) of the Railroad Unemployment Insurance Act.

(d) *Division of Program Operations.* The Division of Program Operations, Bureau of Unemployment and Sickness Insurance, is authorized to make initial determinations on all issues of eligibility for unemployment and sickness benefits, and recovery of benefits, as set forth above, not reserved to the Associate Executive Director by paragraph (e) of this section.

(e) *Bureau of Unemployment and Sickness Insurance.* The Associate Executive Director for Unemployment and Sickness Insurance, or his designee, shall adjudicate:

(1) All requests for waiver of recovery of an erroneous payment;

(2) Applicability of the disqualification in section 4(a–2)(iii) of the Railroad Unemployment Insurance Act if the claimant's unemployment results from a strike against a railroad employer by which he is employed; and

(3) Offers of compromise of debts arising out of the benefit provisions of the Railroad Unemployment Insurance Act. The decision to waive recovery or to accept a compromise shall be made only by the Associate Executive Director. The Associate Executive Director shall also decide whether a plan submitted by an employer or other person or company qualifies as a nongovernmental plan for unemployment, sickness or maternity insurance, within the meaning of section 1(j) of the Railroad Unemployment Insurance Act.

4. Section 320.8 is revised to read as follows:

§ 320.8 Notice of initial determination.

(a) *Benefits payable.* If benefits are payable for a claim, no special notice of the award will be issued. The amount of benefits due will be certified to the United States Treasury Department for payment.

(b) *Benefits not payable.* If an initial determination results in denial of a claim, either in whole or in part, the adjudicating office shall issue a notice of the denial within 15 days of the date that it makes its determination. The notice shall explain the basis for the denial of benefits and shall set forth what steps the claimant can take to contest the denial.

(c) *Communication of notice of denial.* When the adjudicating office mails the denial notice to the claimant's address of record, it shall be considered that notice of the denial has been communicated to the claimant on the date of mailing such notice. If the adjudicating office has been notified that a claimant has an attorney or other representative helping him or her with the claim, a copy of the denial notice shall be sent to the attorney or such other representative.

5. A new § 320.9 is added to read as follows:

§ 320.9 Notice of erroneous benefit payment.

(a) *Content of Notice.* When an adjudicating office determines that benefits were paid erroneously, that office shall issue to the claimant a notice of the amount of the erroneous payment and the basis for the determination. The notice shall include a statement telling the claimant of his or her right to request reconsideration of the determination, of the provisions for waiver and of his or her right to request waiver.

(b) *Communication of notice of erroneous payment.* When the adjudicating office mails the erroneous payment notice to the claimant's address of record, it shall be considered that notice of the erroneous payment has been communicated to the claimant on the date of mailing such notice. If the adjudicating office has been notified that a claimant has an attorney or other representative helping him or her with the claim, a copy of the erroneous payment notice shall be sent to the attorney or such other representative.

6. Section 320.10 is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

(a) *Request.* A claimant shall have the right to request reconsideration of an initial determination under § 320.5 which denies in whole or in part his or her claim for benefits. Such request shall be made in writing and addressed to the adjudicating office that issued the initial determination and must be received by the adjudicating office no later than 60 days from the date of the notice of the initial decision.

(b) *Review of evidence.* Upon request, the claimant shall have an opportunity to review all evidence and documents that pertain to the initial determination.

(c) *Notice of decision.* The adjudicating office shall, as soon as possible, render a decision on the request for reconsideration. If a decision rendered by a district office, as the adjudicating office, sustains the initial determination, either in whole or in part, the decision shall be referred to the appropriate regional office for review prior to issuance.

The claimant shall be notified, in writing, of the decision on reconsideration no later than 15 days from the date of the decision or, where the regional office has conducted a review of the decision, within 7 days following the completion of the review. If the decision sustains the initial determination, either in whole or in part, the claimant shall be notified of his or her right to appeal as provided in §§ 320.12 and 320.15.

(d) *Right to further review of initial determination.* The right to further review of a determination made under § 320.5 or § 320.6 shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(e) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the adjudicating office shall consider the circumstances which kept the claimant from filing the request on time and whether any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) The existence of an unusual or unavoidable circumstance which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner.

7. A new § 320.11 is added to read as follows:

§ 320.11 Request for waiver of recovery.

(a) *Time limitation.* If a claimant requests waiver of recovery of an erroneous payment, he or she shall be given an opportunity for a hearing on his or her request. The claimant shall have 30 days from the date of the notification of the erroneous payment determination in which to file a request for waiver and if he or she so desires, a request for a hearing. Such requests shall be made in writing and be filed by mail or in person at any Board office. If the claimant does not elect to have an oral hearing with respect to his or her request for waiver

of recovery he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(b) *Recovery action.* Where a claimant has made a timely request for waiver of recovery and for a hearing, no action will be taken to recover the erroneous payment by setoff against current benefits prior to the hearing; *Provided However,* that the Board may, prior to the hearing, withhold the amount of the erroneous payment from benefit payments under any of the following circumstances:

(1) The amount of the erroneous payment does not exceed ten times the current maximum daily benefit rate;

(2) The claimant admits he or she was at fault in causing the overpayment;

(3) The claimant is found to have committed fraud;

(4) The claimant authorized recovery by setoff or agrees to repayment; or

(5) The claimant requests that a scheduled hearing be rescheduled to a date more than five business days after the original hearing date.

(c) *Appointment of hearing officer.* If the claimant makes a timely request for waiver and for a hearing, the Associate Executive Director for Unemployment and Sickness Insurance shall promptly arrange for the selection of a Board employee to schedule and conduct the hearing. The Board employee so selected shall not have participated in making the erroneous payment determination and shall conduct the hearing in a fair and impartial manner.

(d) *Scheduling the hearing.* The Board employee selected to conduct the hearing shall schedule such hearing at the earliest practicable time at a Board office or base point. The Board employee may reschedule the hearing upon his or her own motion or upon the request of the claimant, but if the hearing is rescheduled at the request of the claimant to a date more than five business days after the original hearing date the Board may, prior to the hearing, withhold the amount of the erroneous payment from the benefit payments.

(e) *Review of evidence.* Upon request, the claimant shall have an opportunity to review all evidence and documents that pertain to the erroneous payment determination.

(f) *Oral hearing.* The claimant shall also be afforded these rights:

(1) To present his or her case orally and to submit evidence, either through witnesses or documents;

(2) To cross-examine any adverse witnesses who testify;

(3) To be represented by counsel or other person.

(g) *Action after hearing.* When the hearing is completed, the Board employee who conducted it shall prepare a recommended decision and shall submit it, along with any evidence or documents produced as a result of the hearing, to the Associate Executive Director for Unemployment and Sickness Insurance.

(h) *Decision.* The Associate Executive Director for Unemployment and Sickness Insurance shall make a decision on the claimant's request for waiver of recovery and shall notify the claimant accordingly. If the Associate Executive Director decides that waiver of recovery is not appropriate, the adjudicating office shall wait 15 days from the date of the notification of the waiver decision before taking any action to recover the erroneous payment. If the Associate Executive Director decides that recovery should be waived, any amount of the erroneous payment so waived but previously recovered by setoff shall be refunded to the claimant.

(i) *Appeal.* If the Associate Executive Director for Unemployment and Sickness Insurance decides that waiver of recovery is not appropriate, the claimant shall have the right to appeal such decision as provided under § 320.12.

(j) *Requests made after 30 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 30 days. But action to recover the erroneous payment will not be deferred if such a request is not timely filed, and no prerecoupment hearing hearing shall be granted. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of the erroneous payment or by selecting a particular method for repaying the debt. However, no waiver consideration will be given to any debt which is settled by compromise.

(k) *Sunset provision.* Those portions of this section which provide opportunity for a hearing on a claimant's request for waiver of recovery shall cease to be effective as of the close of business August 14, 1989, except that this section will continue in full effect through the final administrative adjudication of any case involving such hearing requested prior to that date.

8. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

A claimant whose claim has been denied in whole or in part upon reconsideration under § 320.10 or a claimant whose request for waiver of recovery under § 320.11 has been denied in whole or in part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which the notice of the decision on reconsideration or waiver of recovery was mailed to the claimant. If no appeal is filed within the time limits specified in this section, the decision of the adjudicating office under § 320.10 or § 320.11 shall be considered final and no further review of such decision shall be available unless the referee finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this chapter.

§ 320.15 [Removed]

9. Section 320.15 is removed.

§ 320.18 [Amended]

10. Section 320.18 is amended by revising the last sentence thereof to read as follows:

* * * In all other cases, the referee shall consider and decide the appeal; in each such case where the referee determines that an issue of fact exists, the claimant shall have the right to a hearing.

11. Section 320.22 is revised to read as follows:

§ 320.22 Notice of hearing.

(a) *Notification of parties.* In any case in which an oral hearing is to be held, the referee shall schedule a time and place for the conduct of the hearing. The referee shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The referee shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(b) *Notice of objection.* A party to the proceeding may object to the time and place of the hearing, or as to the stated issues to be resolved, by filing a written notice of objection with the referee. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(c) *Ruling on objection.* The referee shall rule on any objection timely filed by a party under this section and shall notify the party of his or her ruling thereon. The referee may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The referee also may limit or expand the issues to be resolved at the hearing.

(d) *Failure to appear or to file objection.* If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemded to have waived his or her right to an oral hearing unless said party either filed with the referee a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the referee a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(e) *Rescheduling the hearing.* If the referee finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the referee shall reschedule the hearing. If the referee finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

§ 320.25 [Amended]

12. Section 302.25 is amended by adding a new paragraph (c) to read as follows:

* * * * *

(c) *Where no oral hearing required.* Where the referee finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

* * * * *

§ 320.50 [Amended]

13. Section 320.50 is removed.

PART 340—RECOVERY OF BENEFITS

14. The authority citation for Part 340 continues to read as follows:

Authority: 45 U.S.C. 362–1.

* * * * *

15. Section 340.6 is revised to read as follows:

§ 340.6 Recovery by setoff.

An amount recoverable may be recovered by setoff against any subsequent payments to which the individual from whom the amount is recoverable is entitled under the Railroad Unemployment Insurance Act, the Railroad Unemployment Insurance Act, the Railroad Retirement Act or any other Act administered by the Board, or, in the case of that individual's death, from any payments due under those Acts to his or her estate, designee, next of kin, legal representative, or surviving spouse. In any case in which full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the individual dies before recovery is completed, such recovery shall be made from his estate or heirs.

16. Section 340.10 is revised to read as follows:

§ 340.10 Waiver of recovery of erroneous payments.

(a) *When waiver or recovery may be applied.* Section 2(d) of the Act provides that there shall be no recovery in any case where more than the correct amount of benefits has been paid to an individual or where payment has been made to an individual not entitled to benefits if, in the judgement of the Board:

(1) The individual is without fault; and

(2) Recovery would be contrary to the purpose of the Act or would be against equity or good conscience.

(b) *Fault.* (1) Fault means a defect of judgement or conduct arising from inattention or bad faith. Judgment or conduct is defective when it deviates from a prudent standard of care taken to comply with the entitlement provisions of the Act. Conduct includes both action and inaction. Unlike fraud, fault does not require a deliberate intent to deceive.

(2) Whether an individual is at fault in causing erroneous payments generally depends on all circumstances surrounding the erroneous payments. Among the factors the Board will consider are: the ability of the overpaid individual to understand the reporting requirements of the Act or to realize that he or she is being overpaid (*e.g.*, age, comprehension, memory, physical and mental condition); the particular cause of benefit non-entitlement; and the number of claims on which the individual made erroneous statements.

(3) Circumstances in which the Board will find an individual at fault include but are not limited to:

(i) Failure to furnish information which the individual knew or should have known was material;

(ii) An incorrect statement made by the individual which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for facts);

(iii) Failure to return a payment which the individual knew or should have known was incorrect.

(c) *When recovery defeats the purpose of the Railroad Unemployment Insurance Act.* (1) The purpose of the Railroad Unemployment Insurance Act is to furnish some replacement for an individual's railroad earnings lost because of days of sickness or unemployment. The purpose of the Act is defeated when an erroneous payment is recovered from income and resources which the individual requires to meet ordinary and necessary living expenses. If either income or resources are sufficient to meet expenses, the purpose of the Act is not defeated by recovery of an erroneous payment.

(2) For purpose of this section, income includes any funds which may reasonably be considered available for the individual's use, regardless of source. Income to the individual's spouse or dependents is available if the spouse or dependent lived with the individual at the time waiver is considered. Types of income include but are not limited to:

(i) Government benefits such as Black Lung, Social Security, Workers' Compensation, and Unemployment Compensation benefits;

(ii) Wages and self-employment income;

(iii) Regular payments such as rent or pensions; and

(iv) Investment income.

(3) For purposes of this section, resources include, but are not limited to, liquid assets such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds and the like. The Board may also consider certain non-liquid assets as resources.

(4) Whether an individual has sufficient income and resources to meet ordinary and necessary living expenses depends not only on the amount of his or her income and resources, but also on whether the expenses are "ordinary and necessary." While the level of expenses which is "ordinary and necessary" may vary between individuals, it must be held at a level reasonable for an individual who is temporarily unemployed or incapacitated due to

sickness. The Board will consider the discretionary nature of an expense in determining whether it is reasonable. Ordinary and necessary living expenses include:

(i) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (*e.g.*, life, accident, and health insurance), taxes, installment payments, etc.;

(ii) Medical, hospitalization, and other similar expenses;

(iii) Expenses for the support of others for whom the individual is legally responsible; and

(iv) Miscellaneous expenses (*e.g.*, newspapers, haircuts).

(5) Where recovery of the full amount of an erroneous payment would be made from income and resources required to meet ordinary and necessary living expenses, but recovery of a lesser amount would leave income or resources sufficient to meet expenses, recovery of the lesser amount does not defeat the purpose of the Act.

(d) *When recovery is against equity and good conscience.* Recovery is considered to be against equity and good conscience when a person, in reliance on such payments or on notice that such payment would be made, relinquished a valuable right or changed his or her position for the worse.

(e) *Recoveries not subject to waiver.* Where an amount is recoverable pursuant to section 2(f) of the Act from remuneration payable to an employee by a person or company, or where a lien for reimbursement of sickness benefits has arisen pursuant to section 12(o) of the Act, and in either case recovery is sought from a person other than the employee, no right to waiver of recovery exists.

Dated: August 6, 1987.

By Authority of the Board.
For The Board.
Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 87-18545 Filed 8-13-87; 8:45 am]
BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 102 and 161

[Docket No. 84P-0249]

Canned Tuna; Proposal To Amend the Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the U.S. standard of identity for canned tuna to provide for (1) the optional use of vegetable oil or partially hydrogenated vegetable oil as seasoning or flavoring ingredients in canned tuna in water and (2) the use of safe and suitable emulsifying and suspending agents to aid in dispersion of the oil. The maximum level of use of the oil will be 5 percent of the volume capacity of the can. This action responds to a petition filed by Ralston Purina Co. FDA believes that the amendment would promote honesty and fair dealing in the interest of consumers. The agency is also proposing to update the scientific nomenclature for species' names in the common or usual name regulation for bonito and the standard for canned tuna.

DATES: Comments by October 13, 1987. The agency proposes that any final rule that may issue based upon this proposal shall become effective 60 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: The Ralston Purina Co. has petitioned FDA to amend the U.S. standard of identity for canned tuna (21 CFR 161.190(a)(6)) to permit the use of vegetable oil or partially hydrogenated vegetable oil, with or without safe and suitable emulsifying and suspending agents, as optional seasoning or flavoring ingredients in canned tuna in water. The amount of oil to be used is not to exceed 5 percent of the volume capacity of the can. Ralston Purina Co. also requested FDA to amend the nomenclature provisions in 21 CFR 161.190(a)(8) to provide for use of the phrase "seasoned with oil" when vegetable oil or partially hydrogenated vegetable oil is used for seasoning or flavoring in canned tuna in water and to provide for label declaration of any operational emulsifying and suspending agents used in the food.

Van Camp Seafood Co., Inc., formerly the seafood division of Ralston Purina Co. and now a wholly-owned subsidiary of the company, holds a temporary marketing permit, granted under 21 CFR 130.17, to market test canned tuna in water seasoned with vegetable oil and containing xantham gum as an emulsifier and suspending agent.

The use of small amounts of oil (not more than 5 percent of the volume capacity of the can) results in a product with a calorie and nutrient content comparable to canned tuna packed in water, but with the organoleptic quality of canned tuna packed in oil. Moreover, actual experience under the petitioner's temporary marketing permit indicates that the proposed use of small amounts of vegetable oil or partially hydrogenated vegetable oil results in a product that will be well received by consumers.

The agency believes the petitioner has demonstrated that this amendment is reasonable and beneficial to consumers. Therefore, the agency is proposing that § 161.190(a)(6) be amended to permit the use of vegetable oil or partially hydrogenated vegetable oil, with or without safe and suitable emulsifying and suspending agents, as optional seasoning or flavoring ingredients in canned tuna in water. The agency is also proposing to amend § 161.190(a)(8) to provide for use of the phrase "seasoned with oil" when vegetable oil is used as seasoning or flavoring in tuna in water and to provide for label declaration of any optional emulsifying and suspending agents used in the food.

Scientific Nomenclature

The agency is taking this opportunity to propose that the lists of species in 21 CFR 102.47 and 161.190(a)(2) be updated to use current scientific nomenclature and corresponding trivial names. The references cited in the standard will be removed because they are out of date. The agency is also requesting information about whether other species should be added to either of the lists. A chart comparing the tuna species' names in the current standard with the proposed list of updated names is provided for the convenience of the reader.

Current FDA list	Proposed revised list
Thunnus thynnus—Bluefin tuna.	*Thunnus thynnus*—Northern bluefin tuna
Thunnus maccoyii—Southern bluefin tuna.	*Thunnus maccoyii*—Southern bluefin tuna
Thunnus orientalis—Oriental tuna.	(*Name deleted—Same as Thunnus thynnus*)
Thunnus germo—Albacore.....	*Thunnus alalunga*—Albacore
Thunnus atlanticus—Blackfin tuna.	*Thunnus atlanticus*—Blackin tuna
Parathunnus mebachi—Big-eyed tuna.	*Thunnus obesus*—Bigeye tuna
Neothunnus macropterus—Yellowfin tuna.	*Thunnus albacares*—Yellow-fin tuna
Neothnnus rarus—Northern bluefin tuna.	*Thunnus tonggol*—Longtail tuna
Katsuwonus pelamis—Skip-jack.	*Katsuwonus pelamis*—Skip-jeck tuna
Euthynnus alleteratus—Little tunny.	*Euthynnus alletteratus*—Little tunny

Current FDA list	Proposed revised list
Euthynnus lineatus—Little tunny.	*Euthynnus lineatus*—Black skipjack
Euthynnus yaito—Kawakawa	*Euthynnus affinis*—Kawakawa

Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. The proposal permits the use of vegetable oil or partially hydrogenated vegetable oil, with or without safe and suitable emulsifying and suspending agents, in canned tuna in water. The agency believes that this proposal provides increased flexibility to manufacturers of canned tuna in water and will not impose an additional burden on the industry. Therefore, FDA certifies that this proposed actin will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) 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.

Request for Comments

Interested persons may, on or before October 13, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 102

Beverages, Food standards, Food labeling, Frozen foods, Fruit juices, Oils and fats, Onions, Potatoes, Seafood.

21 CFR Part 161

Food standards, Frozen foods, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Parts 102 and 161 be amended as follows.

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

1. The authority citation for 21 CFR Part 102 is revised to read as follows:

Authority: 21 U.S.C. 321(n), 343, 371(a).

2. By revising § 102.47 to read as follows:

§ 102.47 Bonito.

"Bonito" or "bonito fish" is the common or usual name of the food fish *Sarda chiliensis* and *Sarda velox.*

PART 161—FISH AND SHELLFISH

3. The authority citation for 21 CFR Part 161 is revised to read as follows:

Authority: 21 U.S.C. 341, 371(e).)

4. In § 161.190 by revising paragraphs (a)(2) and (4)(i), by adding new paragraph (a)(6)(ix), and by revising paragraph (a)(8)(vi) to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(2) The fish included in the class known as tuna fish are:

Thunnus thynnus—
Northern bluefin tuna
Thunnus maccoyii—
Southern bluefin tuna
Thunnus alalunga—
Albacore
Thunnus atlanticus—
Blackfin tuna
Thunnus obesus—
Bigeye tuna
Thunnus albacares—
Yellowfin tuna
Thunnus tonggol—
Longtail tuna
Katsuwonus pelamis—
Skipjack tuna
Euthynnus alletteratus—
Little tunny
Euthynnus lineatus—
Black skipjack
Euthynnus affinis—
Kawakawa

* * * * *

(4) * * *

(i) *White.* This color designation is limited to the species *Thunnus alalunga* (albacore), and is not darker than Munsell value 6.3.

* * * * *

(6) * * *

(ix) Edible vegetable oil or partially hydrogenated vegetable oil, excluding olive oil, used alone or in combination, in an amount not to exceed 5 percent of the volume capacity of the container, with or without safe and suitable emulsifying and suspending ingredients, as seasoning in canned tuna packed in water.

* * * * *

(8) * * *

(vi) Where the canned tuna contains one or more of the ingredients provided for in paragraph (a)(6) of this section, the label shall bear the statement "Seasoned with _____", the blank being filled in with the name or names of the ingredient or ingredients used, except that if the ingredient designated in paragraph (a)(6)(vi) of this section is used, the blank shall be filled in with the term "vegetable broth", and if the ingredients designated in paragraph (a)(6)(ix) of this section are used, the blank may be filled in with the term "oil", and if the ingredient designated in paragraph (a)(6)(v) of this section is used alone, the label may alternatively bear either the statement "spiced" or the statement "with added spice"; and if salt is the only seasoning ingredient used, the label may alternatively bear any of the statements "salted", "with added salt", or "salt added". If the flavoring ingredients designated in paragraph (a)(6)(viii) of this section are used, the words "lemon flavored" or "with lemon flavoring" shall appear as part of the name on the label; for example, "lemon flavored chunk light tuna". Citric acid and any optional solubilizing and dispersing agent used as specified in paragraph (a)(6)(viii) of this section in connection with lemon flavoring ingredients or emulsifying and suspending ingredients used as specified in paragraph (a)(6)(ix) of this section shall be designated on the label by their common or usual name.

* * * * *

Dated: June 4, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–18554 Filed 8–13–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 511, 791, 812, 813, 882, and 887

[Docket No. R–87–1332; FR 2170]

Section 8 Housing Vouchers

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department is proposing regulations implementing the Housing Voucher program, based on the Notice of Funding Availability for fiscal year 1987 (published in the **Federal Register** on February 19, 1987, at 52 FR 5250), as modified by this proposed rule. This rulemaking will establish permanent regulations for the Housing Voucher program, which has been administered as a demonstration program by publication of program requirements in Notices of Funding Availability.

DATE: *Comment Due Date*: September 14, 1987.

ADDRESS: HUD invites interested persons to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Division, Room 6122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6477. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Department, by this proposed rule and in order to develop final rules for the Housing Voucher program, seeks public comment on the Notice of Funding Availability (NOFA) for the program, published on February 19, 1987, at 52 FR 5250 (the 1987 NOFA). It is customary for the Department to publish proposed regulatory text when it develops implementing regulations for its programs. Because of the history of the Department's implementation of the Housing Voucher program, described below, the Department is not publishing proposed text, but rather is seeking comment on the policies in the NOFA that implements the program in fiscal year 1987, as modified by the description below of the relationship between the Housing Voucher and Rental Rehabilitation programs.

The Housing Voucher program is authorized under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1347f(o)), which was added by section 207 of the Housing and Urban-Rural Recovery Act of 1983. The Department has implemented the Housing Voucher program, which the authorizing legislation characterizes as a demonstration program, by publishing Notices of Funding Availability. (See the **Federal Register** issues of July 12, 1984, 49 FR 28458; February 28, 1985, 50 FR 8196; March 31, 1986, 51 FR 10932; December 30, 1986, 51 FR 47064; and February 19, 1987, 52 FR 5250.)

The Department published an advance notice of proposed rulemaking (49 FR 28413, July 12, 1984) with the first NOFA. This document advised the public that: If the demonstration became permanent, the Department might use the NOFA as the basis for rulemaking; the period for public comment, accordingly, might be abbreviated; and commenters should take the potential for rulemaking into account in commenting on the NOFA. In addition to the July 12, 1984, NOFA, the NOFAs published on May 8, 1985, and March 31, 1986, (the principal NOFAs for fiscal years 1985 and 1986, respectively) also sought public comment and indicated that they might be the basis for rulemaking. The NOFA for fiscal year 1987, published on February 19, 1987, advised the public (52 FR at 5251) that the Department would be publishing a proposed rule that would be based on that NOFA, and would provide a 30-day public comment period.

The Department, accordingly, proposes to publish a new 24 CFR Part 887, Housing Voucher Program, based on the requirements and policies (as modified below in this proposed rule) that are contained in the 1987 NOFA, as set out in Part II.B.2. (Anticipated Changes in the Housing Voucher Program) and Part III (Housing Voucher Program Requirements for FY 1987) (52 FR at 5254 and 5257, respectively). Part II.B.2. identifies policies that the Department proposes to implement in the final rule, but that were not implemented in Part III of the 1987 NOFA.

The Department has further considered the relationship between the Housing Voucher program and the Rental Rehabilitation program, and has decided to continue to allocate housing vouchers to be used in connection with the Rental Rehabilitation program. Part II.B.2.(a) of the 1987 NOFA (52 FR at 5254) stated the Department's intent completely to "decouple" the Housing Voucher and the Rental Rehabilitation programs in fiscal year 1988. In place of a separate allocation for use with the Rental Rehabilitation program, Part II.B.2.(a) indicated that PHAs would be required to (1) give a "preference" in making housing vouchers available to rental rehabilitation displacees, and (2) refer certificate- and housing voucher-holders to rental rehabilitation projects.

The 1987 NOFA also implements, in fiscal year 1987, several new policies that are identified as a partial implementation of the "decoupling" of rental rehabilitation grant funds from housing voucher funds. These policies, which are described in Part II.B.1. (52 FR at 5253), are: (1) Allocating housing vouchers in connection with rental rehabilitation projects at a ratio of up to one housing voucher per $7,500 of rental rehabilitation grant funds (instead of up to one per $5,000 as in the past); (2) permitting the use of these housing vouchers for general program purposes before they are used for rental rehabilitation purposes; (3) eliminating the authority for a PHA to target housing vouchers allocated in fiscal year 1987 to applicants on its waiting list who agree to move initially into a rental rehabilitation project; and (4) requiring the PHA to include information about local rental rehabilitation projects in its briefing packet for housing voucher and certificate applicants.

Although these policies are part of the "decoupling" of the two programs, elements of these policies are desirable, even though the Department proposes to continue to allocate additional housing vouchers to PHAs for use in connection with the Rental Rehabilitation program. Therefore, the following paragraphs, rather than Part II.B.2. of the 1987 NOFA, describe how the Department proposes to implement the rental rehabilitation component of the Housing Voucher program in the final rule:

(1) In addition to formula allocation funds, housing voucher funds will continue to be allocated, on the basis of a ratio of housing vouchers to the amount of Rental Rehabilitation grant funds allocated, to PHAs participating with units of general local government in the Rental Rehabilitation program.

(2) To the extent of the additional allocation it receives, a PHA must provide housing vouchers (or certificates) to lower income families that are displaced from a rental rehabilitation project by physical rehabilitation activities. A PHA may immediately use these additional housing vouchers for general program purposes, if it can ensure that housing vouchers will be available to displaced, lower income families as they are needed. Any additional housing vouchers not needed for displaced, lower income families must be used in the same manner as formula allocation housing vouchers.

(3) A PHA may not require that a family use a housing voucher to move into a rental rehabilitation project.

(4) A PHA must include information about local rental rehabilitation projects as a possible source of housing in the PHA's briefing packet for housing voucher and certificate applicants.

The proposed rule does not address the question of "economic displacement"—*i.e.*, where assisted rehabilitation causes an increase in rents for persons who were residents of the project before rehabilitation. This situation will be addressed in the final rule (currently under development) to implement the statutory tenant selection preferences for those who, at the time they are seeking assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

The policies described above give notice of how the Department proposes to implement the Housing Voucher program through the final rule. This proposed rule does not affect the requirements contained in Part III of the 1987 NOFA (52 FR at 5257), which currently control the administration of the Housing Voucher program. If the Department decides to revise any of those requirements before publication of a final, effective rule, it will make those revisions by publishing a separate **Federal Register** notice.

The final rule will address, in addition to the public comments received in response to this proposed rule, the public comments received in response to the earlier NOFAs. The final rule will also make conforming changes in related rules contained in Parts 511, 791, 812, 813, and 882.

Findings and Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321 through 4347) is unnecessary since the Certificate program and the Housing Voucher program are part of the Section 8 Existing Housing program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

This rule constitutes a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Cause a major increase in costs or prices for consumers, invidual industries, Federal, State or local government agencies, or geographic regions; or (2) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Analysis of the rule, however, indicates that it does have an annual effect on the economy of $100 million or more. The Director of the Office of Management and Budget, in accordance with section 6(a)(4) of Executive Order 12291, has waived the requirements of sections 3 and 4 of the Executive Order.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule would continue an ongoing program and does not significantly alter current policies and requirements.

This rule was listed as Sequence Number 973 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362), under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520. Currently approved requirements have been assigned the following OMB Control Numbers: 2502–0123; 2502–0154; 2502–0161; 2502–0185; 2502–0348; 2502–0350; 2577–0067 and 2577–0083.

The Catalog of Federal Domestic Assistance program number for this rule is program numbers 14.156.

List of Subjects in 24 CFR Part 887

Grant programs: Housing and community development, Housing, Rent subsidies, Low and moderate income housing.

Authority: Sec. 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: July 23, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87–18587 Filed 8–13–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 5

[Notice No. 636; Ref. Notice No. 633]

Standards of Fill for Wine and Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 633, an advance notice of proposed rulemaking, published in the **Federal Register** on June 24, 1987 (52 FR 23685). AFT has received several requests, representing both domestic and foreign interests, for an extension of the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the advance notice.

DATE: Written comments must be received on or before October 23, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. 385, Washington, DC 20044–0385 ATTN: Notice No. 633.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1987, AFT published Notice No. 633, an advance notice of proposed rulemaking, inviting comments from the public and industry as to whether the existing authorized standard fill sizes for wine and distilled spirits should be retained, revised, or eliminated.

The Bureau also solicited comments on a petition it received from the Washington State Liquor Board (WSLCB), requesting an amendment of the standard of fill requirements for imported distilled spirits.

Subsequent to publication of the Notice, AFT received several requests, representing both domestic and foreign interests, to extend the close of the comment period from August 24, 1987, to October 23, 1987. One commenter noted that contact with European Common Market countries is difficult during July and August, because of their traditional holiday periods.

Another commenter, a national trade association of manufacturers and importers representing over 85 percent of the distilled spirits sold in the United States, requested the extension in order to afford its members sufficient time to develop their respective positions, in view of the complexity and importance of the standard fill issue.

AFT finds the reasons mentioned above to be valid and is, therefore, extending the comment period until October 23, 1987.

Drafting Information

The author of this document is Coordinator James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and containers.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

August 7, 1987.

W.T. Drake,

Acting Director.

[FR Doc. 87-18606 Filed 8-13-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

Self-Contained Self-Rescue Devices

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice to extend period for public comment on proposed rule.

SUMMARY: Due to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its proposed rule for self-contained self-rescue devices in 30 CFR Parts 48 and 75.

DATES: Written comments on proposed rule must be received on or before August 21, 1987.

ADDRESSES: All comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary for Mine Safety and Health, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On June 30, 1987, MSHA published a proposed rule (52 FR 24378) which would require persons using self-contained self-rescue (SCSR) devices to receive training in the opening and activation of the device; inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece; and the wearing of the noseclip. This training, commonly referred to as "hands-on" training, would be required for all persons entering underground coal mines. "Hands-on" training in the use of SCSR units is necessary to avoid danger to underground miners from suffocation or poisoning from toxic products of combustion in the event of a mine fire or explosion. The comment period was scheduled to close on August 14, 1987. Due to requests from the public, MSHA is extending the comment period to August 21, 1987. All interested parties are encouraged to submit comments, and comments must be received on or prior to that date.

Date: August 12, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-18723 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS Coverage for Biofeedback

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This amendment will provide coverage for biofeedback therapy when used as a treatment modality for those medical conditions, as determined by the Director, OCHAMPUS, or a designee, for which biofeedback therapy is generally accepted to be an appropriate mode of treatment. This amendment will offer coverage for services now specifically excluded from CHAMPUS cost-sharing.

DATE: Written public comments must be received on or before September 14, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Judith A. Carroll, Policy Branch, OCHAMPUS, telephone (303) 361-3521.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

Section 199.4, paragraph (g)(59) of Part 199 specifically excludes biofeedback therapy from the CHAMPUS Basic Program. The basis for this exclusion was that this treatment modality was primarily experimental and not generally accepted by the professional medical community.

In the Senate Appropriations Committee Report on the Department of Defense Appropriations Act for 1979, OCHAMPUS was requested to "conduct a study and work with the Biofeedback Society of America (or other approporiate representatives of this clinical technique) to delineate the conditions under which biofeedback might be acceptable as a health care service that can be reimbursed by CHAMPUS."

Following this directive, OCHAMPUS had numerous meetings with DoD officials, OCHAMPUS personnel, and members of the Biofeedback Society of America. The information obtained at these meetings and the input received from other professional sources, lead OCHAMPUS to propose an amendment to the Regulation in 1980 which allowed limited coverage for biofeedback therapy. However, the proposed amendment was disapproved because of insufficient evidence establishing clinical efficacy for biofeedback services.

Each year, since that time, the Senate Appropriations Committee has expressed interest on OCHAMPUS' progress towards the establishment of limited biofeedback benefits. In 1983, OCHAMPUS was directed by Congress to report on when OCHAMPUS would establish biofeedback therapy as a benefit. Our response to this Congressional directive indicated that before OCHAMPUS could establish benefits for limited biofeedback therapy further examination of cost-savings was required. Additionally, we reported that we could only support the establishment of biofeedback services when there was clear evidence that it would not increase program costs. Our report further offered a solution of initiating a demonstration project to determine both clinical and cost effectiveness of biofeedback services. Following this report, The Senate Appropriations Committee Report No. 98-636 of the DoD Appropriations Act of 1985, expressed an interest in being apprised of the results of the OCHAMPUS biofeedback demonstration project.

Acting on the expressed interest of The Senate Appropriations Committee Report, OCHAMPUS determined that an evaluation study of biofeedback by an independent contractor was needed as the first step in designing and implementing a demonstration project. In 1985, a competitive contract was awarded to evaluate the clinical and cost effectiveness of biofeedback therapy and provide recommendations for policy options.

The results of the evaluation study indicated that biofeedback literature now supports the cost effectiveness and efficacy of biofeedback therapy for treatment of fecal incontinence, Raynaud's syndrome, hypertension, chronic migraine, and tension headaches and neuromuscular rehabilitation under certain conditions.

The recommendations for CHAMPUS demonstration benefit policy options were: to provide coverage as a primary modality for fecal incontinence; to provide coverage as an adjunct modality for Raynaud's syndrome, hypertension, chronic migraine and tension headaches with coverage limitations on the number of visits and costs per visit and treatment for specific diagnosis. Additionally, coverage should be only for treatment administered by or under the supervision of a physician or prescribed by one. The study recommended that the demonstration test location and control location match as closely as possible with respect to medical care available from an MTF, CHAMPUS-eligible population demographics, and medical doctor-to-certified therapist ratio.

The study further reported that the demand for biofeedback services could not be determined because no biofeedback patient demographic, utilization and cost data were available. As a result, no reliable analysis of coverage options was possible.

Following a review of the evaluation study and all available research material, OCHAMPUS has decided not to initiate a demonstration project, since there is sufficient information which supports biofeedback as an effective treatment modality recognized by the medical community as the standard of care for certain medical conditions. Additionally, we feel the cost involved in the implementation and evaluation of a biofeedback demonstration project can better be applied to establishing biofeedback therapy as a benefit.

Our proposal incorporates many of the recommendations contained in the evaluation study on benefit options, and also follows Medicare's lead on the exclusion of biofeedback treatment for psychosomatic disorders. Coverage will be limited to the treatment of specific medical conditions for which biofeedback has been proven to be safe and effective when rendered by or supervised by a physician. This follows with current regulatory requirements which require that treatment of conditions of an organic nature must be ordered by or rendered by a physician.

This proposed amendment will offer coverage for services now specifically excluded from CHAMPUS cost-sharing. It will be seen as an enhancement of military benefits. It will provide greater parallel between CHAMPUS benefits and the services now offered at many military treatment facilities.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, the Department of Health and Human Services, the Department of Transportation and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation amendment will not have a significant economic impact on a substantial number of small businesses, organizations, or government jurisdictions.

We have determined that this Regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

Part 199—[Amended]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by adding a new paragraph (e)(16) and by removing and reserving paragraph (g)(59) as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(16) *Biofeedback Therapy.* Biofeedback therapy is a technique by which a person is taught to exercise control over a physiologic process occurring within the body. By using modern biomedical instruments the patient learns how a specific physiologic system within his body operates and how to modify the performance of this particular system.

(i) *Benefits Provided:* CHAMPUS benefits are payable for services and supplies in connection with electrothermal, electromyograph and electrodermal biofeedback therapy when there is documentation that the patient has undergone an appropriate medical evaluation, that other forms of conventional treatment have been unsuccessful, the treatment is administered, supervised, or prescribed by a physician prior to the initiation of biofeedback therapy and, only when provided as treatment for the following conditions:

(A) Adjunctive treatment for Raynaud's Syndrome.

(B) Adjunctive treatment for mild to moderate hypertension.

(C) Adjunctive treatment for neuromuscular rehabilitation for:

(*1*) Stroke, to include foot drop, and

(*2*) Paretic and spastic muscles, and

(*3*) Torticollis.

(D) Vascular and tension headaches.

(E) Fecal incontinence.

(ii) *Limitations.* Payable benefits include initial intake evaluation. Treatment is limited to a maximum of 20 inpatient or outpatient biofeedback treatments per calendar year.

(iii) *Exclusions.* Benefits are excluded for biofeedback therapy for the treatment of ordinary muscle tension states or for psychosomatic conditions. Benefits are also excluded for the rental or purchase of biofeedback equipment.

(iv) *Provider Requirements.* A provider of biofeedback therapy must be a CHAMPUS-authorized provider. (Refer to § 199.6, "Authorized Providers.") If biofeedback treatment is provided by other than a physician, the patient must be referred by a physician and a physician must provide general supervision of the treatment.

(v) *Implementation Guidelines.* The Director of OCHAMPUS shall issue guidelines as are necessary to implement the provision of this paragraph.

* * * * *

(g) * * *

(59) [Reserved]

* * * * *

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 10, 1987.

[FR Doc. 87-18575 Filed 8-13-87; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to release all non-proprietary data used in the calculation of the all inclusive index of railroad input prices to the public. The index is used to calculate the quarterly rail cost adjustment factor. Release of non-proprietary data will enable the public to verify the calculation of major portions of the index. Annual data will be released annually and quarterly data will be released each quarter. Routine items such as data collection forms will be released once. Subsequent releases of such items will be made only when they are revised. Final rules concerning disclosure of non-proprietary index data will be issued after review of comments and replies.

DATES: Comments are due by September 14, 1987, and must be served on all parties on the existing service list.[1] Replies are due 15 days after the receipt of comments.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275-7354, or Robert C. Hasek, (202) 275-0938.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 275-7428 (assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or energy conservation. This proceeding will not have a significant impact on a significant number of small entities.

Decided: August 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18589 Filed 8-13-87; 8:45 am]

BILLING CODE 7035-01-M

[1] A Commission action is underway to sever into a separate sub-docket the decisions which publish the Rail Cost Adjustment Factor (RCAF) from those dealing with the rules governing the RCAF. As part of that action, the Commission will update and publish new service lists for each docket.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 4]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment; Request for Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Request for Comments.

SUMMARY: NHTSA is developing new photometric specifications for motor vehicle headlighting. These specifications will be based on three factors: Geometry of roadways, accidents that are occurring and their relationship to intensity and other characteristics of light, and the ability of a driver to see and avoid obstacles and maintain the vehicle within a traffic lane.

The purpose of this notice is to solicit comments on elements of this development.

Related to this Notice is an afternoon session which has been added to the Meeting to be held in Ann Arbor on September 2, 1987. At 2:00 PM NHTSA will discuss the development of new photometric specifications for motor vehicles.

DATES: Comments due date: December 2, 1987. Meeting date: September 2, 1987 at 2:00 PM.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, 202-366-5280.

ADDRESS: Comments should refer to the Docket and Notice numbers above and be submitted (preferably 10 copies) to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Meeting address: Conference Room, Environmental Protection Agency Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: On October 22, 1985 a Notice of Request for Comments was published in the **Federal Register** (50 FR 42735) as part of a comprehensive review of Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices and Associated Equipment." The purpose of the NHTSA review was to identify regulatory requirements that could be simplified or eliminated, while being consistent with motor vehicle safety. Five principal areas were defined, the first being the feasibility of a standard directed toward on-board original equipment headlighting performance rather than toward performance of individual aftermarket headlamps in a laboratory environment. The second was the desirability of specifications for headlamp life. The third concerned the necessity of dimensional specifications for headlamp equipment. The fourth was the issue of headlamp aim. The fifth was the elimination of obsolete photometric requirements.

Over 40 comments were received on this Notice, with points of view and recommendations varying widely on the five areas of interest. Based on review of the comments, NHTSA has decided to take a two-phase approach consisting of a near-term rulemaking action and a longer term rulemaking action. It is anticipated that a near-term Notice of Proposed Rulemaking (NPRM) will be issued during 1987 which will address the elimination of obsolete photometric requirements, aimability, dimensions, and life. The longer term rulemaking action is addressing a vehicle based "roadway illumination performance requirement." This is the first principal area of concern listed in the previous Notice.

Comments to the Notice concerning this area were divided; some favored a vehicle-based requirement, while others favored an equipment based requirement. There was an almost universal view among vehicle manufacturers that equipment, rather than vehicles, should be tested even if the specification was for vehicle performance. One commenter, Ford Motor Company, had done extensive work toward a vehicle-based photometric performance requirement. A report on this effort by Ford is contained in a paper titled "Development of a Vehicle Headlighting Performance Standard" (VHPS) (Docket 85-15; No. 1, Submission #029). Dealing only with the photometric performance aspects, the

Ford paper helped establish a direction for the development of a vehicle-based photometric requirement. To further that objective, NHTSA has been engaged in an in-house effort to develop a "Roadway Illumination Performance Requirement" (RIPR) for motor vehicles which is based on the safety needs for driving at night. The goal is to achieve a vehicle-based roadway illumination performance requirement that may then be implemented by vehicle manufacturers as they see fit in the design of their vehicles. In an attempt to respond to the vehicle industry's desire to test only equipment and not vehicles for roadway illumination performance compliance, the development of a computer program to translate vehicle performance into equipment performance is also a goal.

NHTSA efforts toward development of the RIPR have included review, study, correction and improvement of various existing mathematical algorithms dealing with target visibility, discomfort glare, and disabling glare. This process has led to the study of target, roadway, and accident characteristics. These efforts are outlined as an attachment to a memorandum placed in Docket 85-15, No. 1 (Submission # 048). This memorandum was a record of a meeting with representatives of Ford Motor Company to discuss their efforts on developing models for evaluating headlamp photometric performance, and their thoughts on how they might develop their VHPS. An attachment to this memorandum, NHTSA's "Outline of Program for Development of a Roadway Illumination Performance Requirement", discussed the three major ingredients necessary for this development: a set of safety needs, a set of qualitative statements of the criteria used for evaluation of the performance necessary to meet each safety need, and a technical program to connect these qualitative statements to quantitative specifications for a regulation.

Approach

Based on anlyses of the variety of roadways that exist today and the accidents that are occurring on these roadways, several driving situations are being identified. The lighting requirements for each of these situations will be estimated from the relationships between necessary light and visibility. The determination of necessary light includes the presence of light from oncoming vehicles. These relationships have been reduced to mathematical expressions which can be solved by computers.

The elements which are the focus of this notice are all related to the calculation part of the process. For that reason, the following description of the calculation program is provided. As will be seen in this description, consideration is given to both the discomfort that may be caused by light from oncoming vehicles (discomfort glare) and the reduction in the distance at which objects can be seen (disability glare). The computer program for determining the amount of light which is necessary for each driving situation consists of equations and decision criteria for balancing the brightness of three features. These are the brightness of the object which needs to be seen (target brightness), the brightness of the background behind the object (background brightness), and the brightness of the light from an oncoming vehicle (veiling brightness). The calculation process consists of two main steps: determination of veiling brightness that corresponds to an acceptable level of discomfort glare, and determination of the necessary target brightness to be able to see the object with the amount of veiling brightness that is determined by the first step. The veiling brightness establishes a maximum amount of light that a vehicle can produce for the specific driving situation and the target brightness establishes a minimum amount of light that the vehicle must produce for the same situation. An example of the results of the calculation process is shown in the following table. This situation corresponds to that which exists when a driver traveling at 40 mph sees a pedestrian on the shoulder of a straight and level two-lane road in time to be able to stop.

EXAMPLE ILLUMINANCE VALUES FOR PEDESTRIAN VISIBILITY

Glare Car				Observer Car			
Maximum Illuminance Allowed f-c	Distance Between Cars ft.	H Angle degree	V Angle degree	Minimum Illuminance Required f-c	Distance to Pedestrian ft.	H Angle degree	V Angle degree
0.0109	385.03	1.56	0.52	1.060	190.36	2.41	0.87
0.0112	314.13	1.92	0.64	0.976	154.94	2.96	1.07
0.0123	192.43	3.13	1.04	0.891	94.16	4.87	1.76
0.0134	141.64	4.25	1.42	0.905	68.84	6.67	2.41
0.0186	50.43	10.01	3.31	1.260	28.65	16.22	5.78

Conditions Used

Age=45 years
Deboer Index=5
Deceleration=16.1 ft/sec/sec
Velocity=40 mph
Reaction time=1.42 sec
Windshield transmittance=70%
Straight road and light necessary to stop before reaching the pedestrian

Definition of Terms

Illuminance-Glare Car—maximum illuminance that can be produced by a glare car at the given angles and distance that does not exceed an acceptable level of discomfort glare, when measured at the observer

Observer Car—minimum illuminance that the observer car must produce at the given angles and distance in order to see a stationary pedestrian on the shoulder and have enough time to come to a complete stop, when measured at the pedestrian

Distance between cars—distance between front of glare car at center line and driver of observer car

Distance to pedestrian—distance between front of observer car at center line and pedestrian

H angle-glare car—angle between center line of glare car and vector connecting front center of glare car and driver's eye

Observer Car—angle between center line of observer car and vector connecting center front of observer car and pedestrian on shoulder

V angle-glare car—measured from ground to vector connecting the

ground at the front center line of glare car and driver's eye

Observer Car—measured from ground to vector connecting the ground at the front center of observer car and pedestrian's center point

Elements for Comment

1. One of the three elements for which comments are solicited is related to the visibility of pedestrians. As part of an evaluation of benefits, it would be desirable to be able to estimate the incremental number and locations of pedestrians that could be seen, and thus avoided. A computer program to provide this estimate would be based on a set of typical locations for pedestrians relative to a vehicle. The program would be able to estimate those pedestrians that would be visible with an existing road illumination system and also those pedestrians that would be visible with a headlighting system that meets new specifications. The agency is seeking such programs, along with supporting documentation of the basis for the program and for use of the program.

2. Another element is a program which can be used to determine visibility of lane markings. A model exists which uses a "vanishing point" method. This model converts a 50-foot segment of marking in the plane of the road to a representative shape in a plane perpendicular to the driver's line of sight. This representation is then treated as any other target; it is converted to a circle with an identical perimeter (circumference). The diameter of this circle is used to define target size.

This representation of lane markings may be adequate, but additional verification and documentation is needed. One problem with this method is the algorithm which is used for the estimates of target size. The estimates of target size for delineation, especially when delineation is viewed from a large distance, appear to be in error.

The agency is seeking comments on other methods for modeling delineation.

3. The third element is conversion from vehicle specifications to specifications for lamps. The intent of the agency is to develop a roadway illumination performance requirement for any vehicle, except motorcycles. The vehicle industry appears in favor of this, however, in comments to Docket 85-15, Notice 1, there was the general opinion that the vehicle manufacturers should not be required to test a vehicle for photometric compliance, but that only headlamps should be tested for photometric compliance. In order to achieve this goal, a computer program must be developed that provides the vehicle manufacturer with the necessary guidance to determine how to design and build a headlighting system that will conform. Conversely, this program will provide a compliance tool with which to determine a vehicle's compliance with the roadway illumination performance requirement.

This computer program must be capable of translating the vehicle-based requirement into a requirement similar to that presently used for laboratory testing of individual headlamps, and it must be accommodating enough to accept any configuration of headlighting system that may be developed in the future. For example, it must take into account headlamp height above the roadway, headlamp distance from the vehicle centerline, the number of headlamps intended to be used for each beam (lower or upper), and the minimum illumination level necessary in the event of a partial system failure. For a simple system today, this may simply describe a 2-headlamp system where each lamp performance is to be identical and mounting height is 24 inches and separation is 48 inches. The computer program would need to be designed to help the lamp designer establish lamp photometry and whether compliance could be met.

The program therefore must take the anticipated vehicle requirements in a format of illumination level, distance, horizontal angle and vertical angle, all referenced to the vehicle centerline at the road surface, and translate them into an equipment requirement where the measurement axis is the centerline of the headlamp. It must accommodate a potentially large number of illumination requirements, and translate each into a potentially large number of individual headlamp unit requirements. The program must be user friendly, in that it asks the user for specific information relative to the user's design layout and philosophy for the headlighting system, and assures that the information has been correctly recorded and is compatible with the program. The output of the program should be a set of photometric specifications so that headlamps may be tested in a laboratory using the standardized headlamp photometry test procedures. The information presented in this format could be used by headlamp designers to design and manufacture complying headlamps and by NHTSA to verify compliance of those production headlamps.

An extra session of the previously announced NHTSA-Industry public meeting in Ann Arbor, Michigan, on September 2, 1987 (52 FR 27282) will be convened at 2:00 p.m. for the purpose of discussing this notice.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1932, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 11, 1987.

Ralph J. Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 87-18609 Filed 8-13-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rulemakings published in the **Federal Register** on March 13 and June 3, 1987, (52 FR 7900 and 52 FR 20757) and sets forth proposed frameworks, (i.e., the outer limits for dates and times when shooting may occur, hunting areas, and the number of birds which may be taken and possessed) for late-season migratory bird hunting regulations for 1987-88. These seasons generally will commence on or about October 1, 1987, and include most of those for waterfowl.

The Service annually prescribes migratory bird hunting regulations frameworks to the States. The effect of this proposed rule is to facilitate the selection of hunting seasons by the States and to further the establishment of the late-season migratory bird hunting regulations for 1987-88.

DATES: The comment period for these proposed late-season frameworks will end on August 25, 1987.

ADDRESS: Address comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received on these proposed late-season frameworks will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as

amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 13, 1987, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (52 FR 7900) a proposal to amend 50 CFR Part 20, with comment periods ending June 18, July 14 and August 25, 1987, respectively, for the 1987–88 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and the late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K. On June 3, 1987, the Service published in the **Federal Register** (52 FR 20757) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 2, 1987, the Service published for public comment in the **Federal Register** (52 FR 25170) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 3, 1987, the Service published in the **Federal Register** (52 FR 28717) a fourth document containing final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 6, 1987, The Service published a fifth document (52 FR 29187) containing final frameworks for other early migratory bird hunting seasons from which State wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for 1987–88. This document is the sixth in the series and deals specifically with proposed frameworks for the 1987–88 late-season migratory bird hunting regulations. Before September 1, 1987, the Service intends to publish in the **Federal Register** a seventh document consisting of a final rule amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; teal seasons in September; sea duck seasons in certain defined areas of the Atlantic Flyway; September duck seasons in four States; September Canada goose seasons in three States; sandhill crane seasons in the Central and Pacific Flyways; a sandhill crane and Canada goose season in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and extended falconry seasons.

At the July 25, 1987, annual Waterfowl Status Meeting, the Service noted that overall conditions on the breeding grounds do not appear to have changed substantially from those of the last few years. Data were presented that little change this year compared to last year in duck breeding populations and breeding habitat that was highly variable in quality and availability. The Service forecasted a 1987 fall flight of ducks similar to that of 1986.

Based on Federal surveys, the conservative duck harvest strategies of the 1986–87 season resulted in essentially no change in the reduced mallard and total duck harvests of 1985, which was the Service's objective. The Service advocates a duck harvest strategy for 1987–88 that continues the conservative harvest posture of the last two years. This year, 1987–88, will be an interim management year while the results from the Stabilized Regulations Study are addressed in the Supplemental Environmental Impact Statement on Issuance of Annual Regulations for Sport Hunting of Migratory Birds.

Review of Comments Received at Public Hearing

Fifteen statements were offered at the August 4, 1987, public hearing. Portions of some of these statements were related to matters outside the purpose of the hearing. Each statement is summarized below and relevant portions are addressed in the responses.

Mr. John M. Anderson, representing the National Audubon Society, with regards to the Pacific Flyway: (1) Believes that a flyway-wide closure on white-fronted geese is prudent; (2) recommended continuation of regulations that would redirect harvests from dusky Canada geese towards more plentiful races; (3) favored continuation of the closed season on cackling Canada geese; and (4) favored a limited season on brant following the recommendations of the Pacific Flyway Council. He observed that populations of snow geese and mid-continent and eastern populations of Canada geese were at satisfactory levels and believed that changes were unnecessary unless Councils deemed changes were necessary for subpopulations. He said that the coordination between the Service and the Flyway Councils is important in Canada goose management and that some populations of resident geese warranted additional harvests. He expressed concern about the status of pintails and blue-winged teal and urged the Service examine the possibility that these species are being adversely impacted in wintering areas south of the U.S. He recommended that regulations governing duck hunting, including that in the Central Flyway, be essentially the same as those of last year. He supported seasons on the Eastern Population of tundra swans but said that information on the population and development of a hunt plan was essential before the season in North Carolina was operational or expanded to other areas.

Response: The Service and the Pacific Flyway Council support the Yukon-Kuskokwim Delta Cooperative Goose Management Plan and the Flyway's plan which provide for ceasing all sport and subsistence harvest of this population should the 3-year average fall index be below 95,000 geese. While the average index has been close to this value, an increase in the fall flight this year has been forecast. As Mr. Pamplin has remarked (see his comments following), the affected States will seek emergency closures should it become necessary. The Service acknowledges the Society's support for various goose and duck regulations which are herein proposed and concurs that a hunt plan for the Eastern Population of tundra swans is essential before hunts in the Atlantic Flyway become operational or expanded.

Mr. T. Miller, representing the Illinois Department of Conservation, supported the position (see below) of Hugh Bateman, Chairman of the Mississippi Flyway Council, regarding daily bag limits for mallards. He requested that the Service approve a slight increase in Canada goose harvest objectives for the principal States that harvest Mississippi Valley Population (MVP) Canada geese in order to maintain the population level near the management plan objective, and gave a number of reasons why the larger objectives are appropriate.

Response: The Service notes Mr. Miller's support of Mr. Bateman's position. The frameworks proposed herein include a modest increase in the MVP harvest objectives.

Mr. Hugh Bateman, representing the Mississippi Flyway Council, commented on the proposed duck hunting regulations. He stated that the proposal to increase the mallard bag limit in the Central Flyway was inconsistent with the Service's guideline to continue with conservative duck harvest strategies, this year that was presented at the

recent waterfowl status meeting in Denver, Colorado, and urged that the Service either reconsider the proposal or offer the same liberalization to all flyways.

Response: The Service has considered Mr. Bateman's statement and those made by other parties and the frameworks proposed herein reflect the same bag limits as last year in the Central Flyway.

Mr. Peter Duncan, representing the Atlantic Flyway Council, expressed support for the comments made by Hugh Bateman, Chairman of the Mississippi Flyway Council, regarding daily bag limits for mallards.

Response: The Service notes Mr. Duncan's support for a conservative duck harvest strategy and refers to the Service action outlined in the previous response to Mr. Bateman.

Mr. Ken Babcock, representing the Missouri Department of Conservation, supported the comments of Hugh Bateman, Chairman of the Mississippi Flyway Council, regarding daily bag limits for mallards. He commended the Province of Manitoba for its regulatory actions in the cooperative effort to reduce the harvest of Eastern Prairie Population Canada geese.

Response: The Service notes Mr. Babcock's support of Mr. Bateman's comments and refers to the Service action outlined earlier in the response to Mr. Bateman.

Mr. Gary Myers, representing The Wildlife Society, supported continued conservative regulations to maintain a reduced duck harvest, urged continued caution in management of black ducks and a closed season on canvasbacks. He further supported efforts to maintain low harvests of both Atlantic and Pacific brant and commended Alaska for continued protection of Aleutian and cackling Canada geese and emperor geese. He then expressed the deep concerns of the Southeastern Section of The Wildlife Society over the fate of Canada geese that winter in the Southeast, stating that sub-populations have been virtually eliminated from Florida and South Carolina and are sharply reduced in North Carolina even though the Atlantic Flyway Population has increased. He urged the Service to consider the size, productivity, and hunting mortality of sub-flocks when establishing frameworks for goose hunting in the Atlantic Flyway. Again on behalf of The Wildlife Society, he strongly supported the cooperative effort of Pennsylvania and other northern States in their attempts to address the Atlantic Flyway Canada goose issues. He also encouraged the Service to work with the States to assure that agreed upon Mississippi Valley Canada goose harvest objectives are met. He stated that The Wildlife Society continues to support programs designed to monitor impacts of management strategies, the elimination of lead shot for waterfowl hunting, the swift implementation of the North American Waterfowl Management Plan, and carefully designed harvest strategies for tundra swans.

Response: The Service appreciates The Wildlife Society's support of the proposed regulations designed to maintain reduced harvests of ducks and to protect eastern population canvasbacks and specific populations of geese. The Service continues to work with Atlantic Flyway States in efforts to resolve the concerns regarding Atlantic Flyway Canada geese and with Mississippi Flyway States to assure that harvest quotas for geese are met. The Service also appreciates the Society's support of efforts to better understand the impacts of harvest regulations, to eliminate toxic shot, and to implement the North American Waterfowl Management Plan. The Service will participate, along with representatives of the four flyways and Canadian interests, in the development of comprehensive guidelines for management of tundra swans.

Mr. Douglas Inkley, representing the National Wildlife Federation, commented that it was unfortunate the stabilized regulations report remains uncompleted and is of little utility for determining migratory bird regulations. He expressed concern for the continued population decline of the black duck and recommended the Service complete the 1983–87 harvest reduction program and evaluate the results. He recognized factors other than hunting which contribute to the decline of black duck populations, but recommended the Service consider additional experiments to determine impacts of hunting mortality on survival of black ducks. He advocated a research strategy recently published in the *Wildlife Society Bulletin*, 1987, which could lead to more effective management of black ducks and other waterfowl populations in decline.

Response: Data and results of the Stabilized Regulations Study have been widely distributed in draft, followed by comprehensive presentations at the North American Wildlife and Natural Resources Conference, in Quebec, in March of 1987. Proceedings of that conference will soon be available in print. Application of these results to harvest management and regulations will not occur through a single report or action, but will take years of interpretation and further work. Further, results from the Stabilized Regulations Study will be considered in the Supplemental Environmental Impact Statement (SEIS) on Issuance of Annual Regulations for Migratory Game Bird Hunting.

A full and complete evaluation of the 1983–87 black duck harvest reduction program is planned for 1988. As part of the evaluation, various harvest management strategies, including the above mentioned experimental harvest plan, will be examined. Future harvest strategies for black ducks will involve a complete analysis of existing information and will require information from Flyway Councils, and Canadian, Provincial and Federal governments.

Mr. Dale Strickland, representing the Central Flyway Council, concurred with the proposed 1987–88 duck regulations noting that the average of 1985 and 1986 mallard harvests, compared to the average of 1979–84 harvests, decreased more in the Central Flyway than in any other Flyway and that the proposed increase in drake mallard bag limits would make regulations more equitable among Flyways. He also supported the proposed frameworks for seasons on geese and tundra swans.

Response: The Service, in response to opposition expressed in the comments of others, about the inadvisability of relaxing restrictions on mallards this year, subsequently reconsidered and denied the proposed increase in bag limits for drake mallards in the Central Flyway. The Service acknowledges some differences in effects of restrictive regulations on harvest reduction in 1985 and 1986. There continues to be disagreement between the Central Flyway and the Service about the effects of some aspects of regulations, the level of precision with which harvest differences can be predicted, and more basic concepts such as the extent to which sex-specific regulations are applicable, especially with duck populations at low levels. These topics and the supporting scientific interpretations are complex and will be addressed during technical meetings prior to the next regulations cycle. The Service appreciates the Council support for proposed frameworks for goose and tundra swans seasons in the Central Flyway.

Mr. Lew Pamplin, representing the Pacific Flyway Council, expressed continued support for the process by which Flyway Councils work with the Service to develop migratory bird hunting regulations. Except for frameworks pertaining to limits of ducks in the Pacific Flyway, be supported the

recommended frameworks. He reiterated the Council's request for increasing bag limits on mallards and pintails from four to five ducks while retaining the restrictive limits of one hen mallard and one hen pintail. He described management on the Copper River Delta to increase production of dusky Canada geese. He said that the affected States would seek emergency closures should the 3-year average fall population of white-fronted geese be below the minimum threshold for hunting. He said that the brant hunting season was designed to maintain a reduced harvest with an allocation of approximately 1,100 to Alaska, 900 to Washington (including not more than 500 "dark bellied" brant), 200 to Oregon and 400 to California, with each State committed to carefully monitoring the size of the harvest. He supported the need for development of the harvest plan for the Eastern Population of tundra swans, with all four flyways and Canada participating.

Mr. Pamplin then spoke on behalf of Alaska Department of Fish and Game. He stressed the importance of the Yukon-Kuskokwim Delta Cooperative Goose Management Plan and urged the objectives and tasks identified in the plan be given high priority by the Service. He also urged the Service to improve coordination to assure completion of tasks deemed necessary to achieve the objectives of the plan, improved education about and compliance with the plan throughout the Pacific Flyway, and to do more and not less to assure an early recovery of those populations of geese that have undergone serious declines.

Response: While there have been improvements in habitat conditions in portions of the principal breeding grounds of ducks, mallards and pintails have not responded similarly and a continuation of restrictive regulations is warranted. The Service concurs with the Council's strategies for limiting harvests of dusky Canada geese and emergency closures on white-fronted goose seasons should the population index warrant it. The Service changed its recommended length of the brant season in California (52 FR 25714) from 16- to 30-consecutive days as requested by the Council and supports the approximate allocation of harvest and monitoring requirements identified by the Council. With respect to Mr. Pamplin's comments on behalf of the Alaska Department of Fish and Game, the Service is committed to working with all agencies and groups in Alaska and throughout the Pacific Flyway to restore populations of Alaskan nesting geese.

Mr. Michael Berger, representing Ducks Unlimited, Inc., noted that organizations' contribution to the protection, restoration and development of wetlands habitats. He complimented the Service for providing information on habitat and duck populations in the U.S. and eastern Canada outside of surveyed areas and voiced the hope that they can be included in fall flight forecasts of the future. He voiced disappointment that weather and resulting poor habitat quality have prevented significant increases in waterfowl populations in surveyed areas. He called for an accelaration of effort to provide adequate habitat and identified the North American Waterfowl Management Plan as the vehicle to implement habitat recovery. He noted the size of the task and identified initial actions by Ducks Unlimited and the States to provide funds while awaiting the anticipated participation by the Federal government.

Response: The Service shares Ducks Unlimited's view that survey efforts need to be expanded into selected areas not presently covered. The Service is now acting in conjunction with the Canadian Wildlife Service to develop surveys in eastern Canada. Further, the feasibility of devloping better measures of duck populations in other unsurveyed breeding areas is under review.

The Service supports Mr. Berger's comments on the importance of the North American Waterfowl Management Plan in restoring waterfowl populations. The Service is actively involved in realigning its habitat acquisition efforts to fit the goals in the North American Plan. This unilateral effort and cooperative efforts with the Canadian government will hopefully result in the accelerated effort Mr. Berger calls for.

Mr. Frank Anderson, representing the Concerned Coastal Sportsmen's Association, Inc., of Massachusetts, requested compensation days for States with a ban on Sunday hunting, and indicated that in exchange for the compensatory days a reduced bag limit would be acceptable. He asked for a continuation of bonus teal and special scaup seasons, requested a 50-day season for ducks based on their improved status, endorsed a longer duck season with reduced bag limits to increase recreational days, requested a 90-day Canada goose season in Massachusetts as a means of alleviating nuisance problems, asked that the brant season continue, and that bag limits on mergansers, excluding hooded, be increased due to their adverse impacts on fish and spawning grounds.

Response: The Service has addressed the issue of make-up for the ban on Sunday hunting most recently in the September 12, 1986, and August 15, 1986 **Federal Register** (51 FR 32464 and 29728, respectively). It is also noted that, since current season length and bag limit are evaluated in relation to harvest that results, any change in that structure would require reviews of the possible season length or bag limit adjustments to avoid increasing harvest. The Service continues to feel the Sunday hunting issue is a matter for local resolution. At this time the Service proposes to continue bonus teal, special scaup, brant and merganser seasons and bag limits. However, on the issue of increased days for waterfowl hunting in exchange for reduced bag limits, the Service reaffirms its conservative harvest strategy for 1987–88 and does not propose to increase hunting days. The proposed frameworks presented herein provide for a special resident Canada goose season for coastal Massachusetts as a means to control numbers of resident geese.

Mr. Richard Elden, representing the Michigan Department of Natural Resources, requested that the Service approve a slight increase in Canada goose harvest objectives for the principal States that harvest Mississippi Valley Population (MVP) Canada geese in order to maintain the population level near the management plan objective. He further requested that the Service endorse the specific regulations for Canada geese proposed by Michigan, and offered a number of reasons why the requested changes in harvest objectives and regulations are needed.

Response: The frameworks proposed herein include the requested increase in MVP harvest objectives and regulations which the Service feels are appropriate for the proposed objective.

Mr. Jim Phillips, who stressed that he was neither a biologist nor an affiliate of any conservation organization, spoke at length of his concerns over the status of some waterfowl and the management programs and suggested a simplified 3-duck bag limit for a 5-year period and elimination of special seasons and bonus limits on scaup and teal.

Response: The Service shares Mr. Phillips' concern over the status of ducks. The decreased numbers of mallards, pintails and other waterfowl were the major consideration in the development of the North American Waterfowl Management Plan that identifies actions necessary to improve the status of all waterfowl. Bag limits and other regulations are being addressed in a supplemental

environmental impact statement expected to be released to the public soon.

Mr. Steve Miller, representing the Wisconsin Department of Natural Resources, expressed appreciation for the October 1 framework opening date for waterfowl proposed for Wisconsin and supported the comments made by Hugh Bateman, Chairman of the Mississippi Flyway Council, regarding daily bag limits for mallards. He requested that the Service approve a slight increase in Canada goose harvest objectives for the principal States that harvest Mississippi Valley Population (MVP) Canada geese in order to maintain the population level near the objective, and gave a number of reasons why the larger objectives are appropriate.

Response: The Service notes Mr. Miller's comments about the framework opening date and support of Mr. Bateman's comments and refers to the Service action outlined earlier in response to Mr. Bateman. The frameworks proposed herein include a modest increase in the MVP harvest objectives.

Mr. Laurence R. Jahn delivered written comments to the hearing on behalf of the Wildlife Management Institute. Citing various evidence, he contended that conservative duck hunting regulations should be continued. He specifically recommended that: (1) Regulations be made more restrictive as they affect pintail and blue-winged teal harvests and that the data bases on these two species be improved; (2) the ban on hunting canvasbacks in the eastern three flyways be continued; (3) additional restrictions on harvests of black ducks be implemented; (4) the ban on cackling Canada geese be continued and harvests of dusky Canada geese, Pacific Flyway white-fronted geese, Pacific brant and emperor geese be further reduced; and (5) regulations be employed to rebuild populations of Ross' geese, Atlantic brant, and both Tall-grass Prairie and Eastern Prairie Canada geese. He recommended that regulations be formulated on the basis of manageable population units. He further recommended that: (1) Research and management of waterfowl populations and their habitats be improved and strengthened in keeping with the North American Waterfowl Management Plan; and (2) experimental closed seasons be considered if the evaluation of stabilized regulations did not provide answers to certain critical management questions.

Response: The Service generally supports Mr. Jahn's recommendations for conservative regulations but believes that further restrictions on pintails and blue-winged teal are not warranted this year. We will continue to monitor the status of these and other duck species, and will consider additional restrictions in 1988 if needed. The Service believes the proposed frameworks on geese and brant seasons and those being implemented in Canada are in keeping with management guidelines and appropriate to rebuilding those populations that have declined. The Service is committed to furthering the goals of the North American Waterfowl Management Plan and efforts to that end will be of high priority. Significant new research, survey development, and management efforts have begun, which will help. The Service is aware of the proposed experimental opening and closing of seasons on black duck to evaluate the effects of hunting on that species, and refers to the response to Mr. Inkley.

Written Comments Received

In the **Federal Register** dated June 3, 1987 (52 FR 20757), the Service reviewed comments on proposed season frameworks received from 10 correspondents as of May 1, 1986. Since then, additional comments have been received. They are discussed here by regulatory topics arranged in the same order as in the March 13, 1987, **Federal Register** (52 FR 7900).

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.*

In the June 3, 1987, **Federal Register** (52 FR 20758) the Service noted and addressed the Atlantic Flyway Council's recommendation that the point value for ring-necked ducks be reduced from 35 to 25 points, but deferred a decision on the issue until the late-season frameworks are developed.

Response: The Service continues to have the same concerns regarding the point value change that were expressed in the June 3 document and therefore proposes the point value for ringnecks be 35 points.

3. *American black ducks.* At the June 18, 1987, public hearing on early-season regulations, Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., expressed concern for the status of the black duck and recommended there be no sport hunting of the species.

Response: See the Service's response given earlier to the comments regarding black ducks presented at the public hearing by Dr. Douglas Inkley.

13. *Duck Zones.* Iowa's request to change the boundary between its two duck hunting zones was noted by the Service in the June 3, 1987, **Federal Register** (52 FR 20759), but action was deferred until the late-season frameworks are developed.

Response: The frameworks proposed herein reflect the Service's concurrence with the requested boundary change.

14. *Frameworks for geese and brant in the conterminous United States-outside dates, season length and bag limits.*

Atlantic Flyway

(a) Massachusetts has requested that it be permitted 16 additional days of hunting for Canada geese between January 21 and February 5 and that the bag limits during those additional days be increased to 5 Canada geese daily and 10 in possession. The Atlantic Flyway Council endorsed the request.

Response: The Service notes that the special season will direct harvest at resident Canada geese and thereby help control the size of resident goose flocks causing nuisance and depredation complaints. The Service believes an experimental special resident Canada goose season is warranted but that the season should be limited to the State's Coastal duck zone. The frameworks proposed herein provide for an experimental late-January early-February Canada goose season in Massachusetts not to exceed 16 days, provided a Memorandum of Agreement governing the experimental season is concluded by the Service and the State.

(b) Delaware requested that it be permitted a special 10-day snow goose season in the vicinity of Bombay Hook National Wildlife Refuge in October to minimize marsh destruction by the geese. The Atlantic Flyway Council endorsed the request.

Response: The Service is not proposing the special season because the proposed regulatory frameworks for hunting snow geese provide the State an opportunity to test its dispersal plan without the necessity for an experimental special season with additional days.

Mississippi Flyway

(a) A recommendation that Indiana be permitted to extend the framework closing date for Canada goose hunting in Posey County to January 31 was noted in the June 3, 1987, **Federal Register** (52 FR 20760), but action was deferred until the late-season frameworks are developed. Indiana submitted additional data supporting the recommendation.

Response: The Service concurs with the recommendation and has incorporated the framework extension in the frameworks proposed herein.

(b) In the June 3, 1987, **Federal Register** (52 FR 20760), the Service

deferred action on the recommendation that Minnesota be permitted to adjust the boundaries of its Southeast Goose Zone and conduct a late-December special resident Canada goose season in a portion of the State, until the late-season frameworks are developed.

Response: The Service concurs with the recommendations and has included them in these frameworks. The special giant Canada goose season is proposed herein, provided a Memorandum of Agreement governing the experimental season is concluded by the Service and the State.

(c) A recommendation that Arkansas be granted the option to be included in the 1987–88 harvest allocation for Mississippi Valley Population Canada geese and that the Canada goose season regulatory frameworks for Arkansas provide a January 31 closing date was deferred in the June 3, 1986, **Federal Register** (52 FR 20761).

Response: The frameworks proposed herein reflect the Service's concurrence with the recommendation.

(d) In the June 3, 1987, **Federal Register** (52 FR 20760), the Service concurred with a request from Ohio to relax Canada goose harvest restrictions which had been imposed in all or parts of 4 counties several years ago to protect small flocks of giant Canada geese. However, concern has been recently expressed about the status of that portion of the Tennessee Valley Population (TVP) of Canada geese which migrates through portions of the Mississippi Flyway to wintering areas in South Carolina, and the Atlantic Flyway Council has recommended additional harvest restrictions on Canada geese in the Pymatuning Reservior area of western Pennsylvania. The extent to which TVP Canada geese use the Ohio counties where the regulations changes are proposed is presently unknown, thus the Service feels that the proposed changes should be deferred until potential impact of the changes on TVP Canada geese can be assessed. A joint meeting of the Atlantic and Mississippi Flyway Councils Technical Sections is scheduled for February 1988 to address this and other mutual interests.

Central Flyway

The Service deferred action in the June 3, 1987, **Federal Register** (52 FR 20761), on a recommendation that limits for geese in the Central Flyway portion of Montana be 3 dark and 3 light geese daily with 6 dark geese and 6 light geese in possession, except in Sheridan County where 2 dark and 3 light geese daily and 4 dark geese and 6 light geese in possession will be allowed.

Response: This recommendation has been reviewed and is included in the frameworks proposed herein.

15. *Tundra swan.*

(a) New Jersey submitted a proposal for an experimental swan hunting season in Salem, Cumberland and Burlington Counties. The State would issue 200 permits and the seasonal bag would be 1 swan per permittee. The Atlantic Flyway Council endorsed the proposal.

Response: The Service is not proposing the experimental season in New Jersey because the "hunt plan" to coordinate the sport harvest of Eastern Population tundra swans among the four waterfowl flyways has not been completed.

(b) Comments have been received from 184 individuals expressing their support of and 9 individuals expressing their objection to a tundra swan hunting season in New Jersey.

Response: See the Service's response given to item 15a.

(c) At the June 18, 1987, public hearing on early-season frameworks, Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., recommended that no sport hunting of tundra swans be permitted in North America.

Response: Fall and winter population surveys and limited breeding ground data provide annual information on the status of tundra swans, and the sport harvest of swans is closely monitored by a permit system in all States where the species is hunted. The Service has no reason to believe that the current level of harvest has any adverse impact on the resource, and therefore, proposes to continue the experimental tundra swan in North Carolina and operational permit seasons eleswhere.

Public Comments

Based on the results of recently-completed migratory game bird studies and having due consideration for any data or views submitted by interested parties, the amendments resulting from these supplemental proposals will specify open seasons, shooting hours, areas, and bag and possession limits for waterfowl and coots.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process.

The Director intends that finally-adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before late July of specific, reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 25, 1987, is contrary to the public interest.

Comment Procedure

Interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536 in the Matomic Building, 1717 H Street, NW., Washington, DC.

All relevant comments received on the late season proposals no later than August 25, 1987, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

Nontoxic Shot Regulations

In the July 21, 1987, **Federal Register** (52 FR 27352), the Service published a final rule describing zones in which lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987–88 season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting. Attention is also directed to the January 15 and July 21, 1987, **Federal Register** (52 FR 1638 and 27363) which gave notice if States do not approve nontoxic shot zones when current Service guidelines and criteria indicate such zones are necessary to protect migratory birds, the Secretary of Interior, acting through the Service, will not open those areas to waterfowl and coot hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service at the address indicated under the caption **ADDRESS.**

As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a Supplemental Environmental Impact Statement (SEIS) on the FES. The Service indicated a mid-July 1987 publication date for a Draft SEIS to be followed by public meetings prior to preparation of the final SEIS was anticipated; however, it is now unlikely that the draft SEIS will be available before early September.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" "[and shall] by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat * * *"

Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Chief, Office of Endangered Species, gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

The Service's biological opinion resulting from its consultation under section 7 of the Endangered Species Act is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC. 20240.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987 (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987 (52 FR 28717).

Authorship

The primary author of this proposed rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1986–87 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1981 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739; as amended, 54 Stat. 1103–04).

Proposed Regulations Frameworks for 1987–88 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

General

Split Season: States in all Flyways may split their season for ducks, geese, or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Extra Teal: States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. States in the Atlantic Flyway (except Florida) not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

Special Scaup-only Season: States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 1, 1987, and January 31, 1988, in the Atlantic Flyway and October 3, 1987, and January 31, 1988, in the Mississippi and Central Flyways, all dates are inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon by the State and the Service prior to August 31, 1987.

4. These areas must be described and delineated in State hunting regulations.

Or

Extra Scaup: As an alternative, States in the Atlantic, Mississippi and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Point System: Selection of the point system for any State entirely within a flyway must be on a statewide basis, *except* if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Massachusetts, Pennsylvania and Vermont may not select the point system pending completion of zoning studies.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots, and Mergansers

Hunting Seasons and Duck Limits:

Outside Dates: Between October 1, 1987, and January 18, 1988.

Hunting Season: Not more than 40 days.

Duck Limits: The daily bag limit of ducks is 4 and may include no more than 3 mallards (only 1 may be a hen), 1 pintail, 2 wood ducks, 1 black duck and 1 fulvous tree duck. The possession limit is 8, including no more than 6 mallards, (no more than 2 of which may be a female), 2 black ducks, 2 pintails, 4 wood ducks, and 2 fulvous tree ducks (except as noted below). The limit of redheads is 2 daily and 4 in possession. The season is closed to the taking of canvasbacks.

Point System Options: As an alternative to coventional bag limits for ducks, a 40-day season with a point-system bag limit may be selected by Atlantic Flyway States during the framework dates prescribed. Point values for species and sexes taken are as follow: in Florida only, the fulvous tree duck counts 100 points each; the female mallard, black duck, mottled duck (except South Carolina) and pintail count 100 points each. Wood duck (except in Virginia, North Carolina, South Carolina and Georgia during the early wood duck season option), redhead and hooded merganser count 70 points each; scaup, blue-winged teal, green-winged teal, sea ducks, wigeon, shoveler, gadwall, and mergansers (except hooded) count 20 points each; the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina and Georgia counts 25 points each; the male mallard, ring-necked duck, goldeneye, bufflehead and all other ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in two days.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

Early Wood Duck Season Option: Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits of wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Restrictions on Wood Ducks: Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

Restrictions on Mottled Ducks: The season is closed to the taking of mottled ducks in South Carolina.

Special Scaup and Goldeneye Season: In lieu of a special scaup season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneye or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

Zoning:

New York: New York may, for *Long Island Zone,* select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected. A 2-segment split season may be selected in each zone. Teal and scaup bonus options shall be applicable, but the 16-day special scaup season will not be allowed.

The *West Zone* is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The *North* and *South Zones* are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. *North Zone*—That portion of the State north of Interstate 95.

b. *South Zone*—That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a. *North Zone*—Game Management Zones 1 through 5.

b. *South Zone*—Game Management Zones 6 through 8.

New Hampshire:

Coastal Zone—That portion of the State east of a boundary formed by

State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone—That portion of the State north and west of the above boundary.

West Virginia may be divided into two zones as follows:

a. *Allegheny Mountain Upland Zone*—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

Zoning Experiments:

Vermont will continue a Lake Champlain Zone in 1987. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont.

Massachusetts, New Jersey, and *Pennsylvania,* may continue zoning experiments now in progress as shown in the sections that follow.

Massachusetts and *New Jersey* may be divided into three zones, *Pennsylvania* into four zones and *Vermont* into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected in Massachusetts, Pennsylvania and Vermont. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

Zone Definitions:

Massachusetts:

Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line. *Except* the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of the State east and south of the Central Zone.

New Jersey:

Coastal Zone—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone—That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania:

Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone—That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I–80, and on the west by the Ohio line.

South Zone—The remaining portion of the State.

Vermont:

Lake Champlain Zone—Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keeseville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Bermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone—The remaining portion of the State.

Sea Ducks: The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season conventional or point system daily bag and possession limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1987, and January 20, 1988, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons for Canada geese. The daily bag and possession limits are 3 and 6 geese, respectively, except in Pennsylvania Counties of Erie, Mercer, Butler, and Crawford where the daily bag and possession limits are 1 and 2, respectively. In New York (including Long Island), Rhode Island, Connecticut, (North Zone only) New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east

and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1988. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with the possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut (North Zone) will be 3 and 6, respectively. In the South Zone of Connecticut (that portion south of Interstate 95) the Canada goose season length may be 90 days with the closing framework date extended to February 5, 1988. The daily bag limit and possession limit will be 3 and 6, respectively, before January 15 and 5 and 10, respectively from January 15 to February 5, 1988. This season in the South Zone of Connecticut is experimental. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season for Canada geese within the October 1, 1987, to January 20, 1988, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season for Canada geese within a December 20, 1987, to January 31, 1988, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In the Coastal Zone of Massachusetts, a special resident Canada goose season may be held within January 21, 1987, to February 5, 1988; the daily bag and possession limits are 5 and 10, respectively.

Closures on Canada geese: The season for Canada geese is closed in Florida and Georgia.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1987, and January 31, 1988, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 4 and 8, respectively.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1, 1987, and January 20, 1988, States in the Atlantic Flyway may select a 30-day season for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

Tundra Swans

In North Carolina an experimental season for tundra swans may be selected subject to the following conditions: (a) the season may be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue and obtain harvest and hunting participation data; and (c) no more than 6,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks, Coots, and Mergansers

Outside Dates: Between October 3, 1987 (October 1 in Wisconsin), and January 17, 1988, in all States.

Hunting Season: Not more than 40 days.

Limits: The daily bag limit of ducks is 4, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks (except as noted below), 2 pintails, and 1 redhead. The possession limit is 8, including no more than 4 mallards (no more than 2 of which may be females), 2 black ducks, 4 wood ducks (except as noted below), 4 pintails, and 2 redheads.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Point-System Option: As an alternative to conventional bag limits for ducks, a 40-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: the female mallard and black duck count 100 points each; the redhead, wood duck (except as noted below) and hooded merganser count 70 points each; the blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 20 points each; the male mallard, pintail, and all other species of ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Coot Limits-Point System: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Early Wood Duck Season Option: Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 3 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system the point value of wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point-system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Western Louisiana: In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season for ducks, coots and mergansers may extend 5 additional days. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by

Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning: Alabama, Illinois, Indiana, Iowa, Michigan, Missour, Ohio, Tennessee, and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone—Mobile and Baldwin Counties. North Zone—The remainder of Alabama. The season in the South Zone may be split.

Illinois: North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I–280, east along I–280 to I–80, then east along I–80 to the Indiana border. South Zone—That portion of the State between the North and South Zone boudaries. South Zone—that portion of the State south of a line running east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along Highway 12 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 159, north along Illinois HIghway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I–70, then east along I–70 to the Indiana border.

Indiana: North Zone—That portion of the State north of a line extending east from the Illinois border along State Highway 18 to U.S. Highway 31, then north along U.S. 31 to U.S. Highway 24, then east along U.S. 24 to Huntington, then southeast along U.S. Highway 224 to the Ohio border. Ohio River Zone: That portion of Indiana south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, then east along State Highway 62 to State Highway 56, then east along State Highway 56 to Vevay, then on State Highway 156 along the Ohio Rvier to North Landing, then north along State Highway 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border. South Zone—That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segments.

Iowa: North Zone—That portion of Iowa north of a line running west from the Illinois border along I-80 to U.S. 59, north along U.S. 59 to State Highway 37, northwest along State Highway 37 to State Highway 175, then west along State Highway 175 to the Nebraska border. South Zone—the remainder of the State.

Michigan: North Zone—The Upper Peninsula. South Zone—That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to M–20, east on M–20 to U.S.–10B.R. in the city of Midland, east on U.S.–10B.R. to U.S.–10, east on U.S.–10 and M–25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn powerplant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 21, south along State Highway 21 to U.S. Highway 60, east along U.S. 60 to State Highway 51, south along State Highway 51 to State Highway 53, south along State Highway 53 to U.S. Highway 62, east along U.S. 62 to I–55, north along I–55 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Within each State: (1) the same bag limit option must be selected for all zones; and (2) if a special scaup season is selected for a zone, it shall be held outside the regular season in that zone.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Outside Dates, Season Lengths and Limits: Between October 3, 1987 (October 1 in Wisconsin) and January 17, 1988, States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Arkansas and Louisiana: Between October 3, 1987, and January 31, 1988, Arkansas may hold a 70-day season on snow (including blue) geese. Between October 3, 1987, and February 14, 1988, Louisiana may hold 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons. Daily bag and possession limits are as described above.

Minnesota. In the:

(a) Lac Qui Parle Goose Management Block (Big Stone, Swift, Chippewa, Lac Qui Parle, and Yellow Medicine Counties)—the season for Canada geese may extend for 30 days. In the Lac Qui Parle Quota Zone (described in State Regulations)—the season will close after 30 days or when 4,000 birds have been harvested, whichever occurs first. Throughout the 5-county area the daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone (the Counties of Washington, Anoka, Hennepin, Carver, Scott, Rice, Steele, and Freeborn, and all Counties south and east thereof)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. In selected areas of the Metro Goose Management Block (described in State regulations) and in Olmsted County, experimental late seasons may be held during December 18–27 to harvest Giant Canada geese. During these seasons, the

daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Iowa: The season may extend for 45 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone (that portion of the State bounded by U.S. Highways 92 and 71) may be held at a different time than the season in the remainder of the State.

Missouri. In the:

(a) Swan Lake Zone (described in State regulations)—the season for Canada geese closes after 40 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone (east of U.S. Highway 67 and south of Crystal City)—A 40-day season on Canada geese may be selected between December 1, 1987, and January 17, 1988, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(c) Remainder of the State—the season for Canada geese may extend for 40 days in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

Wisconsin: The total harvest of Canada geese in the State will be limited to 49,500 birds. In the:

(a) Horicon—Central Zone (Columbia, Dodge, Fond Du Lac, Green Lake, Marquette and Winnebago Counties, and the northwest portion of Washington County north of State Highway 33 and west of U.S. Highway 45)—the harvest of Canada geese is limited to 30,000 birds, with 2,000 birds allocated to the Theresa Subzone. The season may not exceed 50 days. In the Theresa Subzone (described in State regulations), the daily bag limit is 1 Canada goose per permittee through October 5 and 1 Canada goose per permittee per day thereafter, up to a season limit of 4. In the remainder of the Horicon-Central Zone, the season limit may not exceed 2 Canada geese per permittee, and the issuance of permits and tags may not exceed 37,000 permits with 1 tag each and 3,000 permits with 2 tags each.

(b) Mississippi River Zone (that portion of the State west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties)—the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through November 24, and 2 daily and 4 in possession thereafter.

(c) Northeast Goose Zone (that portion of the North Duck Zone which includes the Counties of Vilas, Oneida, Lincoln, Marathon, a portion of Wood County, and all counties or portions of counties eastward). The season for Canada geese may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In Brown County, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively.

(d) Southeast Goose Zone (that portion of the South Duck Zone which includes part of Wood County, Juneau, Sauk, Dane and Green Counties and all counties or portions of counties eastward)—in that portion of the Southeast Zone outside the Horicon-Central tag zone, the season may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In the Rock Prairie Zone (described in State regulations), a special late season to harvest giant Canada geese may be held between November 7 and December 6. During the late season, the daily bag limit is 1 Canada goose and the possession limit is 2.

(e) Northwest Goose Zone (that portion of the North Duck Zone west of the Northeast Goose Zone)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(f) Southwest Goose Zone (that portion of the South Duck Zone west of the Southeast Goose Zone)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In that portion of Wisconsin outside the Horicon-Central Zone, the progress of the Canada goose harvest must be monitored, and the season closed if necessary, to insure that the harvest does not exceed 15,000 birds.

Illinois: The total harvest of Canada geese in the State will be limited to 52,500 birds. In the:

(a) Southern Illinois Quota Zone (described in State regulations)—The season for Canada geese will close after 50 days or when 16,200 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Rend Lake Quota Zone (Franklin and Jefferson Counties)—The season for Canada geese will close after 50 days or when 7,900 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 4.

(c) Tri-County Area (all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Banner Township bounded on the north by Illinois Route 9 and on the east by U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County)—The season for Canada geese may not exceed 30 days. The daily bag limit is 1 Canada goose and the possession limit is 4.

(d) Remainder of State—Seasons for Canada geese up to 40 days may be selected by zones established for duck hunting seasons. The daily bag limit is 2 Canada geese and the possession limit is 4.

Michigan: The total harvest of Canada geese in the State will be limited to 58,000 birds. In the:

(a) North Zone—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon, the framework opening date for geese is September 26. In the remainder of the North Zone, the framework opening date is October 3. Throughout the North Zone, the season for Canada geese may extend for 20 days, except at Seney Goose Management Area, where the season will close after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2, except at Seney Goose Management Area, where the daily bag and possession limits are 2 and 4, respectively.

(b) Middle Zone—The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) South Zone:

(1) Allegan County Zone (that portion of Allegan County west of U.S. Highway 131)—the season for Canada geese will close after 50 days or when 3,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(2) Muskegon Wastewater Zone (described in State regulations)—the season for Canada geese will close after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(3) Saginaw County Goose Management Area—the season for Canada geese will close after 50 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(4) Remainder of South Zone:

(i) East of U.S. Highways 27 and 127—the season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(ii) West of U.S Highways 27 and 127—the season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(d) Southern Michigan Goose Management Area (described in State regulations)—A late Canada goose season of up to 46 days may be held between January 1 and February 15, 1988. The daily bag limit is 2 Canada geese and the possession limit is 4.

Ohio: The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

Indiana: The total harvest of Canada geese in the State will be limited to 16,000 birds. In:

(a) Posey County—The season for Canada geese will close after 50 days or when 4,700 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Kentucky: In the:

(a) West Kentucky Zone (the portion of the State west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I–24, east on I–24 to U.S. 641; northerly on U.S. 641 to U.S. 60; northeasterly on U.S. 60 to U.S. 41; and then northerly on U.S. 41 to the Kentucky-Indiana border)—The season for Canada geese may extend for 50 days, and the harvest will be limited to 16,500 birds. Of the 16,500-bird quota, 10,400 birds will be allocated to the Ballard Subzone and 3,300 birds will be allocated to the Henderson-Union Subzone (both subzones described in State regulations). If the quota in either subzone is reached prior to completion of the 50-day season, the season in that subzone will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Tennessee: In the:

(a) Northwest Zone (Lake, Obion, and Weakley Counties, and those portions of Gibson and Dyer Counties not included in the Southwest Zone)—The season may extend for 50 days, and the harvest of Canada geese will be limited to 7,200 birds. Of the 7,200-bird quota, 5,000 birds will be allocated to the Reelfoot Subzone (described in State regulations). If the quota in the Reelfoot Subzone is reached prior to completion of the 50-day season, the season in the subzone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Southwest Zone (that portion of the State bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45)—The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1988. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion west of State Highway 13, where the daily bag and possession limits are 2 and 4, respectively.

Arkansas: The total harvest of Canada geese in the State will be limited to 2,400 birds. The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1988. The daily bag limit is 1 Canada goose and the possession limit is 2.

Louisiana: The season for Canada geese is closed.

Mississippi: In the:

(a) Sardis Zone (described in State regulations)—The season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1987. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State—The season for Canada geese may not exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In both areas, the framework closing date is January 31, 1988.

Alabama: In Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

Shipping Restriction: In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Outside Dates: October 3, 1987, through January 17, 1988.

Canvasbacks: There will be no open season on canvasbacks in the Central Flyway.

Hunting Season: Seasons in the Low Plains Unit may include no more than 51 days. Seasons in the High Plains Mallard Management Unit may include no more than 67 days, provided that the last 16 days may start no earlier than December 12, 1987. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridan, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: Conventional limits are 4 ducks daily which may include no more than 3 mallards no more than 1 of which may be a female, 3 pintails, 1 redhead, 1 hooded merganser, and 2 wood ducks; and 8 in possession which may include no more than 6 mallards no more than 1 of which may be a female, 6 pintails, 2 redheads, 2 hooded mergansers, and 4 wood ducks.

As an alternative, States may select point system bag and possession limits. Under this system, the daily limit is reached when the point value of the last duck taken and other ducks already taken during that day total 100 or more points. The value of each female mallard, black duck, and mottled duck is 100 points; each wood duck, redhead and hooded merganser, and in Texas only, each black bellied whistling duck and fulvous whistling duck is 70 points; each blue-winged teal, green-winged teal, cinnamon teal, scaup, gadwall, wigeon, shoveler, and merganser (except the hooded merganser) is 20 points; and each drake mallard, pintail and each duck of other species and sexes is 35 points. The possession limit is the equivalent of two daily limits.

Daily bag and possession limits for coots are 15 and 30, respectively.

Zoning: Duck and coot hunting seasons may be selected independently in existing zones as described in the following States:

Montana (Central Flyway portion):

Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska (Low Plains portion):

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to N–10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

New Mexico:

Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma:

Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2. The remainder of the Low Plains.

South Dakota (Low Plains portion):

South Zone. Bon Homme County south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 3207 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Yankton County west of U.S. Highway 81.

North Zone. The remainder of the Low Plains.

Wyoming (Central Flyway portion):

Zone 1. Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse and Niobrara Counties.

Zone 2. Platte, Goshen and Laramie Counties.

Zone 3. Carbon and Albany Counties.

Zone 4. Park, Big Horn, Hot Springs, Washakie and Fremont Counties.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

Outside Dates: October 3, 1987, through January 17, 1988, for dark geese and October 3, 1987, through February 14, 1988 (February 28, 1988, in New Mexico), for light geese.

Possession Limits: Goose possession limits are twice the daily bag limits (see exception for light geese in the Rio Grande Valley Unit of New Mexico).

Hunting Seasons: Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 93 days with a daily limit of 5 geese that may include no more than 2 dark geese.

Kansas: For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 29 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I-70), no more than 86 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 86 days with a daily limit of 5.

Montana: No more than 93 days with daily limits of 2 dark geese and 3 light geese in Sheridan County and 3 dark geese and 3 light geese in the remainder of the Central Flyway.

Nebraska: For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183, and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 13 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 22 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 22 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

New Mexico: For dark geese, no more than 93 days with a daily limit of 2.

For light geese in the Rio Grande Valley Unit (the Central Flyway portion of New Mexico west of highways starting at the Texas line north of El Paso: U.S. 54 to U.S. 60, U.S. 60 to U.S. 285, and U.S. 285 to the Colorado line), no more than 107 days with a daily limit of 5 and a possession limit of 20.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 93 days with a daily limit of 5.

North Dakota: For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 1 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

Oklahoma: For dark geese, no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

South Dakota: For dark geese in the Missouri River Unit (the Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson east of SD Highway 65, Dewey, Gregory, Haakon north of Kirley Road and east of Plum Creek, Hughes, Hyde, Lyman north of Interstate 90 and east of U.S. Highway 83, Potter, Stanley, Sully, Tripp east of U.S. Highway 183, Walworth, and Yankton west of U.S. Highway 81), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 13 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more tha 86 days with a daily limit of 5.

Texas: West of U.S. 81, no more than 93 days with a daily limit of 5 geese which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 86 days with a daily limit of 5.

Wyoming: For geese in each of 4 Units that coincide with management zones for ducks, no more than 93 days with daily limits of 2.

Tundra Swans

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvest, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking ducks.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking ducks:

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note.—The Service's final nontoxic shot zones for 1987–88 hunting seasons in Washington have not been approved by the State; therefore, the proposed frameworks document for late seasons will include wording that in effect says that waterfowl and coot hunting will not be authorized in those zones.

Ducks, Coots, Common Moorhens, and Common Snipe

Outside Dates: Between October 3, 1987, and January 10, 1988.

Hunting Seasons:

Seasons may be split into two segments. Concurrent 79-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted. In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be an additional 7 days.

Duck Limits: The basic daily bag limit is 5 ducks, including no more than 4 mallards but only 1 female mallard, 4 pintails but only 1 female pintail, and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and Common Moorhen (Gallinule) Limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggregate.

Common Snipe Limits: The daily bag and possession limit of common snipe is 8 and 16, respectively.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Idaho—Duck Zones: Duck season dates for Zone 1 and Zone 2 may differ. Zone 1 includes all lands and waters within the Fort Hall Indian Reservation and Bannock County; Bingham County except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39. Zone 2 includes the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

Colorado, Montana, New Mexico and Wyoming—Common Snipe: For States partically within the Flyway a 93-day season for common snipe may be selected to occur between September 1, 1987, and February 28, 1988, and need not be concurrent with the duck season.

Geese (including Brant)

Outside dates, season lengths and limits on geese (including brant): Seasons may be split into two segments. Between October 3, 1987, and January 17, 1988, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Between October 3, 1987, and January 10, 1988, Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively. Brant seasons may not exceed 16-consecutive days in Washington and Oregon and 30-consecutive days in California and must run concurrent with the duck season.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

California, Oregon, Washington—Cackling Canada goose closure: There will be no open season on the cackling Canada geese in California, Oregon and Washington.

California—Canada goose and dark goose closures: Three areas in California, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacremento River; then southerly on the Sacramento River to the Tisdale By-passs; then easterly on the Tisdale By-pass to where it meets O'Banion Road, then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, there will be no open season for Canada geese. In this area, the season on dark geese must end on or before November 30, 1987.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23, 1987.

California (Northeastern Zone)—geese: In the Northeastern Zone of California the season may be from October 10, 1987, to January 10, 1988, except that white-fronted geese may be taken only during October 10 to November 1, 1987. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 3 Canada geese shall be in possession.

California (Balance of the State Zone)—geese: In the Balance of the State Zone the season may be from October 31, 1987, through January 17, 1988, except that whitefronted geese may be taken only during October 31, 1987, to January 3, 1988. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

Western Oregon: In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon north and west of a line formed by State Highway 126 and Interstate Highway 5, except for designated areas, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the seasons in the designated area must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Oregon (Lake and Klamath Counties)—geese: In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open until two weeks after the opening date of the general goose season.

Washington and Oregon (Columbia Basin Portions)—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittias, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be an additional 7 days.

Western Washington: In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the season for snow geese may not extend beyond January 1, 1988. In Clark, Cowlitz, Wahkiakum, and Pacific Counties, except for areas to be designated by the State, there shall be no open season on Canada geese. For designated areas the seasons must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Idaho, Oregon and Montana—Pacific Population of Canada geese: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 and 4 Canada geese, respectively; and the season for Canada geese may not extend beyond January 3, 1988.

Montana and Wyoming—Rocky Mountain Population of Canada Geese: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 3, 1988. In Lincoln, Sweetwater and Sublette Counties, Wyoming, the combined special sandhill crane-Canada goose seasons and the regular goose season shall not exceed 93 days.

Idaho, Colorado and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 86 days and may not extend beyond January 3, 1988.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. Except for Clark County the daily bag and possession limits are 2 and 4 Canada geese, respectively. In Clark County the daily bag and possession limits are 2 Canada geese.

Arizona, California, Utah and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Tundra Swans

In Utah, Nevada and Montana, an open season for tundra swans may be selected to the following conditions: (a) the season must run concurrently with the duck season; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data;

(c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular and any special season framework dates.

Daily Bag and Possession Limits: Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting season and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Date: August 12, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-18701 Filed 8-13-87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 157
Friday, August 14, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Change of Mailing Address for the Federal Grain Inspection Service

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice serves to advise all interested parties of a change in the official mailing address for the Washington, DC, offices of the Federal Grain Inspection Service.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald Mainer, USDA/APHIS/Administrative Services Division/Information Management Branch, Room No. 0094–S, P.O. Box 96464, Washington, DC, 20090–6464. Telephone (202) 447–5366.

SUPPLEMENTARY INFORMATION: The Federal Grain Inspection Service (FGIS) has established a new official mailing address for the Washington, DC, offices. A post office box was established to provide more economical and efficient mail services. The post office box conversion will preserve and protect the security of all mail from unauthorized opening, inspection, or reading of contents or covers, tampering, delay, or other unauthorized acts.

Any interested party, intending to mail to FGIS offices located in Washington, DC, should use the new post office box address.

New official mailing address:

USDA/FGIS/(Name of Division and Office) (Room Number), P.O. Box 96454, Washington, DC 20090–6454

Old mailing address:

USDA/FGIS/(Name of Division and Office) (Room Number), 1400 Independence Avenue, SW., Washington, DC 20250

Dated: August 11, 1986.

W. Kirk Miller,

Administrator.

[FR Doc. 87–18613 Filed 8–13–87; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–704]

Initiation of Antidumping Duty Investigation; Brass Sheet and Strip From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are intitating an antidumping duty investigation to determine whether imports of brass sheet and strip from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 3, 1987. If that determination is affirmative, we will make a preliminary determination on or before December 28, 1987.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On July 20, 1987, we received a petition filed in proper form by American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Copper, Ltd., The Miller Company, Olin Corporation, Revere Copper Products, Inc., The International Association of Machinists and Aerospace Workers International Union, Allied Industrial Workers of America (AFL–CIO), Machanics Educational Society of America (Local 56), and United Steel Workers of America (AFL–CIO/CLC) on behalf of U.S. producers of brass sheet and strip. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of brass sheet and strip from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioners based United States price on actual sales and offers made by Japanese manufacturers and on monthly average unit values of Japanese imports derived from the Census Bureau's import statistics. Petitioners made deductions for Japanese inland freight and insurance, credit expenses, ocean freight and marine insurance, U.S. Customs duties and U.S. inland freight.

Petitioners based foreign market value on actual transaction prices in Japan. Petitioners deducted Japanese inland freight and made adjustments for physical differences in merchandise. Packing costs incurred on sales to the U.S. were added to foreign market value.

Based on this method of comparison, petitioners allege dumping margins ranging from 14.04 to 57.95 percent.

Inititation of Investigation

Under seciton 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on brass sheet and strip from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of brass sheet and strip from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by December 28, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consulation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass sheet and strip, currently provided for under *TSUSA* item numbers 612.3960, 612.3982 and 612.3986 and currently classifiable under HS item numbers 74092100-50, 74092100-75, 74092900-50, and 74092900-75.

The chemical composition of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 3, 1987, whether there is a reasonable indication that imports of brass sheet and strip from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 10, 1987.

[FR Doc. 87-18616 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-021]

Final Results of Antidumping Duty Administrative Review; Cell-Site Transceivers and Related Subassemblies From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 16, 1987 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S. and the period June 12, 1984 through December 31, 1985.

We gave interested parties an opportunity to comment on our preliminary results. We received a comment from Mitsubishi Electric Company ("MELCO"). We also have revised our calculations to include certain shipments by the one manufacturer/exporter.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5505/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Department of Commerce published in the **Federal Register** (52 FR 22832) the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("The Tariff Act").

Scope of the Review

Imports covered by the review are cell-site transceivers and related subassemblies as provided for in items 685.2810 and 685.2820 of the Tariff Schedules of the United States Annotated. Cell-site transceivers and related subassemblies are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package RF equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. The review covers one known manufacturer/exporter, Kokusai Electric Co., Ltd. ("Kokusai"), and the period June 12, 1984 through December 31, 1985.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from MELCO.

MELCO argues that the Department incorrectly assigned a cash deposit rate of 59.94 percent in its shipments, since MELCO was not covered in any prior review or in the fair value investigation. MELCO further notes that, since the Department has already determined that the channel units it exported to the United States during the review period are outside the scope of the order, it is inappropriate to assign a cash deposit rate for MELCO.

Department's Position

We agree. The Department has determined not to cover MELCO in this review because it did not export merchandise covered by the order to the United States. Should Melco begin exporting the covered merchandise to the United States, we shall treat MELCO as a new exporter.

Final Results of Review

We revised our original calculations to include certain shipments by Kokusai, sold prior to the review period but entered after the date of suspension of liquidation by Customs.

As a result of our review of the comment received and our original

calculations, we determine that a weighted-average margin of 0.08 percent exists for Kokusai for the period June 12, 1984 through December 31, 1985.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Since the margin for Kokusai is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit for this firm.

For any entries from a new exporter not covered by this review, whose first shipments occurred after December 31, 1985 and who is unrelated to the reviewed firm, no cash deposit shall be required. This deposit requirement is effective for all shipments of Japanese cell-site transceivers and related subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-18619 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-007]

Final Results of Antidumping Duty Administrative Review, High-Capacity Pagers From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 5, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on high-capacity pagers from Japan. The review covers two manufacturers and/or exporters of this merchandise exported to the United States and the period September 1, 1983 through July 31, 1985. There were no known shipments of this merchandise to the United States by the two firms during the period and there are no known unliquidated entires.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from NEC Corporation ("NEC"), Matsushita Communications Industrial Co., Ltd. ("MCI"), and Motorola, Inc. We will postpone addressing these comments in detail or issuing any clarification of the scope of the antidumping duty order on high-capacity pagers from Japan until the perliminary determination for the fourth administrative review.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Dionne C. Clloway or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-1130/0647.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43942) the preliminary result of its administrative review of the antidumping duty order on high-capacity pagers from Japan (48 FR 37058, August 16, 1983). Motorola, Inc., the petitioner, requested this administrative review in accordance with § 353.53a(a) of the Commerce Regulations. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

Imports covered by the review are shipments of certain Japanese high-capacity pagers ("pagers") from Japan. For the purpose of this review, the term "high-capacity pagers" covers tone-only paging signal receivers, 3,000 or more of which can be operated in a paging system on a single radio frequency channel.

This encompasses all tone-only high-capacity pagers regardless of tariff classification. The Department intends to fully clarify the scope of the order and to subsequently issue a scope ruling in our next review. Will make a second attempt to obtain specific information from the respondents concerning their overseas and domestic pager operations and concerning the characteristics of the pager exports subject to the antidumping dumping duty order. Pending a determination as to whether incomplete pagers are included in this order, we are directing the United States Customs Service to continue to suspend liquidation of all entries of high-capacity pagers whether in the form of subassemblies or component parts (incomplete pagers), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We shall direct the Customs Service not to require a cash deposit on incomplete pagers. This suspension of liquidation will remain in effect until further notice.

The review covers two manufacturers and/or exporters of Japanese high-capacity pagers exported to the United States and the period September 1, 1983 through July 31, 1985.

Analysis of Comments Received

We gave interested parties the opportunity to comment on the preliminary results in accordance with § 353.53a(c) of the Commerce Regulations. The petitioner (Motorola, Inc.) and both respondents, NEC Corporation ("NEC") and Matsushita Communications Industrial Co. ("MCI"), submitted comments. All of these comments were directed to the issue of whether pager components and subassemblies are properly subject to this order. The Department has determined that it currently lacks sufficient information on which to make such a determination. Accordingly, we intend to make another attempt to obtain the necessary information from the respondents and to issue a scope ruling in the next review. At that time, we will analyze and address all of the positions of the parties as presented in their briefs.

Final Results of Review

As a result of the comments received, we determine that the following margins exist for the period September 1, 1983 through July 31, 1985 for tone-only pagers:

Manufacturer/Exporter	Margin (percent)
Matsushita Communications Industrial Co., Ltd.	[1] 109.00
NEC Corporation	[1] 70.35

[1] No shipments during the period.

As provided in section 751(a)(1) of the Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1985 and who is unrelated to any reviewed firm, a cash deposit of

89.97 percent shall be required. These deposit requirements are effective for all shipments of certain Japanese high-capacity pagers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

August 7, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-18620 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-401]

Preliminary Results of Antidumping Duty Administrative Review; Calcium Hypochlorite From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and two manufacturers/exporters, the Department of Commerce has conducted an administrative review of the antidumping duty order on calcium hypochlorite from Japan. The review covers three manufacturers and/or exporters of this merchandise to the United States and the period October 9, 1984 through March 31, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 15470) the antidumping duty order on calcium hypochlorite from Japan.

The petitioner and two manufacturers/exporters requested in accordance with § 353.53(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of antidumping duty administrative review on May 20, 1986 (51 FR 18475). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate HS and *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact Import Specialists at their local Customs offices to consult the schedule.

Imports covered by the review are shipments of calcium hypochlorite, currently classifiable under TSUSA item 418.2200. This product is currently classifiable under HS item number 2828.10.00.00.

The review covers three manufacturers and/or exporters of Japanese calcium hypochlorite to the United States and the period October 9, 1984 through March 31, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed ex-go-down, FOB Japanese port, or U.S. duty-paid delivered price to either the first unrelated purchaser in the United States or an unrelated Japanese trading company for export to the United States. We made adjustments, where applicable, for foreign inland freight, brokerage, handling and inland insurance, ocean freight, marine insurance, U.S. duties, brokerage, and inland freight and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered-to-warehouse, C & F, FOB, or FOB plant price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight and insurance, credit, packing, advertising and sales promotion, commissions to unrelated parties, and indirect selling expenses to offset commissions paid in one market and not in the other.

We made an adjustment for differences in physical characteristics when comparing 65 percent granular calcium hypochlorite sold in the U.S. to the 70 percent granular product sold in Japan and when we compared granular calcium hypochlorite to the product in tablet form; however, we disallowed one claim for a difference in physical characteristics because the claim was based on an allocation of total production costs rather than the cost of materials, labor and direct factory overhead. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determined that the following weighted-average margins exist during the period October 9, 1984 through March 31, 1986:

Manuracturer/Exporter	Margin (percent)
Nissin Donka Co., Ltd.	0.27
Nippon Soda Co., Ltd.	0
Nankai Chemical Industry Co., Ltd.	0

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice. Any requests for a hearing must be made within 8 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Interested parties may also submit written comments on these preliminary results within 30 days after the date of publication. The Department will publish the final results of the administrative review including the

results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, since the only margin is less than 0.50 percent and therefore *de minimis* for cash deposit purposes, no cash deposit shall be required for the firms. For any future shipment from the remaining manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rate published in the antidumping duty order for all other firms. For any future entries of this merchandise from a new exporter, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese calcium hypochlorite entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-18618 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-421-701]

Initiation of Antidumping Duty Investigation; Brass Sheet and Strip From The Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 3, 1987. If that determination is affirmative, we will make a preliminary determination on or before December 28, 1987.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On July 20, 1987, we received a petition in proper form by American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Copper, Ltd., The Miller Company, Olin Corporation, Revere Copper Products, Inc., The International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and United Steelworkers of America (AFL-CIO/CLC), on behalf of U.S. producers of brass sheet and strip. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Unted States purchase price was based on actual sales and offers made by Granges, and on monthly average unit values of Dutch imports, derived from the Census Bureau's import statistics. Petitioners deducted, where appropriate, Dutch inland freight, ocean freight and marine insurance, discounts, sales commissions, U.S. Customs duties and U.S. inland freight.

Petitioners based foreign market value on their best estimate of the constructed value of Dutch brass sheet and strip which was based upon the U.S. brass sheet and strip industry's cost experience. To the sum of materials and fabrication costs, petitioners added the statutory minima of ten and eight percent for general expenses and profit, respectively. Petitioners also added the costs of U.S. packing.

Based upon a comparison of United States price and foreign market value, petitioners allege dumping margins of between 1.97 and 32.48 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on brass sheet and strip from The Netherlands and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by December 28, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass

and strip, currently provided for under the *TSUSA* item numbers 612.3960, 612.3982, and 612.3986, and currently classifiable under HS item numbers 74092100–50, 74092100–75, 74092900–50, and 74092900–75.

The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series not covered by this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, privided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 3, 1987, whether there is a reasonable indication that imports of brass sheet and strip from The Netherlands materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 10, 1987.

[FR Doc. 87–18617 Filed 8–13–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–603; A–479–601]

Antidumping Duty Orders; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy and Yugoslavia

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Italy and Yugoslavia, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that tapered roller bearings from Italy and Yugoslavia are being sold at less than fair value and that sales of tapered roller bearings from Italy and Yugoslavia are materially injuring a United States industry. The ITC ruled that critical circumstances do not exist with regard to tapered roller bearings from Italy.

Therefore, based on these findings, we will discontinue suspension of liquidation of all entries 90 days prior to our preliminary determination with respect to imports from Italy. Suspension of liquidation will begin for all unliquidated entries, or warehouse withdrawals, for consumption of tapered roller bearings from Italy made on or after February 6, 1987, the date on which the Department published its preliminary determination notices in the **Federal Register**. These entries will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Wilson (202) 377–5288 or Karen DiBenedetto (202) 377–1776 (Italy), Mary S. Clapp (202) 377–1769 or Judith Nehring (202) 377–0160 (Yugoslavia), Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, 20230.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are tapered roller bearings currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item number 692.32 or elsewhere in the TSUS.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on February 2, 1987, the Department made its preliminary determinations that there was reason to believe or suspect that tapered roller bearings from Italy and Yugoslavia were being sold at less than fair value (52 FR 3835, 3840, February 6, 1987). On June 22, 1987, the Department made its final determinations that these imports were being sold at less than fair value (52 FR 24198, 24200, June 29, 1987) and that critical circumstances did exist with respect to imports from Italy.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of tapered roller bearings from Italy and Yugoslavia. These antidumping duties will be assessed on all unliquidated entries of tapered roller bearings entered, or withdrawn from warehouse, for consumption on or after February 6, 1987, the date on which the Department published its preliminary determinations.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 124.75 percent for Italy and 33.61 percent for Yugoslavia.

This determination constitutes an antidumping duty order with respect to tapered roller bearings from Italy and Yugoslavia, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48. We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 10, 1987.

[FR Doc. 87–18621 Filed 8–13–87; 8:45 am]

BILLING CODE 3510–DS–M

[Case No. OEE-3-86]

Order Renewing Temporary Denial of Export Privileges; Bollinger, GmbH, et al.

In the matter of: Bollinger GmbH Roseggergasse 34, 1160 Vienna, Austria; Dietmar Ulrichshofer with addresses at Kirchenstrasse 1, 3061 Ollersbach, Austria; and c/o Bollinger GmbH Roseggergasse 34, 1160 Vienna, Austria; and Vrablicz and Company, Steinergasse 11, 1170 Vienna, Austria; Respondents.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of section 388.19 of the Export Administration Regulations, 15 CFR Parts 368 through 399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. sections 2401 through 2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Dietmar Ulrichshofer; Bollinger GmbH, which is owned by Dietmar Ulrichschofer; Leopold Hrobsky; and, Vrablicz and Company (hereinafter collectively referred to as respondents). Ulrichshofer, who is subject to an outstanding indictment in the U.S. District Court for the Central District of California for conspiracy to violate U.S. export controls and is a fugitive from U.S. justice, resides in Ollersbach, Austria; all of the other respondents reside in Vienna, Austria.[1] The initial order was issued on August 12, 1986 (51 FR 29509, August 18, 1986) and renewed on October 11, 1986 (51 FR 37210, October 20, 1986), December 10, 1986 (51 FR 44655, December 11, 1986) February 8, 1987 (52 FR 4632, February 13, 1987) and April 9, 1987 (52 FR 12576, April 17, 1987) and June 8, 1987 (52 FR 22665, June 15, 1987).

In its renewal request dated July 19, 1987 and appended on July 30, 1987, the Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have conspired and acted in concert to violate the Act and the Regulations. The Department has reason to believe that the purpose of the conspiracy is to obtain U.S.-origin goods from third countries for ultimate destination in proscribed countries, without obtaining the required authorization from the Department for such shipments. The Department has reason to believe that respondents have participated in the unauthorized reexport of U.S.-origin commodities, including computer equipment and peripherals, from Austria to proscribed destinations, without authorization from the Department.

While the U.S. Customs Service has not offered any new evidence since the last renewal request, Customs has informed the Department that the investigation is still ongoing. Based on the information contained in the initial request and the subsequent renewal requests, the Department believes that the general circumstances surrounding the past activities of Bollinger and its owner, Ulrichshofer, Vrablicz, and Hrobsky establish that the violations under investigation are significant, deliberate, covert, and likely to occur again, unless appropriate action is taken to reduce the likelihood that they can continue to acquire U.S.-origin goods from the United States and abroad.

In the case of Vrablicz, the Department provides evidence that the investigation is on-going and that the U.S. Customs Attache has offered to meet with the respondent to discuss matters under investigation. It further provides a letter from Vrablicz allegedly refusing to cooperate further in this investigation. Given that the past activities of Vrablicz under investigation have not been fully explained, and in light of Vrablicz's acknowledgement of trade with the Soviet bloc, the Department believes the general circumstances of this case establish that it is appropriate to take action to reduce the likelihood that Vrablicz can continue to acquire U.S.-origin goods from the United States and abroad.

The Department submits that renewal of the temporary denial order naming all respondents is necessary for the purpose of giving notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

With regards to respondent Hrobsky, an opposition to renewal dated July 29, 1987 was submitted in a timely fashion.[2] The most recent renewal of the temporary denial order, signed June 8, 1987, offered the Department the opportunity to judge the degree of responsiveness shown by the respondent's earlier submission of May 18, 1987. In that submission, the respondent provided answers to questions posed by the Customs Attache on April 2, 1987. While I could not independently judge the adequacy of these responses, I indicated in the June 8 renewal order that if the Customs Attache were to indicate satisfaction with the responses, I would entertain a request to terminate the renewal with respect to Hrobsky. If the responses were inadequate, I requested that the Customs Attache so state, if non-cooperation were to be relied on as a basis for further renewal of the order.

The Department's request for renewal contained no mention of the issue of cooperation by this respondent nor did it attempt to assess the adequacy of the responses to its earlier questionnaire, despite my specific request in this regard. Furthermore, neither the Department nor Customs has made any substantive showing of a continuing investigation subsequent to the issuance of the most recent renewal of the order, despite the fact that the Department claims this respondent continues to pose a threat of imminent violation.

A respondent's non-cooperation alone does not suffice as a justification for renewal of a temporary denial order, and the government does not specifically claim this as a basis for renewal in this case. However, a respondent's attempt to cooperate is relevant when there is a question of whether the "state of mind" of the respondent is such that it indicates the cooperating party, despite possible previous involvement in an alleged violation, shows no propensity to engage in future illegal export or reexport activities.

The most recent submission by Hrobsky reiterates its responses to the U.S. Customs Attache's questions. While I still cannot judge the adequacy of these responses, the record before me does contain *indicia* of cooperation, which is not disputed by the Department.

Independent of the question of cooperation and the respondent's "state of mind," the record does not show that an investigation is on-going with respect to this respondent. Given my request

[1] Werner Bruchhausen, a co-defendant named in the indictment along with Ulrichshofer, was recently convicted and sentenced in May 1987 to a substantial term of imprisonment, by the U.S. District Court, Los Angeles, California in connection with some of the export control violation activities underlying the Ulrichshofer indictment.

[2] That submission also contained a request that a hearing relating to this matter be held pursuant to § 388.19(d)(2) of the Regulations. A hearing date was offered to the respondent, who subsequently withdrew the request, although leaving open the possibility of requesting such a hearing at a later date, if, in fact, the order was renewed with respect to Hrobsky.

that the Department assess the degree of responsiveness of the respondent, and the respondent's showing of responsiveness (including an offer to sign an affidavit to attest to the truthfulness of his statements),[3] it is unclear why no new comments or arguments have been offered by the Department concerning the allegations involving Hrobsky. Notwithstanding the affidavit offered by the Department making a general conclusory statement that the investigation is on-going, no specific investigative action relating to this respondent is evident on the record beyond what was undertaken prior to the issuance of the June 8 renewal order. I can only conclude that if Hrobsky does indeed pose an imminent threat, despite his arguments to the contrary, and that if the Customs investigation as to him is in fact continuing actively, the Department would have made a specific showing to this effect.

Therefore, given that the record does not support a continuing belief that Hrobsky poses a threat of imminent violation of the Act or the Regulations, his name is not included in this renewal.

In the case of respondent Vrablicz, an opposition to renewal dated July 21, 1987 was filed with the Deputy Assistant Secretary in a timely fashion. In the most recent renewal of the temporary denial order, I indicated that ownership of or "responsibility" for the goods under investigation appears to be central to the Department's case. I suggested that if the respondent made a direct showing that it was not the owner of the goods nor was it responsible for their disposition, the question of imminent threat would have to be reassessed.

Vrablicz makes no such showing in its most recent submission nor is such showing contained in its letter to the U.S. Customs Attache of May 26, 1987 which was submitted for the records as Exhibit Three of the Department's request for renewal. In the record, the only showing Vrablicz has made is that Austrian law regarding freight forwarders neither obliges the freight forwarder to examine the goods for any hindrances to the shipments (including import or export restrictions) nor make the freight forwarder liable for the consequences of incorrect or incomplete information with regard to the shipment.[4] While Vrablicz may have satisfied Austrian legal requirements, this does not mean it has not violated U.S. export law or regulations nor does it in any way show that Vrablicz did not in fact own or have responsibility for the goods under investigation. Therefore, the factual question of ownership and control for disposition remains unanswered.

Moreover, which the Department has questioned the adequacy of previous cooperation offered by Vrablicz, it now goes on to show Vrablicz's refusal to meet with U.S. government officials. The Department also asserts that Vrablicz has, in fact, refused to cooperate further in the investigation.

The record shows that the respondents has made noticeable effort to cooperate, although that cooperation has not been deemed sufficient by the Department. The Department's arguments not withstanding, it does not appear to be the case that Vrablicz has completely refused future cooperation, but rather that it would no longer deal with a particular government official, while leaving open the possibility of "new trust agreement contracts." [5] This, and previous statements by Vrablicz, appears to indicate that cooperation has previously been given and leaves open the possibility of renewing cooperation under the appropriate circumstances.

I wish to make it clear that a conflict of personalities is no justification for non-cooperation; on the other hand, as stated previously, non-cooperation alone is not a sufficient basis to justify renewal of a temporary denial order. However, as stated above, the showing of cooperation could be relevant to the need for a temporary denial order where this provides a showing that the "state of mind" of the respondent indicates there is no propensity for an imminent violation.

In this case, further cooperation may be forthcoming. The offer by the U.S. Customs Attache to include another U.S. government official should adequately accommodate the concerns raised by Vrablicz regarding its previous dealings in this matter, if in fact Vrablicz has a good faith desire to cooperate. Also, until a clear statement from the respondent indicates whether Vrablicz owned or was responsible for the shipment under investigation, the question of responsibility remains unanswered. From the record it appears that the respondent has been purposefully avoiding directly responding to the question of ownership and responsibility. Therefore, I agree with the Department that the circumstances as reflected by the record as a whole relating to Vrablicz make it appropriate to renew the temporary denial order with respect to this respondent.

No opposition was received from any other respondent. Therefore, based on the showing by the Department, I find that renewal of the order temporarily denying export privileges to respondents Ulrichshofer, Bollinger and Vrablicz is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby ordered,

I

All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II

The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participating, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or

[3] Per his May 18, 1987 submission in opposition to renewal of the temporary denial order.

[4] Per the submission of Dr. Ronald Rast, attorney on behalf of Vrablicz, to DAS Theodore W. Wu dated August 28, 1987.

[5] From an informal translation of Vrablicz's May 26, 1987 letter to Customs Attache Urbanski, submitted as exhibit 3 of the Department's request for renewal.

other services of such commodities or technical data. Such denial of export privileges shall extent only to those commodities and technical data which are subject to the Act and the Regulations.

III

After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related to affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV

No person, firm, corporation, partnership or other business organization, whether in the United States of elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V

In accordance with the provisions of Section 388.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI

This order is effective August 7, 1987, and shall remain in effect for 60 days.

VII

In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served upon each respondent and published in the **Federal Register.**

Date: August 7, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87-18585 Filed 8-13-87; 8:45 am]

BILLING CODE 3300-00-M

[C-614-501]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department has conducted an administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand. We preliminarily determine the total bounty or grant to be 13.55 percent *ad valorem* for the period May 23, 1985 through July 31, 1985 and 9.06 percent *ad valorem* for the period August 1, 1985 through July 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Careau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202 377-2786).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 31638) the final affirmative countervailing duty determination and countervailing duty order on low-fuming brazing copper rod and wire from New Zealand. On August 28, 1986, the respondent, McKechnie Bros. (N.Z.) Ltd., requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on September 16, 1986 (51 FR 32817). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with out product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of New Zealand low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. The chemical composition of the products under investigation is defined by Copper Development Association standards 680 and 681. Such merchandise is currently classifiable under items 612.6205, 612.7220 and 653.1500 of the TSUSA. These products are currently classifiable under HS item numbers 7407.2150, 7408.2100, 8311.1000, and 8311.3060. We invite comments from all interested parties on these HS classifications.

The review covers the period May 23, 1985 through July 31, 1986 and 16 programs. McKechnie Metal Products Limited ("MMP") was the only known exporter of low-fuming brazing copper

wire and rod ("LFB") to the United States during the period of review.

Analysis of Programs

(1) EMDTI

Under the Export Market Development Taxation Incentive ("EMDTI"), established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets, and obtaining market information. During the period of review, the tax credit was 67.5 percent of the total qualifying expenditures. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because the program is limited to exporters, we preliminarily determine that it confers a bounty or grant. MMP claimed EMDTI tax credits on LFB exports to the United States on its tax returns filed in the years covered by the review period.

To calculate the benefit, we compared the value of claiming 67.5 percent of the expenditures as a tax credit to deducting those expenditures as ordinary business expenses. The normal corporate tax rate in New Zealand during the period of review was 45 percent. Since exporters may claim a tax credit of 67.5 percent but may not deduct the expenditures in calculating taxable income, the net benefit to the exporters is 22.5 percent of the qualifying expenditures. Therefore, we took 22.5 percent of MMP's qualifying expenditures relating to LFB exports to the United States and allocated that amount over the f.o.b. value of exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.24 percent *ad valorem* for the period May 23, 1985 through July 31, 1985 and 0.39 percent *ad valorem* for the period August 1, 1985 through July 31, 1986.

(2) EPTI

Under the Export Performance Taxation Incentive ("EPTI"), exporters are entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under Section 156A of the Income Tax Act of 1976. Credits are available as a deduction agaisnt income tax payable. If the tax credit exceeds the income tax payable, the taxpayer receives the difference in cash.

The rate of the tax credit depends on the predetermined value-added category into which the product falls. LFB falls under category C, for which the corresponding rate was 9.1 percent in the period of review. The amount of the tax credit is calculated by multiplying that rate by the f.o.b. value of exports. Because this program is limited to exporters, we preliminarily determine that it confers a bounty or grant. MMP claimed EPTI tax credits on LFB exports to the United States on its tax returns filed in the years covered by the review period.

We calculated the benefit from this program by dividing the amount of EPTI tax credits relating to exports of LFB to the United States by the total value of exports of this merchandise to the United States during the review period. We preliminarily determine the benefit from this program to be 13.31 percent *ad valorem* for the period May 23, 1985 through July 31, 1985 and 8.67 percent *ad valorem* for the period August 1, 1985 through July 31, 1986.

The New Zealand government reduced the EPTI tax credit rate to 4.55 percent in the tax year ending March 31, 1986. MMP claimed an EPTI tax credit at this rate on its 1986 tax return, which was filed in November 1986. Since the credit rate was reduced by 50 percent, we preliminarily determine, for purposes of cash deposit of estimated countervailing duties, the benefit from this program to be 4.34 percent *ad valorem*.

(3) Other Programs

We also examined the following programs and preliminarily determine that MMP did not use them:

(A) Increased Exports Taxation Incentive;
(B) Regional Investment Allowance;
(C) Export Investment Allocance;
(D) Industrial Development Plan Investment Allowance;
(E) Export Programme Grant Scheme;
(F) Export Programme Suspensory Loan Scheme;
(G) Export Suspensory Loans;
(H) Export Credits from the Development Finance Corporation;
(I) Regional Development Investment Incentives;
(J) Research and Development Assistance;
(K) Exemption from Import Duties and Sales Taxes;
(L) Export Production Assistance Scheme;
(M) Export Promotion from the Export-Import Corporation; and
(N) Flexible Incentives Under the Investment Unit of the Department of Trade and Industry.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 13.55 percent *ad valorem* for the period May 23, 1985 through July 31, 1985 and 9.06 percent *ad valorem* for the period August 1, 1985 through July 31, 1986.

The Department intends to instruct the Customs Service to assess countervailing duties of 13.55 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after May 23, 1985 and exported on or before July 31, 1985, and 9.06 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after August 1, 1985 and on or before July 31, 1986.

The reduction of the EPTI tax credit reduces the total estimated bounty or grant to 4.73 percent *ad valorem*. Therefore, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 4.73 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Date: August 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 87-18622 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Program Applications; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Effective August 14, 1987 the Minority Business Development Agency (MBDA) is cancelling the announcement of solicit competitive applications under its Minority Business Development Center Program to operate a MBDC for a three (3) year period, starting December 1, 1987, to November 30, 1988 in the Buffalo Standard Metropolitan Statistical area (SMSA). Refer to the **Federal Register** dated July 21, 1987 Vol. 52, No 139, Pages 27447–9.

William R. Fuller,

Deptuy Regional Director, New York Regional Office.

Date: August 10, 1987.

[FR Doc. 87–18551 Filed 8–13–87; 8:45 am]

BILLING CODE 3510-21-M

Business Department Center Program Applications; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Effective August 14, 1987 the Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center Program to operate a MBDC for a three (3) year period, starting December 1, 1987 to November 30, 1988 in the Rochester Standard Metropolitan Statistical Area (SMSA). Refer to the **Federal Register** dated July 17, 1987 Vol. 52, No 137, Pages 27041–2.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

Date: August 10, 1987.

[FR Doc. 87–18552 Filed 8–13–87; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled two public industry work group meetings and a Council teleconference at the Sheraton Hotel, Anchorage, AK, as follows:

Policy and Planning Committee

Will convene at 10 a.m., September 1, 1987, in the Kuskokwim East Room at the hotel and continue through noon, September 2, to consider groundfish apportionments, joint venture policy, halibut allocation policy, future groundfish management options, the Council's domestic observer program, and crab management.

In conjunction with the Policy and Planning Committee meeting there will be a teleconference of the full Council on September 1 at 1 p.m., Alaska Daylight Savings Time. During the teleconference Council members will receive the results of the most recent survey of domestic processors and review their performance in utilizing the allocations of Pacific cod and pollock set aside for them. The Council will then determine whether any surplus exists for reapportionment to joint ventures.

The public may listen in on the teleconference at: (1) The Sheraton Hotel, Kuskokwim East Room, Anchorage, AK; (2) the Federal Building, Room 453, Juneau, AK; (3) the Kodiak Island Borough Building, 710 Mill Bay Road, Kodiak, AK, and (4) the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, Room 2143, Building 4, Seattle, WA.

Bycatch Committee

Will convene September 2 at 1 p.m., in Josephine's Gallery at the hotel and continue through September 2 to continue their review from their August meeting of various management approaches for bycatch species in the Gulf of Alaska and Bering Sea/Aleutian Islands.

FOR FURTHER INFORMATION CONTACT: Clarence Pautzke, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Date: August 10, 1987.

Henry R. Beasley,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 87–18579 Filed 8–13–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Sea World, Inc. (P2T)

Notice is hereby given that an Applicant has applied in due form for a Permit to import marine mammals as authorized by the Marine Mannal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Name:* Sea World, Inc., 1720 South Shores Road, Mission Bay, San Diego, California 92109.

2. *Type of Permit Requested:* Public Display.

3. *Name and Number of Marine Mammals:* Killer whale (*Orcinus orca*), 1.

4. *Type of Take Requested:* The applicant requests authorization to import one killer whale that has been maintained at Zeedierenpark Harderwijk, Holland since its collection from the waters of the North Atlantic in 1976.

5. *Period of Activity:* The applicant requests the import authority be valid for a period of three (3) years.

The arrangements and facilities for transporting and maintaining the marine mammal requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate for the well-being of the marine mammal involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resoures and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009;

Director, Northereast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger

Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: August 6, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87-18580 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Union of Soviet Socialist Republics

August 11, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 17, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 313/320pt., produced or manufactured in the Union of Soviet Socialist Republics, in excess of 4,360,661 square yards.

Background

On July 22, 1987, the United States Government, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of the Union of Soviet Socialist Republics to enter into consultations concerning exports to the United States of cotton sheeting in Category 313/320pt., produced or manufactured in the Soviet Union.

The United States has decided, inasmuch as a mutually satisfactory solution concerning this category has not been reached, to control imports of cotton sheeting in Category 313/320pt., produced or manufactured in the Soviet Union and exported during the twelve-month period which began on July 22, 1987 and extends through July 21, 1988, at a level of 4,360,661 square yards.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 313/320pt. is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the Soviet Union, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement, Category 313/320 Pt.; Cotton Sheeting Fabric; Union of Soviet Socialist Republics July 1987

Summary and Conclusions

United States imports of cotton sheeting fabric—Category 313/320 pt.—from the Union of Soviet Socialist Republics (U.S.S.R.) were 4,361,000 square yards for the year ending in April 1987, a substantial increase from 17,000 square yards imported a year earlier. During the first four months of 1987, the U.S.S.R. shipped 4,135,000 square yards. In addition, we have learned that the U.S.S.R. has the intention of exporting quantities well above the current levels. The U.S.S.R. had not exported cotton sheeting fabric to the United States (U.S.) since 1977.

Further, cotton sheeting fabric imports from the U.S.S.R. enter the U.S. market at one-third the price of domestically produced cotton sheeting fabric and two-thirds the price of most foreign produced cotton sheeting fabric in the United States market.

The U.S. market for cotton sheeting fabric is a price sensitive market where price differences result in major shifts in producer's market shares. A substantial increase above current U.S. imports from the U.S.S.R. at one-third the domestic price poses an imminent threat of market disruption in the U.S.

Production and Market Share

U.S. production of cotton sheeting fabric experienced a 50 percent decline between 1979 and 1985, falling from 535 million square yards to 264 million square yards. During this same period the market for cotton sheeting fabrics declined six percent. The U.S. producers' share of the market nearly halved, dropping from 70 percent in 1979 to 37 percent in 1985.

Production of U.S. cotton sheeting fabrics increased in 1986. The magnitude of the increase is not known because 1986 production data as collected is not comparable with prior year' data. However, first quarter 1986 and 1987 data are comparable and reflect a 32

percent increase. Nevertheless, the U.S. producers' share of the market remained at the diminished level of 47 percent through the first quarter of 1987.

Imports and Import Penetration

U.S. imports of cotton sheeting fabric—Category 313/320 pt.—from all sources more than doubled between 1979 and 1986, increasing from 228 million square yards in 1979 to 544 million square yards in 1986. The ratio of imports to domestic production increased more than two and a half times, rising from 43 percent in 1979 to 109 percent in 1986. The import to production ratio was 115 percent during the first quarter of 1987.

Duty Paid Values and U.S. Producers' Price

Approximately 73 percent of the U.S.S.R.'s cotton sheeting fabric for the year ending April 1987 entered under TSUSA 320.1934, a cotton sheeting fabric of 10 yarn counts. These fabrics entered the U.S. at duty-paid landed values at one-third the U.S. producers' price for comparable fabrics.

Committee for the Implementation of Textile Agreements

August 11, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 17, 1987, entry into the United States for consumption, and withdrawal from warehouse for consumption, of certain cotton textile products in Category 313/320pt. [1], produced or manufactured in the Union of Soviet Socialist Republics and exported during the twelve-month period which began on July 22, 1987 and extends through July 21, 1988, in excess of 4,360,661 square yards.[2]

Textile products in Category 313/320pt. which have been exported to the United States prior to July 22, 1987 shall not be subject to this directive.

Textile products in Category 313/320pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

[1] In Category 313 and, in Category 320, sheeting in TSUSA items 320.—through 331. —, with statistical suffixes 38, 80 and 82.

[2] The limit has not been adjusted to account for any imports exported after July 21, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-18583 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DR-M

Officials Authorized To Issue Export Visas for Certain Textile and Apparel Products From India

August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

The Government of India has notified the United States Government under the terms of the Bilateral Cotton, Wool, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987 that the following officials of the Cotton Textiles Export Promotion Council have replaced Messrs. S. Nagaratnam, K.R. Menon, A.B. Singhal and K.R. Kapadia as officials authorized to issue export visas for certain cotton, wool, silk blend and other vegetable fiber fabrics and made-up products from India:

M.S. Bhagavan
R. Vasudevan
H.B. Dalal
N.G. Chavan

In addition, the following officials of the Apparel Export Promotion Council are now authorized to issue visas for cotton, wool, man-made fiber and other vegetable fiber apparel from India:

K. Umesh
M.A.K. Jeelani
C.K. Muraleedharan
M. Suresh

The purpose of this notice is to advise the public of these changes.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-18584 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Performance Review Board; Membership Appointments

AGENCY: Defense Mobilization Systems Planning Activity, DOD.

ACTION: Announce membership of Performance Review Board.

SUMMARY: This notice adds Mr. Thomas Stanners of the Office of Management and Budget to the previosly published Performance Review Board (PRB) of the Defense Mobilization System Planning Agency (DMSPA). The publication is required by 5 U.S.C. 4314(c)(4).

The Peformance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding peformance and performance awards to the Director.

DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Oppenheimer, Resource Management and Support Services, Defense Mobilization Systems Planning Activity, c/o OASD(FM&P), Correspondence & Control Division. The Pentagon, Room 3E-759, Washington, DC 20301, (703) 756-2249.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C 4314(c)(4), the following name is added to the previously published members of the Defense Mobilization System Planning Activity PRB. All members will serve for one-year renewable terms.

Mr. Thomas Stanners

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 10, 1987.

[FR Doc. 87-18574 Filed 8-13—87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 14, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW.,

Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public, (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 11, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for the Endowment Grant Program
Agency Form Number: ED 2460
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 1000
Burden Hours: 4000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application will be used by institutions of higher education to apply for grants under the Endowment Challenge Grant Program, Title III of the Higher Education Act, as amended. Data collected from the institutions will be used by the Department to make grant awards for the purpose of establishing or increasing endowment funds.

Type of Review: Reinstatement
Title: Financial Report for the Endowment Challenge Grant Program
Agency Form Number: E40–10P
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Response: 175
Burden Hours: 175
Recordkeeping Burden:
Recordkeepers: 175
Burden Hours: 350

Abstract: The Endowment grant program consists of matching grants to institutions of higher education which they, in turn, invest in low-risk securities for 20 years. This form will be used by grantees to report to the Department what has happened to their investment and what they have done on their return on the investment. The Department would use the information collected to monitor grantees' compliance with regulations.

Type of Review: Revision
Title: Evaluation of Training Activities on Title IV Student Financial Assistance Programs
Agency Form Number: ED 786
Frequency: On occasion
Affected Public: Individuals or households
Reporting Burden:
Responses: 42,420
Burden Hours: 6,363
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by participants in various training activities sponsored by the Office of Student Financial Aid. The training activities are targeted at high school counselors and financial aid administrative officials at postsecondary educational institutions. The Department uses the information collected to determine if training has been targeted at the most appropriate groups in the most effective manner.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Three-Year State Plan for Independent Living (IL) Rehabilitation Services Under Title VII (Part A) of the Rehabilitation Act of 1973
Agency Form Number: ED (RSA) SPIL
Frequency: Every three years
Affected Public: State or local governments
Reporting Burden:
Responses: 84
Burden Hours: 1680
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This State plan is submitted by designated State agencies who provide independent living rehabilitation services. The State plan is the basis upon which the Department monitors and evaluates the States' performance with respect to the requirements of Part A under Title VII of the Rehibilitation Act of 1973, as amended.

Type of Review: New
Title: Annual Report on State Agency Independent Living Rehabilitation Services, Title VII Part A
Agency Form Number: ED RSA–7A
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 79
Burden Hours: 632
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This report will be submitted to the Department by State agencies that provide independent living services to severely disabled individuals. The Department will use this information to monitor the States' progress in providing these services.

Office of Educational Research and Improvement

Type of Review: Revision
Title: Common Core of Data
Agency Form Number: ED 2442, 2443, 2443–1, 2446, 2447
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 3363
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: These surveys provide information about student enrollment, graduates, teachers, and related finances and are used in the allocation of Federal funds under Chapter 1, Education Consolidation and Improvement Act, as amended. Data are also provided to the general public as requested.

[FR Doc. 87–18646 Filed 8–13–87; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No: 84.021]

Notice Inviting Applications for New Awards Under the Fulbright-Hays Group Projects Abroad Program for Fiscal Year 1988

Purpose: Provides grants to conduct overseas group projects in research, training and curriculum development to higher education institutions, private nonprofit educational organizations, state departments of education and a consortia of the three.

Priorities: The regulations governing the Fullbright-Hays Group Projects Abroad Program (34 CFR 664.32) provide for the establishment of funding priorities by the Secretary. For Fiscal Year 1988, the Secretary has established funding priorities for this program. These priorities will be applied in accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3). All available funds for this program will be reserved solely for applications which propose projects focusing upon one or more of the following world areas: (1) Africa; (2) Latin America and the Caribbean; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East; or (7) South Asia. Applications focusing on Western Europe will not be funded.

Deadline for Transmittal of Applications: October 26, 1987.

Applications Available: August 28, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based on the FY 1987 appropriation.

Estimated Range of Awards: $20,000 to $204,000.

Estimated Average Size of Awards: $55,000.

Estimated Number of Awards: 38.

Project Period: 6 weeks to 12 months.

Applicable Regulations: (a) Higher Education Programs in Modern Foreign Language Training and Area Studies—Fulbright-Hays Group Projects Abroad Program, 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Dr. Stephney J. Keyser, U.S. Department of Education, Mail Stop 3308, 400 Maryland Avenue, SW., ROB-3, Washington, DC 20202. Telephone: (202) 732-3294.

Program Authority: 22 U.S.C. 2454(b)(6).

Dated: August 11, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-18626 Filed 8-13-87; 8:45am]

BILLING CODE 4000-01-M

[CFDA No.: 84.016]

Notice Inviting Applications for New Awards Under the Undergraduate International Studies and Foreign Language Program for Fiscal Year 1988

Purpose: Provides grants to institutions of higher education, combinations of those institutions, and public and private nonprofit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Deadline for Transmittal of Applications: November 2, 1987.

Applications Available: September 4, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based on the FY 1987 appropriations.

No money will be used in fiscal year 1988 to fund model foreign language projects under section 604(b) of the Higher Education Act of 1965, as amended.

Estimated Range of Awards: $20,000 to $70,000.

Estimated Average Size of Awards: $46,000.

Estimated Number of Awards: 32 to 35.

Project Period: 24 months for single institutions of higher education; up to 36 months for all other applicants.

Applicable Regulations: (a) Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658, and (b) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78. To conform to the recent revisions to the statute, the word "comprehensive" has been deleted in Part 658, and in § 658.11(g), the phrase "pre-service and in-service" has been inserted before the word "teacher".

For Applications or Information Contact: Ralph Hines, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB 3, Washington, DC 20202. Telephone: (202) 732-3290.

Program Authority: 20 U.S.C. 1124.

Dated: August 11, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-18627 Filed 8-13-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; International Atomic Energy Agreements; Civil Uses; Japan and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/(JA)-4, for the retransfer of 8 spent boiling water reactor fuel segments containing 2,097 grams of uranium enriched to approximately 2.43 percent in the isotope uranium-235 and 13 grams of plutonium from Japan to Studsvik Energiteknik, AB, Sweden for power ramp tests in the R-2 reactor. Upon completion of the tests, it is planned to return the segments to Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 10, 1987.

George J. Bradley Jr,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-18553 Filed 8-13-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EL87-51-000]

Notice of Filing; Cajun Electric Power Coop., Inc. v. Gulf States Utilities Co.

August 11, 1987.

Take notice that on July 17, 1987, Cajun Electric Power Cooperative, Inc. (CAJUN) tendered for filing pursuant to sections 205, 206 and 306 of the Federal Power Act, 16 U.S.C. 824d, 824c and 825c and Rule 206 of the Commission's Rules of Practice and Procedure, a complaint, motion for expedited consideration, and request for relief. CAJUN states that this complaint is based upon an interpretation of the Gulf States Utility Company's (Gulf States) Service Schedule CTOC, a transmission equalization agreement between CAJUN and Gulf States.

CAJUN states that it is filing this complaint for overcharges based on the past and continuing misinterpretation of a filed tariff and on the past and continuing imposition of charges in excess of contract rates. CAJUN asserts that Gulf States has continuously misinterpreted and misapplied Service Schedule CTOC to the CAJUN/Gulf States Power Interconnection Agreement, with the resulting amount in controversy, as of December 31, 1986, estimated as being approximately $37,000,000 (subject to modification and recalculation after discovery). CAJUN also asserts that Gulf States continues to charge CAJUN rates in excess of the lawful amounts under Service Schedule CTOC and the Power Interconnection Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1987. 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.

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. Answers to the complaint shall also be due on or before September 10, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18631 Filed 8-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-806-000]

Application; Shell Gas Trading Co.

August 11, 1987.

Take notice that on August 5, 1987, Shell Gas Trading Company, a Delaware corporation (SGT), c/o Shell Oil Company, P.O. Box 2463, Houston, Texas 77252-2463, filed an Application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), (15 U.S.C. 717f(b) and 717f(c)) and §§ 157.5 and 157.23 of the Federal Energy Regulatory Commission's Regulations (18 CFR 152.5 and 157.23), for a blanket certificate of public convenience and necessity authorizing the sale of natural gas for resale in interstate commerce on the spot market or short-term market with pregranted abandonment authority. SGT further requests that the sales and abandonment authority requested herein be made applicable to all Natural Gas Policy Act of 1978 (NGPA) categories of gas, including gas abandoned in connection with take-or-pay settlements under §§ 2.76 and 2.77 of the Commission's Rules. SGT further requests that the requested authority also apply to gas supplies which have qualified for automatic abandonment authority pursuant to Order Nos. 451 and 451-A. SGT requests such authority as to gas owned by it, and not to sales on behalf of others or as agent for others, and agrees that such authority may be limited to a term expiring on March 31, 1988 (unless extended). SGT requests that the requirements for filing of a blanket affidavit to cover such sales in accordance with § 154.94(h) of the Commission's Regulations be waived and to the extent that SGT qualifies for any allowance for production-related costs under section 110 of the NGPA, SGT requests that the requirement that it comply with § 154.94(k) and Part 271 of the Commission's Regulations be waived. SGT requests that the certificate state that SGT will be subject to the Commission's jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transaction authorized.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 26, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18632 Filed 8-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-802-000, et al.]

Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates; [1] Phillips 66 Natural Gas Co., et al.

August 10, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 25, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession]

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-802-000 (G-3244), B, 8/3/87.	Phillips 66 Natural Gas Co., 990-G Plaza Office Bldg., Bartlesville, OK 74004.	El Paso Natural Gas Co., Winkler Gas Plant, Winkler County, TX.	(1)	
CI87-803-000 (CI72-686), B, 8/3/87.	.....do	.....do	(1)	
CI87-798-000 (G-20255), B, 7/29/87.	Phillips Petroleum Co., 990-G Plaza Office Bldg., Bartlesville, OK 74004.	Texas Eastern Transmission Corp., West George Field, Live Oak County, TX.	(2)	
G-4579-043, D, 7/30/87.....	Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, OK 74102.	Northern Natural Gas Co., Division of Enron Corp., Lease Nos. 6-1530584 (SE Sec. 9-34S-40W); 6-1534161 (NE Sec. 2-34S-41W); 6-1535326 (SE Sec. 13-34S-41W); 6-1530612 (NW Sec. 25-34S-41W); 6-1534183 (NE Sec. 13-34S-40W); 6-1534797 (SW Sec. 1-34S-41W); and 6-1531943 (S/2 NE Sec. 16-34S-40W), Morton County, KS.	(3)	
CI87-804-000 (CI72-433), B, 8/3/87.	.....do	Northern Natural Gas Co., Division of Enron Corp., E/2 NW/4 Sec. 23-32S-33W, Seward County, KS.	(4)	
CI87-731-000, F, 6/29/87...	Elf Aquitaine, Inc., 1000 Louisiana—Suite 3800, Houston, TX 77002.	Northern Natural Gas Co., Division of Enron Corp., West Cameron Block 480 Field, Offshore, LA.	(5)	
CI76-151-001, CI87-760-000, CI87-761-000, F, 7/10/87.	Fina Oil and Chemical Co., P.O. Box 2159, Dallas, TX 75221.	Northern Natural Gas Co., Division of Enron Corp., and El Paso Natural Gas Co., University "O", Andrews County, TX, Owens "C", Crockett County, TX and Sealy Smith "B", Winkler County, TX.	(6)	
CI67-717-001, D, 7/30/87...	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Co., Division of Enron Corp., Mocane Laverne Field, Harper County, OK.	(7)	
CI60-129-000, D, 7/29/87...	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Natural Gas Pipeline Co. of America, Knox Field, Grady and Stephens Counties, OK.	(8)	
CI87-801-000, B, 7/30/87...	Amoco Production Co., P.O. Box 50879, New Orleans, LA 70150.	Florida Gas Transmission Co., Palacious Field, Matagorda County, TX.	(9)	
CI61-752-005, D, 7/29/87...	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	ANR Pipeline Co., Woodward Area, Dewey, Woodward and Major Countries, OK.	(8)	
CI78-565-001, D, 7/30/87...	Sohio Petroleum Co. P.O. Box 4587, Houston, TX 77210.	ANR Pipeline Co. Putnam Field, Dewey County, OK.	(10)	
CI87-695-000, B, 6/9/87.....	Questa Energy Corp., P.O. Box 19297, Amarillo, TX.	Transwestern Pipeline Co., South Follett (Morrow) Field, Lipscomb County, TX.	(11)	

[1] Phillips 66 NGC has sold all of its interest in the Winkler Gas Gathering System to Cabot Corporation. This change in ownership occurred by agreement for sale effective 5-1-87 and executed 5-11-87.

[2] The contract expired of its own terms on 12-6-80. On 4-25-78, the Pawlike "A" Well was plugged.

[3] The subject leases reverted to the U.S. Government effective 11-25-86, 11-27-86, 12-3-86, 12-16-86, 12-22-86 and 3-24-87, after which Cities Service no longer has a working interest in such leases.

[4] Cities has had no oil well gas sales since 1981. The unit is comprised of one well, the Baughman #1-23, which produces approximately 70 Mcf/month and the entire volume is used as lease fuel.

[5] Elf Aquitaine, Inc. acquired certain interest from Union Texas Petroleum Corp., effective 10-1-86.

[6] By Assignments dated 11-14-86, effective 10-1-86, Cities Service Oil and Gas Corporation assigned to FINA all Cities' right, title and interest in certain oil and gas leaseholds and leasehold acreage.

[7] Assignments of dedicated acreage to PNG Operating Company and Foran Oil Company effective December 1, 1986.

[8] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.

[9] Production dedicated under Gas Sales Contract dated 1-22-59, ceased in the year 1980. The only producing well was plugged and abandoned in March, 1985. Gas Sales Contract has been mutually terminated by Seller and Purchaser effective 5-1-87.

[10] The Farris Unit No. 1, Sec. 21-T17N-R17W, was plugged and abandoned 5-5-87.

[11] Due to marketing and operational problems with current gas purchaser, gas sales have been limited and intermittent with little chance for improvement according to the present purchaser. Applicant proposes to connect well into the Northern Natural Gas Company, Division of Enron Corp's., system for additional marketing opportunities. Applicant will maintain the existing connection to Transwestern Pipeline and in effect have two separate connections. Sales of gas to either purchaser will be maintained on an as-needed basis.

[FR Doc. 87-18629 Filed 8-13-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RI74-188-003, et al.

Pending Proceedings; Independent Oil & Gas Association of West Virginia and Columbia Gas Transmission Corp.

August 10, 1987.

Take notice that proceedings are pending concerning the applicability of the Natural Gas Policy Act of 1978 to the rate clauses agreed to in the settlements reached in *Independent Oil & Gas Association of West Virginia,* Docket Nos. RI74-188 [1] and RI75-21.[2] These settlements approved special relief, cost-based rates for certain small producers selling natural gas produced in West Virginia to Columbia Gas Transmission Corporation, Consolidated Gas Supply Corporation, Carnegie Natural Gas Company, and Equitable Gas Company.

In order that a final resolution to these on-going proceedings may be reached, the period during which an interested party may become a party to these proceedings has been opened and extended. Any West Virginia producer of natural gas, not currently a party, who has an interest in these proceedings and who desires to become a party, may file a motion to intervene in accordance with Rule 214 of the Commission's rules

[1] 55 FPC 1238 (1976).

[2] 55 FPC 1296 (1976).

of practice and procedure, 18 CFR 385.214 (1987). All motions to intervene must be filed within 60 days of publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18630 Filed 8-13-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3247-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, EPA.

Availability of Environmental Impact Statements Filed August 3, 1987 Through August 7, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870269, DSuppl, COE, CA, Sacramento River Bank Protection, Erosion Control, Collinsville to Chico Landing, River Miles 0 to 194, Updated Information, Due: September 28, 1987, Contact: Mike Welsh (916) 551-1861.

EIS No. 870270, DSuppl, EPA, FL, Jacksonville Harbor Ocean Dredged Material Disposal Site, Canaveral Harbor, Designation, Due: September 28, 1987, Contact: Sally Turner (404) 347-2126.

EIS No. 870271, Final, COE, TX, Cypress Creek Flood Control Plan, San Jacinto River and Tributaries, Harris and Waller Counties, Due: September 14, 1987, Contact: Charles Harbaugh (713) 766-3044.

EIS No. 870272, Draft, AFS, AK, Cleveland Peninsula Resources Management Plan, Value Comparison Units 717, 718, 719, 720 and 723, Tongass National Forest, Ketchikan Area, Due: September 30, 1987, Contact: Carl Leland (907) 225-2148.

EIS No. 870273, Final, AFS, AZ, Prescott National Forest, Land and Resource Management Plan, Yavapai and Coconino Counties, Due: September 14, 1987, Contact: H. Bruce Lamb (602) 445-1762.

EIS No. 870274, Draft, BLM, CA, Western Mojave Land Tenure Adjustments Project, Due: November 13, 1987, Contact: Sue Richardson (619) 259-3591.

EIS No. 870275, Adoption, Final, FHA, ME, Jonesport Harbor Navigation Improvement Project, Due: September 14, 1987, Contact: Warren Clayman (202) 382-9616.

EIS No. 870276, Draft, BIA, CA, Colmac 45MW Biomass-Fueled Power Plant, Construction and Operation, Lease Approval, Cabazon Indian Reservation, Riverside County, Due: October 12, 1987, Contact: Donald Knapp (916) 978-4703.

EIS No. 870277, Draft, FHW, NY, Southwest Lockport Bypass Construction, Robinson Road to NY-31, Niagara County, Due: September 28, 1987, Contact: Victor Taylor (518) 472-3616.

EIS No. 870278, Draft, AF, OR, Malheur National Forest, Land and Resource Management Plan, Due: November 12, 1987, Contact: Kenneth Evans (503) 575-1731.

EIS No. 870279, DSuppl, COE, LA, New Orleans to Venice Hurricane Protection Plan, Barrier Features Construction, Plaquemines Parish, Due: September 30, 1987, Contact: E. Scott Clark (504) 862-2521.

Amended Notices

EIS No. 870253, Draft, NOA, NH, New Hampshire Coastal Program, Ocean, Harbor, and Great Bay Areas, Approval, Contact: Kathryn Cousins (202) 673-5152, Published FR 07-31-87—Incorrect phone number.

EIS No. 870223, DSuppl, NRC, IL, Rare Earths Permanent Waste Disposal Facility Decommissioning, Alternative Site Analysis, License, Dupage County, Due: October 1, 1987, Published FR 7-2-87—Review period extension.

Dated: August 11, 1987.

Anne Norton Miller,

Director, Special Programs and Analysis Division, Office of Federal Activities.

[FR Doc. 87-18643 Filed 8-13-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3248-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 27, 1987 through July 31, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environemntal Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-FHW-F40291-IL, Rating EC2, Elgin-O'Hare Highway/FAP Route 426 Improvement, US 20/Lake Street and Lovell Road Intersection IL-19/ Irving Park Road and US 12/45/ Manheim Road Intersection, Construction, 404 Permit, IL. SUMMARY: EPA's review resulted in concerns regarding loss of wetlands. EPA requested that wetland mitigation plans be developed prior to the final EIS.

Final EISs

ERP No. F-BLM-K61059-CA, Western Counties Wilderness Study Area Project, Indio Resource Area, Wilderness Recommendations, Designation, California Desert, CA. SUMMARY: EPA supported the BLM's recommendations of certain areas as wilderness areas, and requested that BLM's final recommendation document state that water and air quality will be best protected in areas recommended for wilderness designation.

ERP No. F-BLM-K61079-00, Eagle Lake-Surprise (Formerly Cedarville) Resource Areas, Wilderness Study Areas Designation, CA and NV. SUMMARY: EPA requested that the wilderness recommendation document that BLM prepares disclose that air and water quality would be best protected in lands that are designated wilderness. The final EIS had indicated that air and water quality impacts would be the same whether or not the lands were designated as wilderness.

ERP No. F-FRC-L05194-WA, Snohomish River Basin, Seven Hydroelectric Projects, Construction, Operation, and Maintenance, Licenses, WA. SUMMARY: DPA reviewed the final EIS which analyed the individual and cumulative impacts of seven hydroelectric projects considered under three scenarios. Scenario C considered all seven projects and was found to be environmentally unsatisfactory since it would lead to unrestricted cumulative impacts to target resources. Scenario B involved three projects and EPA had environmental concerns stemming from lack of adequate mitigation to reduce potentially significant adverse effects upon target resources. Scenario A considered only one project and EPA considered it to be environmentally acceptable if licensed with the staff-proposed mitigation measures adopted as articles to the license. Overal EPA had environmental concerns because there is no assurance that the Commission will find in favor of the final EIS's preferred action (Scenario A), and because the information about the mitigation measures is not adequately detailed.

ERP No. F-IBR-J31018-UT, Uinta Basin Unit Construction and Operation,

Colorado River Water Quality Improvement Program UT. SUMMARY: EPA's previous comments were addressed in the final EIS. EPA requested the commitments in attachment D of the final EIS be included in the Record of Decision.

ERP No. F-NRC-K22003-CA, Humboldt Bay Power Plant, Unit 3, Decommissioning, Approval, Ca. SUMMARY: EPA's review indicated that the final EIS adequately addressed the concerns EPA raised on the draft EIS. However, EPA recommended that a water quality monitoring program be implemented during the decommissioning period because of the long term storage proposed and the potential for seismic activity in the area. EPA requested that the amended NRC license for the Humboldt Bay plant incorporate these monitoring concerns.

ERP No. F-USA-K11031-CA, Presidio Army Barracks Numbers 098, 119, and 124, Facility Development Construction, CA. SUMMARY: The final EIS adequately addressed the concerns EPA had raised on the draft EIS.

ERP No. F-USN-K11030-CA, San Francisco Bay Battleship Battlegroup and Cruiser Destroyer Group Homeporting, Construction, and Operation, Naval Station Treasure Island, Hunters Point Annex, Naval Air Station Alameda, CA. SUMMARY: EPA reviewed the final EIS and made the following recommendations to the US Navy: (1) That only shallower sediments be dredged at the Hunters Point berthing site, and that deeper sediments not be dredged due to toxicity; (2) that future planning of onshore facilities fully consider the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) due to waste sites in the project area; (3) that Navy homeporting activities not conflict with the requirements of Superfund; and (4) that State and local regulatory agencies and the public be allowed to review and comment on the Superfund review process.

ERP No. F-USN-K80015-AZ, Joint Guayule Rubber Program Processing Operation, Prototype Rubber Extraction Facility, Construction and Operation, Gila River Indian Reservation, AZ. SUMMARY: EPA requested that the Navy's Record of Decision provide more information on spent solvent wastes, their treatment, State of Arizona hazardous waste permit requirements, and pond impacts on migratory birds and other wildlife.

Regulations

ERP No. R-FRC-A86225-00, 18 CFR Parts 2 and 380, Regulations Implementing the Nat'l Environmental Policy Act (NEPA) of 1969 (52 FR 20314). SUMMARY: EPA has environmental objections to the draft regulations proposed by the Federal Energy Regulatory Commission for implementation of the NEPA based on four major areas of concern. They are: (1) Rejection of the CEQ referral process for resolving interagency disputes, (2) definition of purpose and need with alternatives, (3) discretionary inclusion of monitoring and enforcement in the Record of Decision, and (4) delegation of agency consultation to applicants.

Amended Notice

The following review should have appeared in the FR Notice published on July 31, 1987.

ERP No. F-FRC-G05045-00, Lee Creek Hydroelectric and Water Supply Project, Construction and Operation, License, 404 Permit, AR and OK. SUMMARY: EPA has developed and transmitted necessary mitigating conditions to address our environmental concerns with the Lee Creek Water Power Project and final EIS. The conditions were developed to ensure the project would not result in significant degradation of Lee Creek or remove the existing beneficial uses from the stream in either Arkansas or Oklahoma. If these conditions are not incorporated into the license in a legally enforceable manner, EPA will continue to object to issuing the license for the project. EPA has requested a response from FERC prior to the licensing decision. EPA has the Administrator's approval to refer this project to the Council on Environmental Quality if our concerns are not resolved.

Dated: August 11, 1987.

Anne Norton Miller,

Director, Special Programs and Analysis Division, Office of Federal Activities.

[FR Doc. 87-18644 Filed 8-13-87; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-83002D; FRL-3247-8]

Receipt of Request for Waiver of Testing of Supelco, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of request for waiver of testing requirements.

SUMMARY: EPA requires testing of specified chemical substances to see if they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs) and reporting of the results. However, provisions are made for exclusion from, or waiver of, these requirements if an appropriate application is made to the Agency and is approved. EPA has received such a request for a waiver of these requirements from Supelco, Inc., and this document gives notice of its receipt. Comments may be made on this request.

DATE: Comments should be received by August 31, 1987.

ADDRESS: Submit comments in triplicate to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202)-554 1404).

SUPPLEMENTARY INFORMATION: EPA under 40 CFR Part 766 (52 FR 21412, June 5, 1987) requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

Under 40 CFR 766.32(a)(1)(i) and (ii), a person may be granted an exclusion from the testing requirements of Part 766 if appropriate testing of the chemical substance has already been done or the process and reaction conditions are such that HDDs/HDFs would not be produced.

A waiver of the testing requirements of Part 766 may be granted under 40 CFR 766.32(a)(2)(i) through (ii) if: (1) 100 kilograms or less of the product are produced annually exclusively for research and development, or (2) the cost of testing would be so high as to prohibit its production and the chemical substance will be produced in such a manner that there will be no unreasonable risk during its manufacture, import, processing, distribution, use, or disposal. Under 40 CFR 766.32(a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Under the regulation, a request for either an exclusion or waiver must be made before September 4, 1987 for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987, or 60 days prior to resumption of manufacture or import of a chemical substance not being manufactured or processed as of June 5, 1987.

The request from Supelco, Inc. asks that the requirements of the rule be waived with respect to certain chemicals it manufactures. Supelco

states in its request that it produces chemicals which are subject to the rule at levels of 100 kilograms per year or less, and that these chemicals are used only for research and development purposes. The request asks that the waiver apply to all compounds subject to the rule which it manufactures.

Dated: August 6, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-18602 Filed 8-13-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51688; FRL-3247-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a permanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premaunfacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-1511 and 87-1512—October 28, 1987.

P 87-1513, 87-1514, 87-1515, 87-1516, 87-1517, 87-1518, 87,1519, and 87-1520—October 31, 1987.

P 87-1521, 87-1522, 87-1523, 87-1524, 87-1525, and 87-1526—November 1, 1987.

P 87-1527, 87-1528, 87-1529, 87-1530, 87-1531, 87-1532, 87-1533, 87-1534, 87-1535, 87-1536, 87-1537, 87-1538, 87-1539, 87-1540, 87-1541, and 87-1542—November 2, 1987.

P 87-1543, 87-1544, 87-1545, 87-1546, 87-1547, 87-1548, and 87-1549—November 3, 1987.

Written comments by:

P 87-1511 and 87-1512—September 28, 1987.

P 87-1513, 87-1514, 87-1515, 87-1516, 87-1517, 87-1518, 87-1519, and 87-1520—October 1, 1987.

P 87-1521, 87-1522, 87-1523, 87-1524, 87-1525, and 87-1526—October 2, 1987.

P 87-1527, 87-1528, 87,1529, 87-1530, 87-1531, 87-1532, 87-1533, 87-1534, 87-1535, 87-1536, 87-1537, 87-1538, 87-1539, 87-1540, 87-1541, and 87-1542—October 3, 1987.

P 87-1543, 87-1544, 87-1545, 87-1546, 87-1547, 87-1548, and 87-1549—October 4, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51688]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1511

Manufacturer. Confidential.

Substance. (g) Asporogenic strain of *Bacillus* species self-cloned by rDNA techniques to contain multiple gene copies for a hydrolase, using a vector from *Staphylococcus aureus.*

Use/Production. (G) The microorganism will be used for the biosynthesis of a hydrolase. Prod. range: Confidential.

Test Data. Pathogenicity study by various routes in mice revealed no pathogenic potential for the microorganism in 21-day test. Tests of survival and gene transfer in soil showed a rapid decline in population numbers and no transfer of genes to another *Bacillus* species. Test of reversion to sporogenicity showed no reversion.

Exposure. Workers in laboratory and production areas.

Environmental release/Disposal. Production and processing: Live cells used for biosynthesis are contained in sealed fermentation vessel systems. At the end of biosynthesis, the cells are killed using a validated procedure. The enzyme is recovered from the dead cells. Disposal of cell waste: Landfill and waste-water treatment facility on company property.

P 87-1512

Importer. Confidential.

Chemical. (G) Fluorinated acrylic copolymer.

Use/Import. (g) Oil and water proofing agent. Import range: Confidential.

Toxicity Data. Acute oral: 5,250 mg/kg; Acute dermal: 0.5 ml; Irritation: Eye—Slight-irritation.

P 87-1513

Manufacturer. Product Research and Chemical Corporation.

Chemical. (s) 2-Ethanol, 1,1'-thiobis, 2-propanol, 1-hydroxyethyl-thio, 1,3-propanediol, 2-ethyl-2-[hydroxy methyl]ethanol, 2-(5-hexenylthio)-.

Use/Production. (S) Site-limited prepolymer for manufacture of thiol terminated polymer and industrial reactive plasticizer for vulcanized rubbers, sealants, adhesives and coatings. Prod. range: 100,000 to 450,000 kg/yr.

P 87-1514

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzene sulfonyl chloride.

Use/Production. (S) Isolated intermediate. Prod. range: Confidential.

P 87-1515

Importer. Confidential

Chemical. (G) Fluorinated copolymers.

Use/Import. (G) Water repellent for building and wooden materials. Import range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation; Eye—Non-irritant, Skin—Irritant.

P 87-1516

Importer. Confidential.

Chemical. (G) Alkenamide polymer with acrylic acid derivatives.

Use/Import. (S) Industrial retention/drainage aid. Import range: Confidential.

Toxicity Data. Ames test: Non-mutagenic.

P 87-1514

Importer. Confidential.

Chemical. (G) Alkenylbenzene polymer with acrylic acid derivatives.

Use/Import. (S) Industrial synthetic sizing agent. Import range: Confidential.

P 87-1518

Importer. Confidential.

Chemical. (G) Isocyanate polymer with polyalkyloxy compound, substituted diol, and substituted siloxane.

Use/Import. (S) Industrial leather finishing agent. Import range: Confidential.

P 87-1519

Importer. Confidential.

Chemical. (G) Isocyanate polymer with polyalkyloxy compound, substituted propionic acid, and a diamine.

Use/Import. (S) Industrial color fixing agent for leather. Import range: Confidential.

P 87–1520

Importer. Confidential.

Chemical. (G) Alkyl modified polydimethylsiloxane.

Use/Import. (S) Synthetic lubricant. Import range: Confidential.

P 87–1521

Manufacturer. Confidential.

Chemical. (G) Polyurethane elastomer.

Use/Production. (G) Non-dispersive formulation adhesive. prod. range: Confidential.

P 87–1522

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Polyester resin of aryl and alkyl acids and anhydride with alkane diols.

Use/Import. (G) Coatings additive. Import range: Confidential.

P 87–1523

Manufacturer. Confidential.

Chemical. (G) Styrenated hydroxy functional acrylate methacrylate polymer.

Use/Production. (G) Dispersively used coating. Prod. range: 95,000 to 270,000 kg/yr.

P 87–1524

Manufacturer. Confidential.

Chemical. (G) Styrenated hydroxy functional methacrylate polymer.

Use/Production. (G) Industrial coating composition having a dispersive use. Prod. range: 95,000 to 270,000 kg/yr.

P 87–1525

Importer. Confidential.

Chemical. (G) Fluorinated acrylic copolymer.

Use/Import. (G) Oil and water-proofing agent. Import range: Confidential.

Toxicity Date. Acute oral: > 5,250 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87–1526

Manufacturer. Products Research and Chemical Corporation.

Chemical. (S) Polymer of 2-ethanol; 1, 1'-thiobis; 2-propanol, 1-hydroxyethylthio; 1, 3-propanediol, 2-ethyl-2-(hydroxymethyl); and ethanol, 2-(5-hexenythio).

Use/Production. (S) Industrial polymer for manufacture of sealants, adhesives and coatings. Prod. range: 100,000 to 450,000 kg/yr.

P 87–1527

Manufacturer. Confidential.

Chemical. (G) Cyanoacrylate ester.

Use/Production. (S) Industrial cyanoacrylate adhesive. Prod. range: Confidential.

P 87–1528

Importer. Roure Bertrand Dupont, Incorporated.

Chemical. (S) Acetyl-1-dimethyl-3,3 cyclohexene-1.

Use/Import. (S) Industrial, commercial and consumer fragrance ingredient. Import range: 50 to 250 kg/yr.

Toxicity Data. Acute oral: > 8,000 mg/kg; Irritation: Skin—Non-irritating, eye—Minimally irritating.

P 87–1529

Manufacturer. Confidential.

Chemical. (G) Copper complex salt of dialkyl, dialkylamino, carboalkoxy-substituted xanthene dye.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1530

Importer. Confidential.

Chemical. (S) Mixture of pyridinium, 1,1'-[1,4-phenylenebis[imino[6-[[7–[(1,5-disulfo-2-naphthalenyl)azo]-8-hydroxy-3,6-disuflo-1-naphthalenyl]amino]-1,3,5-triazine-4,2-diyl]]]bis[3-carboxy, dihydroxide, bis(inner salt), octasodium salt and pyridinium, 3-carboxy-1-[4-[[4-[[4-chloro-6-[[7-[(1,5-disuflo-2-naphthanlenyl)azo]-8-hydroxy-3,6-disulfo-1-naphthalenyl]amino]-1,3,5-triazin-2-yl]amino]phenyl]amino]-6-[[7-[(1,5-disulfo-2-naphthalenyl)azo)-8-hydroxy-3,6-disulfo-1-naphthalenyl]amino]-1,3,5-triazine-2-y1]-, hydroxide, inner salt, octasodium.

Use/Import. (S) Commercial dye for cellulosic fibers. Import range: 10,000 kg/yr.

Toxicity Data: Acute oral: > 4,000 mg/kg; Ames test: Negative.

P 87–1531

Importer. Marubeni America Corporation.

Chemical. (S) 1,3-Benzenedicarbonitrile, 2-[[4-(diethylamino)-2-methylphenyl]azo]-5-nitro.

Use/import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; TLm 48 hr (Cyprinodont): 200 parts per million (ppm).

P 87–1532

Manufacturer. Fineten, Incorporated.

Chemical. (S) Benzoate ester of alkoxylated C_{18} alcohol.

Use/Production. (S) Industrial dye carrier for synthetic textile with low toxicity, ceramic powder dispersant with high thermal stability, co-emulsifier for difficult to emulsify high melting point synthetic and natural waxes, solufilizer and coupling agent for difficult to dissolve silicones, anti-oxidants and synthetic oils. Prod. range: 23,000 to 35,000 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Mild, Eye—Non-irritant.

P 87–1533

Manufacturer. Confidential.

Chemical. (G) Potassium salt of an aqueous acrylic emulsion.

Use/Production. (S) Commercial and consumer in situ thickener salt. Prod. range: Confidential.

P 87–1534

Manufacturer. Confidential.

Chemical. Sodium salt of an aqueous acrylic emulsion.

Use/Production. (G) Commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1535

Manufacturer. Confidential.

Chemical. (G) Sodium salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Commercial and consumer flow modifier. Prod. range: Confidential

P 87–1536

Manufacturer. Confidential.

Chemical. (G) Potassium salt of an aqueous carboxylated styrene butadiene compolymer.

Use/Production. (G) Flow modifier. Prod. range: Confidential.

P 87–1537

Manufacturer. Confidential.

Chemical. (G) Sodium salt of an aqueous acrylic emulsion.

Use/Production. (G) Commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1538

Manufacturer. Confidential.

Chemical. (G) Fatty acid esters.

Use/Production. (G) Site-limited and industrial lubricant base. Prod. range: Confidential.

P 87–1539

Manufacturer. Confidential.

Chemical. (G) Potassium salt of an aqueous acrylic emulsion.

Use/Production. (G) Commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1540

Importer. Marubeni America Corporation.
Chemical. (S) Benzoic acid, 4,4'-[(1-amino-8-hydroxy-3,6-disulfo-2,7-naphthalenediyl)bis[azo(4-sulfo-3,1-phenylene)imino(6-chloro-1,3,5-triazine-4,2-dyl)imino]]bis-,m tetrasodium salt.
Use/Import. (S) Commercial dye for cellulosic fibres. Import range: 10,000 kg/yr.

P 87–1541

Importer. Marubeni America Corporation.
Chemical. (S) 3-Pyridinecarbonitrile, 1-butyl-5-[(3,4-dichloro-phenyl)azo]-1,2-dihydro-6-hydroxy-4-methyl-oxo-.
Use/Import. (S) Commercial dye for polyester. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Ames test: Non-mutagenic; TLm 48 hr (Cyprinodont): 100 ppm.

P 87–1542

Importer. Confidential.
Chemical. (G) Sulfoalkyl, methacrylate-ester K-salt.
Use/Import. (S) Functional monomer, chemical intermediate for polymerization. Import range: Confidential.

P 87–1543

Manufacturer. Confidential.
Chemical. (G) Polymer of polysubstituted cycloalkane and disubstituted alkane.
Use/Production. (G) Specialty polymeric material. Prod. range: 1,600 to 3,100 kg/yr.

P 87–1544

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 87–1545

Importer. Confidential.
Chemical. (G) Substituted benzyl amine.
Use/Import. (S) Industrial epoxy curing agent. Prod. range: Confidential.

P 87–1546

Manufacturer. Confidential.
Chemical. (G) Dialkyleneglycoliminopolycarboxylic acid, disodium salt.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

P 87–1547

Manufacturer. Confidential.
Chemical. (G) Dialkyleneglycoliminopolycarboxylic acid, dipotassium salt.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

P 87–1548

Manufacturer. Confidential.
Chemical. (G) Dialkyleneglycoliminopolycarboxylic acid, monosodium salt.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

P 87–1549

Manufacturer. Confidential.
Chemical. (G) Dialkyleneglycoliminopolycarboxylic acid, monopotassium salt.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Date: August 7, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–18490 Filed 8–13–87; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–59827; FRL–3247–5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eight such PMNs and provides the summary.

DATES: Close of Review Period:
Y 87–206, 87–207, 87–208, 87–209, and 87–210—August 24, 1987.
Y 87–211, 87–212, and 87–213—August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the exemption received by EPA. The complete non-confidential documents are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–206

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 87–207

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl and alkyl acids and anhydride with alkene diols.
Use/Import. (G) Coatings additive. Import range: Confidential.

Y 87–208

Manufacturer. Confidential.
Chemical. (G) Alkyd copolymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 87–209

Manufacturer. Emery Chemicals.
Chemical. (S) Adipic acid, phthalic anhydride, ethylene glycol, neopentyl glycol 2-ethylhexanol.
Use/Production. (S) Industrial plasticizers for polyvinyl chloride resin. Prod. range: 680,000 to 750,000 kg/yr.

Y 87–210

Manufacturer. Emery Chemicals.
Chemical. (S) Dimethyl glutarate-adipate, dimethyl terephthalate, neopentyl glycol, ethylene glycol iso decyl alcohol, tetra propyl titanate.
Use/Production. (S) Industrial plasticizer for use in polyvinyl chloride resin-based molding compounds. Prod. range: 200,000 to 500,000 kg/yr.

Y 87–211

Manufacturer. Confidential.
Chemical. (G) Modified acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 87-212

Manufacturer. Confidential.
Chemical. (G) Modified acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 87-213

Manufacturer. Confidential.
Chemical. (G) Modified acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Date: August 7, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-18491 Filed 8-13-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-797-DR]

Major Disaster and Related Determinations; Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota, (FEMA-797-DR), dated August 6, 1987, and related determinations.

DATED: August 6, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: Notice is hereby given that, in a letter of August 6, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms, tornadoes, and flooding beginning on or about July 20, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, Federal funds provided under PL 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of PL 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster.

Dakota and Hennepin Counties for Individual Assistance.

Carver, Ramsey, Scott, and Washington Counties as adjacent areas for Individual Assistance.

Carver, Hennepin, and Ramsey Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-18548 Filed 8-13-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Crowley Caribbean Transport, Inc.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011063-002

Title: United States/Jamaica Discussion Agreement

Parties:

Crowley Caribbean Transport, Inc.
R.B. Kirkconnell & Bro. Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would add Zim Israel Navigation Co. as a member of the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: August 11, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-18593 Filed 8-13-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Fidelcor, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in sections 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 8, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to acquire 100 percent of the voting shares of Fidelity Bank Delaware, in a yet-to-be-named city in Delaware.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Provident Bankshares Corporation,* Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Provident Bank of Maryland, Baltimore, Maryland, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Badger Bank Services, Inc.,* Cassville, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Badger State Bank, Cassville, Wisconsin.

2. *NBD Bancorp, Inc.* and NBD Northern Corporation, both in Detroit, Michigan; to acquire 100 percent of the voting shares of State National Corporation, Evanston, Illinois, and thereby indirectly acquire State National Bank, Evanston, Illinois, and The Bank & Trust Company of Arlington Heights, Arlington Heights, Illinois.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Centerre Bancorporation,* St. Louis, Missouri; to acquire 100 percent of the voting shares of Centerre Bank of Delaware, New Castle, Delaware, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 10, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18536 Filed 8-13-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; First Commercial Corp;

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation,* Little Rock, Arkansas; to particpate in a joint venture through the acquisition of 11.11 percent of the voting shares of GulfNet, Inc., New Orleans, Louisiana, which is the manager and operator of an automatic teller machine and electronic fund transfer network pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the Southern United States.

Board of Governors of the Federal Reserve System, August 10, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18537 Filed 8-13-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, the "Beneficiary Inquiry Tracking System (BITS)," HHS/HCFA/OPHC 09-70-4002. We have provided background information about the system in the **"SUPPLEMENTARY INFORMATION"** section below. HCFA invites public comments by September 14, 1987, with respect to the routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB), on August 11, 1987, pursuant to paragraph 4b(3) of Appendix I to EOMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. In accordance with paragraph 4b(4) of this same Circular, we are requesting a waiver from EOMB of the 60-day advance notice requirement. Therefore, in the absence of a denial of the waiver request by EOMB, the new system of records including routine uses will become effective September 10, 1987, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Mr. Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-A-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT:

Ms. Sharley Chen, Office of Compliance, Office of Prepaid Health Care, Health Care Financing Administration, Room 4360 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, telephone: (202) 245-0835,

or

Ms. Dorothea Musgrave, Office of Compliance, Office of Prepaid Health Care, Health Care Financing Administration, Room 4360 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, telephone: (202) 245-0824.

SUPPLEMENTARY INFORMATION:

Pursuant to the provisons of the Privacy Act of 1974, notice is hereby given that the Health Care Financing Administration (HCFA) proposes to initiate the Beneficiary Inquiry Tracking System (BITS) to track and monitor the resolution of the inquiries made by or on behalf of Medicare beneficiareis who are or have been enrolled in a Group Health Plan. A Group Health Plan is a Health Maintenance Organization (HMO), Competitive Medical Plan

(CMP), or a Health Care Prepayment Plan (HCPP) which has executed a contract with HCFA to provide services to Medicare beneficiaries on a prepaid or cost basis.

BITS is one of several approaches HCFA will utilize to promote the effective administration and operation, and to maintain the integrity of the Medicare HMO/CMP program. The primary function of BITS will be to track and monitor the status of inquiries received by HCFA and HCFA's ten regional offices (RO) regarding Medicare Group Health Plans. In addition, BITS will serve a valuable program monitoring and evaluation function. The data accumualted in BITS will be aggregated and used to generate reports documenting on a national, regional, or plan level the volume and specific types of inquiries received from or on behalf of Medicare beneficiaries. The Office of Prepaid Health Care (OPHC) will use these reports to conduct various analyses and to develop program indicators for operational (e.g., contract renewal) and programmatic issues. If a particular analysis reveals a significant volume of inquiries or complaints which appear to be valid, HCFA will pursue further investigation and/or corrective actions that may be appropriate. In this manner, BITS will be integrated into and will complement other monitoring and oversight activities of the Department, HCFA, and OPHC; thereby ensuring that Medicare beneficiaries continue to receive quality care.

The BITS is established under the authority of Section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)), and Sections 1874 and 1876 of Title XVIII of the Social Security Act (42 U.S.C. 1395kk and 1395mm). The system is subject to the regulations at 42 CFR Part 401 Subpart B and 45 CFR Part 5b setting forth the conditions under which Medicare information shall be made available to the public and the Freedom of Information Act rules that apply to such disclosures of information. The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the system meet the compatibility requirement of the Act since they are consistent with the purpose of the system to promote the effective administration and operation of the Medicare HMO program and to maintain its integrity. Release of beneficiary-specific information will require authorization and will be determined on an individual case-by-case basis.

We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Please note: We are re-numbering System No. 09-70-0506, "Group Health Plan System," last published at 52 CFR 13525, April 23, 1987. The new number will be 90-70-4001. This change is made for administrative purposes only in order to uniquely identify the Office of Prepaid Health Care (OPHC) systems.

Dated: August 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-4002

SYSTEM NAME:

Beneficiary Inquiry Tracking System (BITS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, Bureau of Data Management and Strategy, Office of Health Program Systems, Division of Capitation Systems, Room A-1, 1705 Equitable Building, 6325 Security Boulevard, Baltimore, Maryland 21207

Health Care Financing Administration, Office of Prepaid Health Care, Room 4360 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201

Health Care Financing Administration, Regional Offices, See Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Medicare beneficiary who is or who has been enrolled in a Group Health Plan, or any persons who act on behalf of beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the record includes the following:

1. Beneficiary Name
2. Health Insurance Claim (HIC) Number
3. Health Maintenance Organization (HMO) Number
4. Date Received
5. Source of Inquiry: Beneficiary, Congressional Office HMO, HCFA Central Office, Social Security Administration, Provider, Medicare Intermediary or Carrier, Office of the Inspector General, Professional Review Organization/Quality Review Organization, State Insurance Commissioner/State Regulator, Disenrollment Survey, All Others
6. Type of Inquiry: *Quality of Care Issues:* Inappropriate Care Received; Failure to Provide Services; Access to Care; Other Quality of Care; *Enrollment Issues:* Inappropriate Enrollment; Failure to Enroll (Selective Enrollment); Inappropriate Disenrollment; Failure to Disenroll; *HMO Bill Payment Issues:* Beneficiary Billed for Authorized Services; Beneficiary Billed for Nonauthorized Services; Provider Not Paid by HMO; *Correction Actions:* Medicare Non-payment Because of HMO Status; Systems Corrections; *Reconsiderations: Reconsideration Requests; Routine Items:* Beneficiary Requests Disenrollment; Verification of HMO Status; *Miscellaneous:* All Items Not Covered Above
7. Analyst Assigned
8. Referral Dates
9. Referral Entities
10. Response Dates
11. Date Closed
12. Process Days
13. Interim Response Date
14. Retroactive Deletion Months
15. Retroactive Accretion Months
16. Record Number
17. Congressional ID Number
18. HCFA Regional Locator

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established under the authority of section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)) and sections 1874 and 1876 of Title XVIII of the Social Security Act (42 U.S.C. 1395kk and 1395mm).

PURPOSE OF THE SYSTEM:

The Beneficiary Inquiry Tracking System (BITS) will be used to track and monitor the resolution of the inquiries made by or on behalf of Medicare beneficiaries who are or who have been enrolled in a Group Health Plan. A Group Health Plan is a Health Maintenance Organization (HMO), Competitive Medical Plan (CMP), or a Health Care Prepayment Plan (HCPP) which has executed a contract with HCFA to provide services to Medicare beneficiaries on a prepaid or cost basis.

BITS is one of several approaches HCFA will utilize to promote the effective administration and operation, and to maintain the integrity of the Medicare HMO/CMP program. The primary function of BITS will be to track and monitor the status of inquiries received by HCFA and HCFA's ten regional offices (RO) regarding Medicare Group Health Plans. This will assist the ROs in managing their inquiry caseloads and will facilitate timely resolution of the inquiries. In addition, BITS will serve a valuable program monitoring

and evaluation function. The data accumulated in BITS will be aggregated and used to generate reports documenting on a national, regional, or plan level the volume and specific types of inquiries received for or on behalf of Medicare beneficiaries. The Office of Prepaid Health Care (OPHC) will use these reports to conduct various analyses and to develop program indicators for operational (e.g., contract renewal) and programmatic issues. Based upon analysis of these reports, OPHC will be able to identify potential problems or conflicts that exist within the Medicare HMO program. If a particular analysis reveals a significant volume of inquiries or compliants which appear to be valid, HCFA will pursue further investigation and/or corrective actions that may be appropriate. In this manner, BITS will be integrated into and will complement other monitoring and oversight activities of the Department, HCFA, and OPHC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office in response to an inquiry from that office at the request of the subject individual.

2. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency there of where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

4. To a third party where:

(a) HCFA needs information from the third party to verify information presented by the inquiring individual relating to program integrity, quality of care, evaluation and measurement of system activities, entitlement to benefits, or amount of reimbursement;

(b) The individual is unable to provide the information sought by HCHA, i.e., there is a reasonable basis to conclude that the individual is of questional mental capability, cannot read or write, cannot communicate due to a language barrier, or lacks access to the information, or that some similar circumstances exists;

(c) The party to whom disclosure is to be made has, or is reasonably expected to have such information, and disclosure is needed in order to obtain the information; and

(d) HCFA determines that the purpose of disclosure is compatible with the purposes for which the records were collected.

5. To a State Insurance Commissioner or other state regulator with similar authority, Professional Review Organization, Quality Review Organization, or an entity under contract to HCFA or the Department acting in a manner consistent with maintaining the integrity of the Medicare program if HCFA determines that disclosure of beneficiary-specific information is necessary or relevant to an official investigation or litigation regarding a specific case, and if HCFA determines:

(a) That the use or disclosure of information does not violate legal limitations under which the record was provided, collected, or obtained; and

(b) That the purpose for which disclosure is to be made:

(1) Is compatible with the purposes for which the records were collected;

(2) Cannot be reasonably accomplished unless the record is provided in individual identifiable form; and

(3) Is of sufficient importance to warrant any effect on the privacy of the individual that disclosure of the record might bring; and

(c) That adequate safeguards have been instituted so as to protect the confidentiality of the data and prevent unauthorized access to it; and

(d) That the appropriate procedures, format, and media will be used for the data disclosure process.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

The records are maintained at each of the system location sites in magnetic media (e.g., magnetic tape and computer discs) and in paper form.

RETRIEVABILITY:

The data in this system are retrieved by beneficiary name, social security number or record number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Department of HHS' Information Resources Management Manual, "Part 6, Automated Information Systems Security." This includes maintaining the records in a secure enclosure.

Access to specific records is limited to those who have a need for them in the performance of their official duties.

Paper records are maintained in locked files in buildings which are secured after normal business hours.

RETENTION AND DISPOSAL:

Records are maintained on-line in the system from the date of inquiry until two years after the final response is released.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Prepaid Health Care, Health Care Financing Administration, Room 4360 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the system manager at the address indicated above or to the HMO Coordinator at the appropriate regional office (see Appendix A), and specify beneficiary name or Social Security Number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the information in the records being sought. You may also request an accounting of disclosures that have been made of your records, if any. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for

requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, irrelevant, or otherwise in need of correction. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained from the inquiries of or those made on behalf of Medicare beneficiaries and the following sources: Congressional office; Health Maintenance Organization (HMO) or a Group Plan; HCFA Central Office; Social Security Administration; providers; Medicare Intermediary/Carrier; Office of the Inspector General; Professional Review Organization; State Insurance Commissioner/State Regulator; Disenrollment Survey; and all others. The paper record includes the original incoming inquiry, any supporting documentation obtained during the investigation process, and the final inquiry response. The magnetic tape record will only include information to be compiled in the data base (e.g., name, dates associated with inquiry resolution, type of inquiry) and not any descriptive data items.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix—Health Care Financing Administration, Regional Offices

I. Boston

HMO Coordinator, Room 1309, JFK Federal Building, Boston, Massachusetts 02203

II. New York

HMO Coordinator, Room 3811, 26 Federal Plaza, New York, New York 10278

III. Philadelphia

HMO Coordinator, 3535 Market Street, P.O. Box 7760, Philadelphia, Pennsylvania 19101

IV. Atlanta

HMO Coordinator, Suite 701, 101 Marietta Tower, Atlanta, Georgia 30323

V. Chicago

HMO Coordinator, Suite A–835, 175 W. Jackson Boulevard, Chicago, Illinois 60604

VI. Dallas

HMO Coordinator, Room 2000, 1200 Main Tower Building, Dallas, Texas 75202

VII. Kansas City

HMO Coordinator, New Federal Office Building, Room 235, 601 East 12th Street, Kansas City, Missouri 64106

VII. Denver

HMO Coordinator,
Federal Building,
Room 574,
1961 Stout Street,
Denver, Colorado 80294

IX. San Francisco

HMO Coordinator,
14th Floor,
100 Van Ness Avenue,
San Francisco, California 94102

X. Seattle

HMO Coordinator, Mail Stop 502, 2901 Third Avenue, Seattle, Washington 98121

[FR Doc. 87–18549 Filed 8–13–87; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776], and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, NIH, announces the reestablishment, effective September 1, 1987, of the following committees:

Diagnostic Radiology Study Section
Molecular Biology Study section
Neurology B Study Section
Nutrition Study Section
Pathology A Study Section
Pathology B Study Section
Physiology Study Section
Reproductive Biology Study Section
Tropical Medicine and Parasitology Study Section

Duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: August 10, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87–18623 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meetings; Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control, and its Subcommittees.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892–3100 (301–496–5708) will provide summaries of the meeting and rosters of members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20892–4200 (301–427–8630).

Name of committee: Centers and Community Oncology Subcommittee
Date of meeting: September 3, 1987, 8:30 a.m–4 p.m.
Place of meeting: Building 31, Conference Room 9, C Wing 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Discuss current and future programs of the Centers and Community Oncology Program.

Name of committee: Cancer Control Science Subcommittee
Date of meeting: September 10, 1987, 11 a.m.–4 p.m.
Place of meeting: Building 31, Room 2A52, 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Discuss current and future programs of the Cancer Control Science Program.

Name of committee: Prevention Subcommittee
Date of meeting: September 15, 1987, 9 a.m.–4 p.m.
Place of meeting: Federal Building, Room B1–19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892–4300
Agenda: Discuss current and future programs of the Prevention Program.

Name of committee: Board of Scientific Counselors, Division of Cancer Prevention and Control
Dates of meeting: September 21–22, 1987, 8:30 a.m.–adjournment
Place of meeting: Holiday Inn, Rooms: Versailles III and IV, 8120 Wisconsin Avenue, Bethesda, Maryland 20814
Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Dated: August 7, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18562 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Special Grants Review Committee, National Institute of Dental Research, September 29–30, 1987, in the Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815. The Committee will meet in the Palladian East Room. The meeting will

be open to the public from 9 a.m. to 9:30 p.m. on September 29 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 29 from 9:30 a.m. to recess and on September 30 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Rose Marie Petrucelli, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 519, Bethesda, MD 20892, (telephone 301/496–7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121–Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13–122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845–Dental Research Institutes; National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18563 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, September 17–18, 1987, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. until approximately 12 noon on Thursday, September 17. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 12 noon until recess on Thursday, September 17, and from 9 a.m. until adjournment on Friday, September 18, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Acting Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18564 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meetings of National Advisory Allergy and Infectious Diseases Council; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 17–18, 1987, at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The meeting will be open to the public on September 17 from approximately 9 a.m. to 9:15 a.m. for opening remarks of the Institute Director and again from 2:15 p.m. to approximately 4 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussion will include a report by the Director, Intramural Research Program, and a report by the Deputy Director, NIH, on the use of animals in biomedical research.

In accordance with the provisions set forth in sections. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Allergy and Immunology Subcommittee and of the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 9:15 a.m. until approximately 12 p.m., and from 1 p.m. until approximately 2:15 p.m. on September 17. The meeting of the full Council will be closed from approximately 8:30 a.m. until adjournment on September 18 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18558 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on September 15–16, 1987, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Tuesday, September 15, from 10:30 a.m. until 1:00 p.m. for a status report by the Director, National Institute on Aging, the

Biomedical Research and Clinical Medicine Program Review, and a report on the meeting of the Advisory Committee to the Director, NIH. It will again be open to the public Wednesday, September 16, from 9:00 a.m. until adjournment for a report on the Behavorial and Social Research Program, a report of the Office of Technology Assessment of "Life Sustaining Technologies and the Elderly," and a report on the ad hoc Committee on Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 15 from 2:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you contact Mrs. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C05, Bethesda, Maryland 20892, (301/496–9322), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18559 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 21–22, 1987, which is being held in conjunction with the NICHD 25th Anniversary Celebration and the NIH Centennial Observation.

The NICHD 25th Anniversary Celebration on September 21 in Wilson Hall, Shannon Building, will be open to the public from 9:00 a.m. until 1:00 p.m. The agenda includes an NIH Centennial slide presentation, comments on scientific progress by former NICHD Directors, research accomplishments by longest term grantees and intramural scientists, and a look to the future. The meeting will be open to the public on September 22 convening in Conference Room 6, Building 31 from 8:30 a.m. to 9:30 a.m. for the report of the Director, NICHD. The Subcommittee on Planning meeting, open to the public, will meet in Room 2A03, Building 31 on September 22 from 1:00 p.m. to adjournment to discuss the Biennial Report and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 22 from 9:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Majorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 469–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18560 Filed 8–13–87 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of National Advisory Dental Research Council

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 21–22, 1987, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. to adjournment on September 22 for general discussion and program presentations. Attendance by the public will be limited to space available. The 1987 Seymour J. Kreshover lecture will follow at 3:30 pm., in the ACRF Amphitheater in the Warren G. Magnuson Clinical Center, NIH.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 21 from 10:30 a.m. to recess for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone 301–496–9469), will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18561 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Science, National Institutes of Health, on October 8 and 9, 1987, Building 31, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on October 8, 1987, from 8:30 a.m. to 11:30 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisons set forth in section 552b(c)(4) and 552b(c)(6), Title

5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 8 from 11:30 a.m. to 6:00 p.m., and on October 9, 1987, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenback, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting, roster of council members. Dr. Elke Jordan, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC])

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18565 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological and Communicative Disorders and Stroke Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee
Date: September 30, 1987 (Planning Subcommittee)
Place: National Institutes of Health, Building 31, Conference Room 8A49, 9000 Rockville Pike, Bethesda, Maryland 20892
Open: 1 p.m.–3 p.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: 3 p.m.–5 p.m.
Closure Reason: For review of grant applications.
Dates: October 1–2, 1987 (Council)
Place: National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892
Open: October 1, 9 a.m.–1 p.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: October 1, 1 p.m.–recess; October 2, 8:30 a.m.–adjournment
Closure Reason: For review of grant applications.
Executive Secretary: John C. Dalton, Ph.D., Director, NINCDS–EAP, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9248

Name of Committee: Neurological Disorders Program Project Review A Committee
Dates: October 4–6, 1987
Place: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814
Open: October 4, 8 p.m.–8:30 p.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: October 4, 8:30 p.m.—recess; October 5, 8:30 a.m.—recess; October 6, 8 a.m.—adjournment
Closure Reason: To review grant applications.
Executive Secretary: Dr. Herbert Yellin, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223

Name of Committee: Communicative Disorders Review Committee
Dates: October 22–23, 1987
Place: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814
Open: October 22, 8:30 a.m.–9 a.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: October 22, 9 a.m.—recess; October 23, 8 a.m.—adjournment
Closure Reason: To review grant applications.
Executive Secretary: Dr. Marilyn Semmes, Federal Building, Room 9C–14, National Institutes of Health Bethesda, Maryland 20892, Telephone: 301/496–9223

Name of Committee: Neurological Disorders Program Project Review B Committee
Dates: November 13–15, 1987
Place: Holiday Inn, Chateau LeMoyne, 301 Rue Dauphine, New Orleans, Louisiana 70112
Open: November 13, 8 p.m.–8:30 p.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: November 13, 8:30 p.m.—recess; November 14, 8 a.m.—recess; November 15, 8 a.m.—adjournment
Closure Reason: To review grant applications.
Exective Secretary: Dr. A Beau White, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18566 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; National Biomaterial Resource Committee

Notice is hereby given that a group of expert consultants, augmented by NIH staff, will meet to conduct a review of the need for and appropriate management of the procurement and distribution of human tissues and organs for biomedical research purposes.

This review has been instituted by the National Biomaterial Resource Committee of the Office of the Director, NIH. The Committee is charged with coordinating the management and funding of national biomaterial resources, including human tissue procurement functions.

In order to better understand the current and potential usage of such resources, and to define the most efficient methods for obtaining and

distributing human tissue for research purposes, a meeting of outside experts will be held in Bethesda, Maryland on November 9–10, 1987.

The meeting participants will be asked to address the following major questions concerning this concept:

• What is the need for centralized human tissue procurement and distribution networks? Are the needs of the existing user community being adequately met by resources such as:

Existing general human tissue procurement and distribution networks (e.g., the National Diseases Research Interchange);

Specialized tissue procurement organizations funded by NIH Institutes (e.g., the National Institute of Diabetes and Digestive and Kidney Diseases Liver Tissue Procurement and Distribution System, and the National Cancer Institute Cooperative Human Tissue Network);

Private arrangements between investigators and nearby medical institutions?

• Is there a potentially larger user community for human tissues, for instance:

Molecular biologists who cannot easily obtain such tissues due to lack of proximity to appropriate medical centers,

Researchers concerned with rare or orphan diseases for which it is difficult to obtain samples,

Basic cell biologists and tissue culture researchers?

• Is there a need for geographically distributed procurement centers?

• To what extent should such resources be supported by user fees?

As part of these deliberations, the afternoon of November 9, will be devoted to a public hearing in which the review group will receive testimony from interested parties. On November 10, the review group will meet in closed executive session for deliberations. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 6. Attendance and number of presentations will be limited to time and space available.

All individuals wishing to attend or to present statements at this public hearing should notify, in writing, Ms. Barbara Harrison (301–496–1454), National Institutes of Health, Shannon Building, Room 228, 9000 Rockville Pike, Bethesda, Maryland 20892, by September 15.

Those planning to present testimony must file a one-page summary of the presentation with Ms. Harrison by September 22. The proceedings will not be transcribed. Each speaker will be limited to a maximum of 10 minutes. Those wishing to provide a statement to the review group without public testimony may submit a one-page statement for inclusion in the proceedings by September 22.

Dated: August 4, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87–18567 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–040–07–5420–10–ZGKF; OK NM 63452]

Realty Action; Issuance of Disclaimer of Interest to Lands in Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to issue disclaimer of interest.

SUMMARY: Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976, section 315, 43 U.S.C. 1745 (1976) does hereby disclaim and release to the Independent School District No. I–06 all interest in both the surface and mineral estate in the land described below.

DATE: Comments should be received by November 12, 1987.

ADDRESS: Comments should be sent to: Bureau of Land Management, 9522-H East 47th Place, Tulsa, OK 74145.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, Oklahoma Resource Area, Headquarters, 405–231–5491.

Beginning at the Southeast corner of the S½NE¼, Section 2, T. 14 N., R. 26 W., Indian Meridian, Roger Mills County, Oklahoma; Thence West 25 rods; Thence North 32 rods; Thence East 25 rods; Thence South 32 rods to the place of beginning, containing 5.00 acres, more or less.

After review of the official records, and other title evidence it has been determined by the Bureau of Land Management that by Warranty Deed dated September 3, 1921, Rufus N. and Rebecca E. Cox, his wife, conveyed the above land to the Board of Directors Consolidated School District No. 8, Roger Mills County, Oklahoma. This instrument was filed for record on July 8, 1922, and is duly recorded in Book 32, page 71, Roger Mills Courthouse records, Cheyenne, Oklahoma.

The Bureau has determined that the above land was not included in the land conveyed to the United States by Warranty Deed dated March 1, 1941, from Carl Kemp. also known as, Carl A. Kemp and Hermine B. Kemp, his wife, to the United States of America. This instrument was filed for record on March 5, 1941, and is duly recorded in Book 52, page 208, Roger Mills County Courthouse records, Cheyenne, Oklahoma.

The Bureau of Land Management has determined that the United States has no interest in the above land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments on the above disclaimer may present their views in writing to the District Manager at the address indicated above. If no protest are received the disclaimer will be become effective on or about September 15, 1987.

Dated: August 3, 1987.

Larry L. Woodard,

State Director.

[FR Doc. 87–18568 Filed 8–13–87; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–07–4212–22]

Filing of Plats of Survey; Nevada

July 31, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

DATES: Filings were effective on dates shown.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784–5484.

SUPPLEMENTARY INFORMATION: 1. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on September 14, 1987:

Mount Diablo Meridian, Nevada

T. 43 N., R. 19 E.
T. 44 N., R. 19 E.
T. 43 N., R. 20 E.

2. The land within Township 43 North, Range 19 E., located in Long Valley, ranges from approximately 5,500 to 7,000 ft. above sea level, encompassing the southern end of Alkali Lake, rising to a north-south mountain range along the western tier of sections. The soil is sandy clay loam mixed with varying amounts of alkali at the lower

elevations, becoming rocky in the mountains. The vegetation consists of scattered sagebrush, rabbitbrush and native grass, with pockets of juniper, aspen and mountain mahogany at the upper elevations.

Access is gained to this area via Nevada State Highway No. 34 (graded gravel road) which enters in section 33 and leaves in section 1. Another major access road enters in section 32, joins with Nevada State Highway No. 34, and continues northerly along the fourth meridional line. There are a couple of other trail roads in the area. Improvements in the area are limited to a few ranch houses and several old buildings. There is also a major high voltage transmission line that traverses the eastern part of the township.

Principal users are ranchers and hunters.

3. The land within Township 44 North, Range 19 E., located in Long Valley, ranges from approximately 5,500 to 6,700 ft. above sea level, encompassing the northern end of Alkali Lake, rising to a north-south mountain range along the western tier of sections. The soil is sandy clay loam mixed with varying amounts of alkali at the lower elevations. The vegetation consists of scattered sagebrush, rabbitbrush, buckbrush and native grass, with pockets of juniper, aspen and mountain mahogany at the upper elevations.

Access is gained to this area via an improved gravel road which runs along the fourth meridional for 4¾ miles, south to north, jogs approximately ½ mile to the east, then turns easterly along the north boundary of the township, leaving in section 3. A trail road commences at this point, extending easterly to eventually join with Nevada State Highway No. 34 a few miles to the east of this township. There are several trail roads in the area.

Improvements in the area include two main ranches and a couple of mobile homes. There is also a major high voltage transmission line that traverses the eastern part of the township.

Principal users are ranchers and hunters.

4. The land within the confines of this survey in Township 43 North, Range 20 East, located on the eastern side of Long Valley, ranges from approximately 5,500 to 6,000 ft. above sea level and is generally level on the west boundary, rising gently to a distinct bluff toward the east, with tableland and gently rolling land on top. The soil in sandy in the valley becoming very rocky on the bluff and on top. The vegetation consists of scattered juniper in areas on top and scattered sagebrush and native grass throughout.

Access is gained to this area via County Road 8A, an east-west road located about a mile south of the township. There is a main trail road in the township running generally northwest and southeast in addition to a couple of other minor trail roads. There is a reservoir located in section 34 and numerous windmills. The western part of West Lake extends into sections 25 and 36.

Principal users are ranchers and hunters.

5. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to application, petition, and disposal as appropriate. All such valid applications received at or prior to 10:00 a.m., on September 14, 1987, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

6. The following Plats of Survey which do not require an opening, were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates shown:

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E., Dependent Resurvey and Section Subdivision, July 21, 1987
T. 21 S., R. 19 E., Dependent Resurvey and Section Subdivision, July 21, 1987
T. 47 N., R. 39 E., Dependent Resurvey and Section Subdivision, July 28, 1987
T. 13 S., R. 70 E., Supplemental Plat, July 28, 1987

The survey of T. 47 N., R. 39 E., was executed to meet certain administrative needs of the Bureau of Indian Affairs. The remaining surveys were executed to meet the administrative needs of the Bureau of Land Management.

All of the above listed plats are now the basic record of describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-18541 Filed 8-13-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-940-07-4220-11; Nev-045108, Nev-045160, Nev-045905, Nev-051785, Nev-059256, N-5999]

Proposed Continuation and Modification of Withdrawals; Nevada

July 30, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) proposes that 618.074 acres of land withdrawn for six air navigation sites continue for an additional 20 years. The lands will remain closed to location and entry under the mining laws. One withdrawal containing .304 acres has been and will remain open to leasing under the mineral leasing laws. The remaining withdrawals will be modified to open the land to application under the mineral leasing laws.

DATE: Comments should be received by November 12, 1987.

ADDRESS: Comments should be sent to: State Director, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, NV 89520, (702) 784-5481.

SUPPLEMENTARY INFORMATION: The FAA proposes that the existing land withdrawals made by BLM Orders dated January 18, 1952, September 18, 1957, and November 14, 1957, and Public Land Orders Nos. 1905 dated July 15, 1959, 3447 dated September 23, 1964, and 5305 dated November 28, 1972, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are described as follows:

Mount Diablo Meridian

T. 8 N., R. 35 E.,
Sec. 12, SE¼.
T. 2 N., R. 38 E.,
Sec. 29, Beginning at Section corner common to Sections 13, 18, 19, and 24, proceed on a bearing S. 51°14'02" E. 11,860.43 feet to a point which is the center of the VOR site; thence proceed on a bearing of N. 40°44'38" E. 2,033.49 feet to the true point of beginning; thence S. 2,640 feet to a point; thence W. 1,556.68 feet to a point on the East boundary of State Highway No. 47 right-of-way; thence along the East boundary of State Highway No. 47 road right-of-way on a bearing of N. 11°30' W. 2,694.1 feet to a point; thence E. 2,081.1 feet back to the true point of beginning; and described as Parcel "A"; and beginning at SW. corner

of parcel "A" described above; thence proceeding W. 408 feet to the true point of beginning of Parcel "B"; thence by metes and bounds proceed W. 675.32 feet to a point; thence N. 2,640 feet to a point; thence E. 150.99 feet to a point located on the West boundary of State Highway No. 47 road right-of-way; thence along the West boundary of State Highway No. 47 right-of-way on a bearing of S. 11°30' E. 2,694.1 feet to the true point of beginning; and described as Parcel "B".

T. 13 S., R. 47 E.,
Sec. 17, SE¼NW¼SW¼, S½NE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼, SE¼SW¼, E½SW¼SW¼;
Sec. 20, NE¼NW¼NW¼, N½NE¼NW¼, NW¼NW¼NE¼.

T. 19 S., R. 57 E.,
Sec. 10, From the quarter corner common to secs. 3 and 10, T. 19 S., R. 57 E., thence S. 9°20' E., 1,141 feet to a U.S. Air Force survey marker which is a cross in the top of a 2-inch bolt set in the foot of an abandoned radar height-finder tower and immediately adjacent to and above a USGS brass top reference marker, said point of departure located at latitude 36°19'07.886" North, longitude 115°34'27.748" W., thence S. 64°22'25" W., 177.36 feet, to a 2½" x 2½" angle iron driven flush with the surface, which is the point of beginning of the plot; thence S. 23°29'55" E., 79.35 feet, to a point, which is a tack in pavement, thence S. 79°13'45" E., 104.76 feet, to a point which is a tack in pavement; thence S. 10°46'15" W., 15 feet, to a point which is a tack in pavement; thence N. 79°13'45" W., 149.05 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence N. 67°28'05" W., 72.0 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence N. 44°01'05" W., 23 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence N. 06°57'20" E., 49 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence N. 41°06'50" E., 73.21 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence S. 32°00'50" E., 81 feet, to the point of beginning; and described as Parcel 1; and

From the point of beginning described above, thence N. 64°22'25" E., 3 feet, to a point which is the beginning of Parcel 2; thence N. 25°37'35" W., 4.30 feet, to a point; thence N. 64°22'25" E., 3 feet, to a point, thence S. 25°37'35" E., 4.30 feet, to a point; thence S. 64°22'25" W., 3 feet, to the beginning; and described as Parcel 2.

T. 26 S., R. 63 E.,
Sec. 12, SW¼NW¼NE¼NE¼, W½SW¼NE¼NE¼, W½W½SE¼NE¼, S½N½NW¼NE¼, S½NW¼NE¼, SW¼NE¼, S½NE¼NE¼NW¼, SE¼NE¼NW¼, E½SE¼NW¼, SE¼NW¼.

T. 13 S., R. 69 E.,
Sec. 28, SE¼SE¼.

The areas described aggregate 618.074 acres in Esmeralda, Mineral, Nye, and Clark Counties.

The function of the sites is to maintain air to ground communication to provide navigational assistance for civil aviation, commercial airlines, and military aircraft. The purpose of the withdrawals is to provide the minimum essential acreage required to protect the construction, operation, and maintenance of these air navigation sites from electronic or physical interference for flight safety purposes.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the continuation of the proposed withdrawals may present their views in writing to the Nevada State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-18542 Filed 8-13-87; 8:45 am]

BILLING CODE 4310-HC-M

Supplemental Environmental Impact Statement, Northwest Area Noxious Weed Control Program; Corrections

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of the final supplement to the final environmental impact statement for Noxious Weed Control in Five Northwestern States. Corrections.

FOR FURTHER INFORMATION CONTACT: Philip Hamilton, Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97232.

SUMMARY: Some mistakes have been noted in the numerical displays in some of the tables in the Supplemental Environmental Impact Statement (SEIS) on the Northwest Area Noxious Weed Control Program. When measured against the SEIS's text and how it displays the chemicals' toxicity for specific effects, the mistakes are not substantive. Since the numerical mistakes do not affect the SEIS's textual analysis, in the BLM's judgment no reason exists to reconsider or alter the agency's decision to use chemicals as part of a program to suppress and eradicate noxious weeds.

Despite the inconsequential nature of the numerical errors in the tables as originally displayed, to act consistently with the notion of full disclosure, the BLM has determined that the agency will publish an erratum herein which notes the mistakes in the tables, displays the corrected tables, and states as above that the Agency's position, based on professional opinion, is that the displayed changes do not affect the SEIS's analysis or the decision to use chemicals for noxious weed control. The corrected tables are as follows:

Date: July 31, 1987.

Charles W. Luscher,

State Director, Oregon.

BILLING CODE 4310-33-M

Table 3-3. Summary of Acute and Chronic Toxicity Thresholds Based on Results From the Most Sensitive Species.

Herbicide	Acute Oral[1] LD50 in mg/kg	Systemic Toxicity[2] NOEL in mg/kg/day	Reproductive[3] Toxicity NOEL in mg/kg/day	Provisional[4] Allowable Daily Intake Set by EPA in mg/kg/day
2,4-D	100	1	5	0.01
Picloram	2,000	7	50	0.007
Glyphosate	4,320	30	10	0.1
Dicamba	757	25	3	0.0125

[1]Based on review by Sassman and others 1984 and EPA tox-oneliners.
[2]Lowest NOEL found in the literature (see Appendix K) for general system effects such as changes in kidneys, liver, or decreased food consumption.
[3]Lowest NOEL found in the literature (see Appendix K) for reproductive effects such as birth defects, fertility, fetotoxicity, or maternal toxicity.
[4]EPA used the lowest NOEL and reduced it by a safety factor (100, 1,000, 100 and 2,000 for 2,4-D, picloram, glyphosate, and dicamba respectively).

Table 3-5. Lowest Margins of Safety for Occupational and Public Exposures

	2,4-D (NOEL - 1)	Picloram (NOEL = 7)	Glyphosate (NOEL = 10)	Dicamba (NOEL = 3)
Lowest Margins of Safety for Major Mixing Errors				
Workers				
Aerial				
Pilot	9	180	---	77
Mixer-loader	2	41	---	18
Supervisor	23	500	---	214
Observer	6	135	---	58
Ground Vehicle				
Driver	10	212	102	15
Mixer-loader	2	41	20	3
Driver-mixer-loader	2	35	17	2
Ground Hand				
Mixer-loader-applicator	4	90	43	6
Public				
Dermal (drift)				
500 feet	$>$5,000	$>$10,000	$>$10,000	$>$10,000
1/4 mile	$>$10,000	$>$10,000	$>$10,000	$>$10,000
1/2 mile	$>$10,000	$>$10,000	$>$10,000	$>$10,000
Oral Ingestion				
Water	299	$>$5,000	$>$2,000	400
Meat	833	$>$10,000	$>$5,000	$>$1,000
Berries	$>$2,000	$>$10,000	$>$10,000	$>$4,000

Table 3-5. Lowest Margins of Safety for Occupational and Public Exposures (Cont.)

	2,4-D (NOEL = 1)	Picloram (NOEL = 7)	Glyphosate (NOEL = 10)	Dicamba (NOEL = 3)
Lowest margins of Safety for Extrordinary Exposures				
Dermal and Oral Exposure (public)	118	>2,000	>1,000	150
Dermal Exposure Aerial Spray (public)	10	>10,000	83	100
Ground Hand Applicator with Oral Exposure (Occupational)	4	87	41	6
Lowest Margins of Safety for Doses Due to Spills				
Spills onto skin (0.5 liter)				
Concentrate	-94	1.5	-7.2	-31
Spray Mix (Aerial)	-14	15	---	-9
Spray Mix (Ground)	-1.4	175	7.1	1
Spills into Water (1 liter consumed)				
Pond, Helo	13	280	---	120
Reservior, Helo	1,000	>1,000	---	8,823
Pond, Truck	9	194	91	14
Reservoir, Truck	667	>1,000	>1,000	1,000

Table N-5 Summary of Dosages for occupational Exposure (in mg/kg/day)

	2,4-D		Picloram		2,4-D in Mix		Picloram in Mix		Glyphosate		Dicamba	
	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors
Aerial[1]												
Pilot	0.108	0.117	0.036	0.039	---	---	---	---	---	---	0.036	0.039
Mixer-loader	0.468	0.507	0.156	0.169	---	---	---	---	---	---	0.156	0.169
Supervisor	0.040	0.043	0.013	0.014	---	---	---	---	---	---	0.013	0.014
Observer	0.144	0.156	0.048	0.052	---	---	---	---	---	---	0.048	0.052
Ground Vehicle[1]												
Driver	0.090	0.098	0.030	0.033	0.030	0.033	0.015	0.017	0.090	0.098	0.18	.196
Mixer-loader	0.468	0.507	0.156	0.169	0.156	0.169	0.078	0.085	0.468	0.507	0.936	1.014
Driver-Mixer-loader	0.558	0.605	0.186	0.202	0.186	0.202	0.093	0.101	0.558	0.605	1.116	1.209
Ground hand[1]												
Mixer-loader-applicator	0.216	0.234	0.072	0.078	0.072	0.078	0.036	0.039	0.216	0.234	0.432	.468

[1]Computed using the formula. (Application Rate x Base Case Dose). Tables N-3 and N-4 respectively.

Table N-8A Margins of Safety[1] for Systemic Effects Based on Doses to Workers on Aerial and Ground Application Projects

	2,4-D		Picloram		2,4-D & Picloram		Glyphosate		Dicamba	
	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors
Aerial[1]										
Pilot	9	9	194	180	---	---	---	---	694	641
Mixer-loader	2	2	45	41	---	---	---	---	160	148
Supervisor	25	23	539	500	---	---	---	---	1,923	1,786
Observer	7	6	146	135	---	---	---	---	521	481
Ground Vehicle[1]										
Driver	11	10	233	212	89	80	333	306	139	128
Mixer-loader	2	2	45	41	17	15	64	59	27	25
Driver-Mixer-loader	2	2	38	35	14	13	54	50	22	21
Ground hand[1]										
Mixer-loader-applicator	5	4	97	90	37	33	139	128	58	53

[1]MOS = NOEL from Table N-7 divided by exposure dose from Table N-5

Table N-8B Estimated Margins of Safety[1] for Reproductive Effects Based on Doses to Workers on Aerial and Ground Application Projects

	2,4-D		Picloram		2,4-D in Mix		Picloram in Mix		Glyphosate		Dicamba	
	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors
Aerial[1]												
Pilot	45	45	1,386	1,286	---	---	---	---	---	---	83	77
Mixer-loader	10	10	321	293	---	---	---	---	---	---	19	18
Supervisor	125	115	3,850	3,571	---	---	---	---	---	---	231	214
Observer	35	30	1,043	964	---	---	---	---	---	---	63	58
Ground Vehicle[1]												
Driver	55	50	1,664	1,514	165	150	3,334	3,030	111	102	17	15
Mixer-loader	10	10	321	293	30	30	642	592	21	20	3	3
Driver-Mixer-loader	10	10	271	250	30	30	538	496	18	17	3	2
Ground hand[1]												
Mixer-loader-applicator	25	20	693	643	75	60	1,388	1,282	46	43	7	6

[1]MOS = NOEL from Table N-7 divided by exposure dose from Table N-5

TABLE N-9A MARGINS OF SAFETY FOR CHRONIC EFFECTS BASED ON DOSES TO THE PUBLIC IN THE VICINITY OF AERIAL AND GROUND APPLICATION PROJECTS[1]

	ADULT (70 Kg)		ADOLESCENT (40 Kg)		CHILD (10 Kg)	
	MINOR MIXING ERROR	MAJOR MIXING ERROR	MINOR MIXING ERROR	MAJOR MIXING ERROR	MINOR MIXING ERROR	MAJOR MIXING ERROR
2,4-D						
500 FEET	8,600	7,900	6,500	6,000	3,000	2,800
1/4 MILE	27,400	25,300	20,900	19,300	9,800	9,000
1/2 MILE	66,700	61,600	50,800	46,900	23,800	22,000
WATER	300	200	300	300	93	86
MEAT	800	700	800	700	600	500
BERRIES	3,100	2,800	3,400	3,100	2,200	2,000
PICLORAM						
500 FEET	1,816,800	1,677,000	1,384,200	1,277,700	648,800	598,900
1/4 MILE	5,771,000	5,327,100	4,397,000	4,058,700	2,061,000	1,902,500
1/2 MILE	14,401,540	12,937,300	10,678,400	9,857,000	5,005,000	4,620,400
WATER	6,800	6,200	7,700	7,100	1,900	1,700
MEAT	18,100	16,700	17,300	15,900	12,900	11,900
BERRIES	65,300	60,300	71,800	66,300	46,700	43,100
2,4-D IN MIX						
500 FEET	25,900	23,900	19,700	18,200	9,200	8,500
1/4 MILE	82,400	76,100	62,800	57,900	29,400	27,100
1/2 MILE	200,200	184,800	152,500	140,800	71,500	66,000
WATER	900	800	1,100	1,000	200	200
MEAT	2,500	2,300	2,400	2,200	1,800	1,700
BERRIES	9,300	8,600	10,200	9,400	6,600	6,100
PICLORAM IN MIX						
500 FEET	3,633,600	3,354,100	2,768,400	2,555,500	1,297,700	1,197,900
1/4 MILE	11,542,100	10,654,200	8,794,000	8,117,500	4,122,100	3,805,100
1/2 MILE	28,030,900	25,874,600	21,356,800	19,714,000	10,011,000	9,240,900
WATER	13,600	12,500	15,500	14,300	3,800	3,500
MEAT	36,300	33,500	34,600	31,900	25,900	23,900
BERRIES	130,700	120,700	143,700	132,600	93,400	86,200
GLYPHOSATE						
500 FEET	259,500	239,500	197,700	182,500	92,600	85,500
1/4 MILE	824,400	761,000	628,100	579,800	294,400	271,700
1/2 MILE	2,002,200	1,848,100	1,525,400	1,408,100	715,000	660,000
WATER	9,700	8,900	11,100	10,200	2,700	2,500
MEAT	25,900	23,900	24,700	22,800	18,500	17,100
BERRIES	93,400	86,200	102,600	94,700	66,700	61,500
DICAMBA						
500 FEET	108,100	99,800	82,300	76,000	38,600	35,600
1/4 MILE	343,500	317,000	261,700	241,500	122,600	113,200
1/2 MILE	834,200	770,000	635,600	586,700	297,900	275,000
WATER	4,000	3,700	4,600	4,200	1,100	1,000
MEAT	10,800	9,900	10,200	9,500	7,700	7,100
BERRIES	38,900	35,900	42,700	39,400	27,800	25,600

1. These values have been trunkated at the lowest hundred.

TABLE N-9B ESTIMATED MARGINS OF SAFETY FOR REPRODUCTIVE EFFECTS BASED ON DOSES TO THE PUBLIC IN THE VICINITY OF AERIAL AND GROUND APPLICATIONS

MARGINS OF SAFETY

	ADULT (70 Kg)		ADOLESCENT (40 Kg)		CHILD (10 Kg)	
	MINOR MIXING ERROR	MAJOR MIXING ERROR	MINOR MIXING ERROR	MAJOR MIXING ERROR	MINOR MIXING ERROR	MAJOR MIXING ERROR
2,4-D						
500 FEET	43,200	39,900	32,900	30,400	15,400	14,200
1/4 MILE	137,400	126,800	104,600	96,600	49,000	45,200
1/2 MILE	333,700	308,000	254,200	234,600	119,100	110,000
WATER	1,600	1,400	1,800	1,700	400	400
MEAT	4,300	3,900	4,100	3,800	3,000	2,800
BERRIES	15,500	14,300	17,100	15,700	11,100	10,200
PICLORAM						
500 FEET	12,977,200	11,979,000	9,887,400	9,126,800	4,634,700	4,278,200
1/4 MILE	41,221,900	38,051,000	31,407,100	28,991,200	14,722,100	13,589,600
1/2 MILE	100,110,400	92,409,600	76,274,500	70,407,300	35,753,700	33,033,400
WATER	48,100	44,900	55,600	51,300	13,900	12,800
MEAT	129,700	119,700	123,500	114,000	92,600	85,500
BERRIES	467,100	431,100	513,300	473,800	333,600	307,900
2,4-D IN MIX						
500 FEET	129,700	119,700	98,800	91,200	46,300	42,700
1/4 MILE	412,200	380,500	314,000	289,900	147,200	135,800
1/2 MILE	1,001,100	924,000	762,700	704,000	357,500	330,000
WATER	4,800	4,400	5,500	5,100	1,300	1,200
MEAT	12,900	11,900	12,300	11,400	9,200	8,500
BERRIES	46,700	43,100	51,300	47,300	33,300	30,700
PICLORAM IN MIX						
500 FEET	25,954,500	23,958,000	19,774,800	18,253,700	9,269,400	8,556,400
1/4 MILE	82,443,800	76,102,000	62,814,300	57,982,400	29,444,200	27,179,300
1/2 MILE	200,220,800	184,819,200	152,549,100	140,814,600	71,507,400	66,006,800
WATER	97,300	89,800	111,200	102,600	27,800	25,600
MEAT	259,500	239,500	247,100	228,100	185,300	171,100
BERRIES	934,200	862,300	1,026,600	947,600	667,300	615,900
GLYPHOSATE						
500 FEET	86,500	79,800	65,900	60,800	30,800	28,500
1/4 MILE	274,800	253,600	209,300	193,200	98,100	90,500
1/2 MILE	667,400	616,000	508,400	469,300	238,300	220,000
WATER	3,200	2,900	3,700	3,400	900	800
MEAT	8,600	7,900	8,200	7,600	6,100	5,700
BERRIES	31,100	28,700	34,200	31,500	22,200	20,500
DICAMBA						
500 FEET	12,900	11,900	9,800	9,100	4,600	4,200
1/4 MILE	41,200	38,000	31,400	28,900	14,700	13,500
1/2 MILE	100,100	92,400	76,200	70,400	35,700	33,000
WATER	400	400	500	500	100	100
MEAT	1,200	1,100	1,200	1,100	900	800
BERRIES	4,600	4,300	5,100	4,700	3,300	3,000

1. These values have been trunkated at the lowest hundred.

Table N-10 Extraordinary Dose Margins of Safety[1] from Selected Exposures

	Dermal & Oral Exposure[2] (Public)	Dermal Exposure Aerial Spray[3] (Public)	Ground Hand Applicator With Oral Exposure[4] (Occupational)
2,4-D			
Adult	118	10	4
Picloram			
Adult	2,741	10,000	87
2,4-D in Mix			
Adult	354	30	12
Picloram in Mix			
Adult	5,482	20,000	174
Glyphosate			
Adult	1,176	83	41
Dicamba			
Adult	150	100	6

[1]MOS = lowest NOEL exposure dose.
[2]Dermal exposures at 500 feet from application Oral exposure in ingestion of berries, water, and meat.
[3]Assumes person receives full per-acre application rate.
[4]Assumes major mixing errors.

Table N-19 Margins of Safety for Doses Due to Spills of 2,4-D

	Exposure (mg/kg/day	Margin of Safety Relative to Acute LD50 (375)	Systemic NOEL (1)	Reproductive NOEL (5)
Spill onto Skin (0.5 liter)				
Concentrate	94	1	-94	-19
Spray Mix (Aerial)	14	7	-14	2.8
Spray Mix (Ground)	1.4	71	-1.4	3.6
Spills into water (1 liter consumed)				
Pond, Helo	0.076	1,315	13	65.8
Reservoir, Helo	0.001	10,000	1,000	5,000+
Pond, Truck	0.11	909	9	45.45
Reservior, Truck	0.0015	6,666	667	3,333+

Table N-20 Margins of Safety for Doses Due to Spills of Picloram

	Exposure (mg/kg/day	Margin of Safety Relative to Acute LD50 (8200)	Systemic NOEL (7)	Reproductive NOEL (50)
Spill onto Skin (0.5 liter)				
Concentrate	4.8	416	1.5	10
Spray Mix (Aerial)	0.48	4,166	15	104
Spray Mix (Ground)	0.04	10,000+	175	1,250
Spills into water (1 liter consumed)				
Pond, Helo	0.025	8,000	280	2,000
Reservoir, Helo	0.00034	10,000+	10,000+	10,000+
Pond, Truck	0.036	10,000+	194	1,389
Reservior, Truck	0.00048	10,000+	10,000+	10,000+

Table N-22 Margins of Safety for Doses Due to Spills of Dicamba

	Exposure (mg/kg/day	Margin of Safety Relative to Acute LD50 (757)	Systemic NOEL (25)	Reproductive NOEL (3)
Spill onto Skin (o.5 liter)				
Concentrate	94	8	-4	-31
Spray Mix (Aerial)	28	27	-1	-9
Spray Mix (Ground)	2.8	270	9	1
Spills into water (1 liter consumed)				
Pond, Helo	0.025	10,000	1,000	120
Reservoir, Helo	0.00034	100,000	73,529	8823
Pond, Truck	0.22	3,441	114	14
Reservior, Truck	0.0030	10,000	8,333	1,000

[FR Doc. 87-18582 Filed 8-13-87; 8:45 am]
BILLING CODE 4310-33-C

Fish and Wildlife Service

Endangered Species Convention; Foreign Law Notification, Honduras

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 17.

Subject: Honduras—CITES Appendix III wildlife.

This is a Schedule III Notice.

Source of Foreign Law Information: Cites Secretariat.

In a CITES Notification dated January 13, 1987, the CITES Secretariat notified the Parties that the Republic of Honduras has included the following list of species of wildlife on CITES Appendix III:

Mammals:

Agouti paca: *Paca*
Coendou mexicanus: *Coendou*
Dasyprocta punctata: *Agouti*
Eira barbara: *Tayra*
Nasua nasua: *Coati*
Potos flavus: *Kinkajou*

Birds:

Cairina moschata: *Muscovy duck*
Crax rubra: *Great curassow*
Dendrocygna autumnalis: *Black-bellied tree duck*
Dendrocygna bicolor: *Fulvous whistling duck*
Ortalis vetula: *Plain chachalaca*
Penelope purpurascens: *Crested guan*
Sarcoramphsu papa: *King vulture*

Reptiles:

Agkistrodon bilineatus: *Tropical moccasin*
Bothrops asper: *Lance-head snake*
Bothrops nasuta: *Nose-horned viper*
Bothrops nummifera: *Jumping viper, Tamagasse*
Bothrops ophryomegas: *Western hog-nosed viper*
Bothrops schlegeli: *Schlegel's pit-viper, Eyelash viper*
Crotalus durissus: *South American rattlesake*
Micrurus diastema: *Coral snake*
Micrurus nigrocinctus: *Coral snake*

Action by the Fish and Wildlife Service: The Service will detain wildlife included in the above list until it is satisfied that the shipment complies with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Wildlife included in the above list that was exported from Honduras after April 13, 1987 must be accompanied by a Convention export permit issued by the Honduran management authority. Shipments from other countries must be accompanied by a Convention certificate of origin or a re-export certificate, as appropriate. Shipments failing to comply with the terms of the Convention will be refused clearance and may be subject to seizure and forfeiture.

EFFECTIVE DATE: Date of publication.

Expiration Date: None until further notice.

FOR FURTHER INFORMATION CONTACT: Nancy J. Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202–343–9242.

Dated: August 3, 1987.

Frank Dunkle,

Director.

[FR Doc. 87–18605 Filed 8–13–87; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; Raintree Resources Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Raintree Resources, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4907, Block 57, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 3, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 5, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–18543 Filed 8–13–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Yellowstone National Park; Commercial Traffic Regulations; Meeting; Correction

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting; date correction.

SUMMARY: This notice corrects the date previously published in the **Federal Register** on August 5, 1987, (52 FR 29074) for a public meeting to be held in West Yellowstone, Montana, for the purpose of obtaining public response concerning the regulation of commercial traffic on that portion of U.S. Highway 191 that passes through Yellowstone National Park. The correct date for this public meeting is September 29, 1987. The dates for the public meetings scheduled for Big Sky and Bozeman, Montana were listed correctly in the original notice and remain the same: September 4 and September 30, respectively.

Date August 10, 1987

L. Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 87–18641 Filed 8–13–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations; Avesta Stainless, Inc., et al.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: Avesta Stainless Inc., 6220 Dixie Road, Mississauga, Ontario, Canada L5T 1AG.

2. Wholly-owned subsidiary which will participate in the operations, and jurisdiction of incorporation: Avesta Welding Products, Inc.—New Jersey

B.1. Parent corporation and address of principal office: Enamel Products & Plating Company, 3500 Walnut Street, McKeesport, PA 15132.

2. Wholly-owned subsidiaries and divisions which participated in the operations, and states of incorporation:

Name and State

E.P.&P. Trucking Co.—PA
Solar Hardware Division—MS
Southern-Gemini Division—MS
Anderson Metal Products—MS

C.1. Parent corporation and address of principal office: Home Curtain Corp., 295 Fifth Avenue, New York, NY 10016.

2. Wholly-owned subsidiaries which will participate in the operations, and their states of incorporation:

(A) Superba Print Works, Mooresville, NC—N.Y.
(B) Glenn Manufacturing, Morven, NC—N.C.
(C) Rex Fashions, Mooresville NC—N.Y.
(D) Home Curtain Corp., Mooresville, NC—N.Y.
(E) Draymore Manufacturing, Mooresville, NC—N.C.

D.1. Parent corporation and address of principal office: Occidental Petroleum Corporation, 10889 Wilshire Boulevard, Los Angeles, California 90024 (Incorporated in the State of Delaware)

2. Wholly-owned subsidiaries which will participate in the operations:

i. Cities Service Oil and Gas Corporation, 110 West Seventh Street, P.O. Box 300, Tulsa, Oklahoma 74119 (Incorporation in the State of Delaware)
ii. MidCon Corp., 701 East 22nd Street, P.O. Box 1207, Lombard, Illinois 60148, (Incorporated in the State of Delaware)
iii. Occidental Chemical Corporation, Occidental Tower, 5005 LBJ Freeway, Dallas, Texas 75244 (Incorporated in the State of New York)
iv. IBP, Inc., Highway 35, Box 515, Dakota City, Nebraska 68731 (Incorporated in the State of Delaware)
v. Island Creek Corporation, 2355 Harrodsburg Road, Lexington, Kentucky 40504 (Incorporated in the State of California)

E.1. Parent corporation and address of principal office: Roanoke Electric Steel Corporation, P.O. Box 13948, Roanoke, Virginia 24038–3948.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) John W. Hancock, Jr., Inc.—Virginia
(ii) Shredded Products Corporation—Virginia
(iii) Socar, Inc.—South Carolina
(iv) Socar of Ohio, Inc.—Ohio
(v) Bucyrus Steel Company—Ohio
(vi) RESCO Steel Products Corporation—Virginia

Noreta R. McGee,

Secretary.

[FR Doc. 87–18588 Filed 8–13–87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–57 (Sub-No. 250)]

Notice of Findings; Soo Line Railroad Co.; Abandonment in McIntosh County, ND, and McPherson and Campbell Counties, SD

The Commission has issued a certificate authorizing the Soo Line Railroad Company to abandon its 49.27-mile line of railroad extending from milepost 361.00 near Ashley, ND to the end of the line at milepost 410.27 near Pollack, SD, in McIntosh County, ND and McPherson and Campbell Counties, SD. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 87–18633 Filed 8–13–87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Action To Enjoin Discharge of Water Pollutants; Automatic Electro-Plating Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. Automatic Electro-Plating Corporation*, Civil Action No. 86–0920 (MTB), was lodged with the United States District Court for the District of New Jersey on *July 20*, 1987. The consent decree establishes a compliance program for the New Jersey plant owned and operated by Automatic to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $100,000.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States v. Automatic Electro-Plating Corporation*, D.J. Ref. No. 90–5–1–1–2531.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, U.S. Courthouse, 502 Federal Bldg., 970 Broad St. Newark, NJ 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–18544 Filed 8–13–87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; City of Berryville, AR

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 22, 1987 a proposed consent decree in *United States v. City of Berryville, Arkansas, The State of Arkansas, and Tyson Foods, Inc.*, Civil Action No. 87–3010, was lodged with the United States District Court for the Western District of Arkansas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311 at the City's wastewater treatment plant. The complaint alleged that the City discharged pollutants into navigable

waters in excess of the limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit, violated Administrative Orders issued by EPA, violated its permit monitoring and reporting requirements, and failed to meet the pretreatment requirements in its NPDES permit. The State of Arkansas was named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). Tyson Foods, Inc. is alleged to have violated section 307 of the Act, 33 U.S.C. 1317, by introducing pollutants into the City's wastewater treatment plant in violation of the general pretreatment regulations, 40 CFR 403.5 The complaint sought injunctive relief to require the City to comply with its NPDES permit and the Administrative Orders and civil penalties for past violations. The consent decree provides for a compliance schedule to bring the City into compliance with its permit by December 31, 1988. The City is also required to pay a civil penalty of $10,000 in settlement of the government's civil penalty claims. The consent decree only resolves the liability of the City of Berryville and the State of Arkansas, and does not address the portions of the complaint against Tyson Foods, Inc. The United States is seeking civil penalties for past violations and injunctive relief to require Tyson Foods, Inc. to comply with the pretreatment regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Berryville, Arkansas et al.*, D.J. Ref. 90–5–1–1–2777.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Arkansas, U.S. Post Office and Courthouse Building, 6th and Rogers, Fort Smith, Arkansas 72901 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–18556 Filed 8–13–87; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; Weslock Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 4, 1987, a proposed Consent Decree in *United States v. Weslock Company*, Civil No. CV 86 4286WDK (JRX) was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the prevention of the discharge of volatile organic compounds in violation of the Clean Air Act and the limits set forth in the California State Implementation Plan ("SIP"), adopted under the Clean Air Act. The proposed Consent Decree requires Weslock to maintain compliance with the Act and the SIP and to pay a civil penalty of $27,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Weslock Company, D.J. Ref. 90–5–2–1–962.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 North Spring Street, Los Angeles, California 90012, and at the Region 9 Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.70 (10 cents per page reproduction cost) make payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–18557 Filed 8–13–87; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Revocation of Registration; Denial of Application; Eugene H. Tapia, M.D.

On April 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Eugene H. Tapia, M.D. Apartment #148, 1050 Minnewawa Avenue, Clovis, California 93612. The Order to Show Cause sought to revoke DEA Certificate of Registration AT3700134, previously issued to Dr. Tapia, and to deny the application for DEA registration executed by Dr. Tapia on November 10, 1986. The statutory predicate for the Order to Show Cause was that Dr. Tapia's continued registration would be inconsistent with the public interest as defined in 21 U.S.C. 823(f) as evidenced by, but not limited to: (1) Dr. Tapia's unlawfully prescribing controlled substances, specifically codeine cough preparations and Doriden (a Schedule III controlled substance) as part of a scheme to defraud medicaid and distribute controlled substances; (2) Dr. Tapia's conviction in the United States District Court for the Northern District of Illinois of two counts of mail fraud on April 11, 1986; (3) the summary suspension of Dr. Tapia's license to practice medicine and controlled substance registration by the Illinois Department of Registration and Education on May 23, 1985, and, on June 12, 1985, the revocation of Dr. Tapia's controlled substance license in Illinois.

Dr. Tapia, proceeding pro se, replied to the Order to Show Cause in a letter dated May 25, 1987. Dr. Tapia did not request a hearing. The Administrator finds that Dr. Tapia has waived his opportunity for a hearing under 21 CFR 1301.54(a), and that the doctor's letter constitutes a written statement regarding his position on the matters of fact and law involved. 21 CFR 1301.54(c). The Administrator has considered the entire record in this matter, including Dr. Tapia's written statement, and hereby issues this final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that beginning in 1980, Dr. Tapia was involved in a large racketeering enterprise, Drug Industry Consultants, Inc. (DIC), formed for the purpose of generating cash through the sale of controlled substances and by defrauding the Illinois Department of Public Aid (IDPA) and Medicaid Program. DIC owned and controlled numerous pharmacies and sham medical clinics throughout the Chicago metropolitan area which served as fronts for the sale of controlled substances such as cough syrup and Doriden (glutethimide). When a codeine type cough syrup (e.g., Tussionex) and a sedative such as Doriden are ingested in combination, the effect on the user is a heightened euphoria. This combination is referred to in street terms as "loads" or "juice and beans." Not only did physicians at the DIC clinics sign prescription forms for these abused controlled substances, they were also expected to sign orders for unnecessary blood and other tests. Patients who did not possess a legitimate medicaid card were required to pay $5.00 in cash to clinic personnel in order to see the doctor and obtain the desired drugs. Patients were informed that they would have to submit to the unnecessary lab tests so that medicaid could be billed. Minimal or no medical examinations were performed by the DIC physicians before providing the medically unnecessary prescriptions to the patients; however, the doctors were instructed to maintain patient records in a fashion such that it would appear that the individual receiving cough syrup and Doriden had a legitimate medical need for the substances. After receiving the prescriptions, patients usually received only the Doriden and cough syrup (in exchange for $25—$30 in cash) although the prescription listed numerous other drugs. The pharmacists and the pharmacy involved would then submit invoices to IDPA seeking reimbursement for the unnecessary and frequently non-dispensed items. Examination of these invoices submitted to IDPA reveals that numerous patients supposedly received anywhere from 8 to 57 prescription and non-prescription items per visit. DIC controlled pharmacies received over $10.1 million in reimbursement for their supposed dispensing of services and drugs, etc. Physicians employed by DIC received approximately $4.2 million in IDPA reimbursement.

On November 6, 1982, Dr. Tapia participated in distributing, via prescription, Tussionex and Doriden to an undercover state investigator. During this visit, Dr. Tapia and others dispensed numerous other medically unnecessary items to undercover agents which were reimbursable to IDPA. On January 21, 1983 and on February 10, 1983, the IDPA and the Comptroller's office mailed partial reimbursement for these unnecessary items. This served as the basis for Dr. Tapia's indictment by the special April, 1984 grand jury, in the U.S. District Court, Northern District of Illinois for violation of 21 U.S.C. 841 (Illegal Distribution of Controlled Substances), 18 U.S.C. 1341 (Mail Fraud), and 18 U.S.C. 1962 (RICO). Dr. Tapia pled guilty to two counts of mail fraud (18 U.S.C. 1341) under the terms of a plea agreement. On April 11, 1986, Dr. Tapia was sentenced to six months imprisonment, five years probation, and was required to secure counseling. The doctor admitted his participation in the medicaid and drug distribution fraud in the plea agreement.

On May 23, 1985, the Illinois Department of Registration and Education summarily suspended both Dr. Tapia's license to practice medicine and his controlled substance registration. On June 12, 1985, Dr. Tapia's controlled substance license in Illinois was ordered revoked for a period of no less than five years. The grounds for the suspension were that Respondent's conduct constituted "unprofessional incompetence as manifested by poor standards of care * * *" as well as "* * * dishonorable, unethical [and] unprofessional conduct of a character likely to deceive, defraud or harm the public."

On June 10, 1986, the California Board of Medical Quality Assurance ordered the revocation of Dr. Tapia's Physicians and Surgeons License. However, the Board stayed the execution of the order of revocation and placed Dr. Tapia on probation for five years. As part of his probation, the doctor was suspended from the practice of medicine for six months; ordered to maintain a record of all controlled substances prescribed, dispensed, or administered; directed to perform community service; required to participate in an educational program; and required to pass an oral clinical examination in family practice and obstetrics.

On February 6, 1987, Dr. Tapia passed his oral clinical examination and completed his six-month suspension from the practice of medicine. According to the terms set by the California Board of Medical Quality Assurance, Dr. Tapia has been permitted to resume the practice of medicine in the State of California. Dr. Tapia now wishes to renew his registration with the Drug Enforcement Administration and therefore submitted the application for renewal that is the subject of this final order.

Since the Order to Show Cause seeks the revocation of Dr. Tapia's registration and denial of his application for renewal based on its inconsistency with the public interest, the Administrator must consider the factors enumerated in 21 U.S.C. 823(f) in determining whether to revoke this registration. The factors relevant in this matter are: The recommendation of the appropriate state licensing board or professional disciplinary authority; Respondent's experience in dispensing with respect to controlled substances; compliance with applicable state, Federal, or local law relating to controlled substances; and, such other conduct which may threaten the public health and safety.

Both the State of Illinois Department of Registration and Education and the the California Board of Medical Quality Assurance found Dr. Tapia's admitted acts in the April 25, 1985, plea agreement to be "* * * unprofessional conduct * * * in violation of Federal statutes which offenses were substantially related to the qualifications, functions, and duties of physician and surgeon." Dr. Tapia's registration to handle controlled substances in the State of Illinois was revoked for a period of no less than five years in 1985. Although Dr. Tapia is currently authorized to practice medicine in the State of California, he is on probation for five years.

Dr. Tapia's experience in dispensing controlled substances was negligent and irresponsible. This negligence and irresponsibility is amply demonstrated by Dr. Tapia's active involvement in a "medical practice" which caused the distribution of abused controlled substances without complete physical examinations and for no legitimate medical need. His past experience with controlled substances displays an aptitude for seeking monetary gain rather than providing legitimate medical services.

Dr. Tapia's lack of compliance with applicable laws relating to controlled substances also indicates that he should not be registered with DEA. Dr. Tapia has been convicted of mail fraud in connection with a scheme to illegally distribute controlled substances. Dr. Tapia has admitted his participation in the medicaid and drug distribution

fraud. His fraudulent practices were an abuse of his authority to prescribe controlled substances. Such conduct displayed a clear disregard for the law, wholly inconsistent with the public interest.

In his written statement, Dr. Tapia expressed regret for his past conduct but requested forgiveness inasmuch as his conduct was a "revenge gesture" against a form chief. The Administrator is charged with protecting the public health and safety from the illicit diversion of controlled substances. The facts of this case, as set forth, indicate that Dr. Tapia either lacks the necessary awarness of the responsibilities imposed by DEA registration or has chosen to flagrantly disregard them during a quest for "revenge." Further, his participation in DIC was not an isolated occurrence but part of a pattern of behavior over a number of years. The Administrator concludes that Dr. Tapia has not presented adequate evidence to overcome the inescapable conclusion that he should not be entrusted with a DEA Registration.

The statute provides at 21 U.S.C. 824(a)(4), that a registration may be revoked upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest, as determined under 21 U.S.C. 823(f). Accordingly, there is a lawful basis for revoking Dr. Tapia's registration and denying his application for renewal.

Having examined the record as it appears, including the letter submitted by the doctor, the Administrator concludes that there is a lawful basis for the revocation of Dr. Tapia's DEA Certificate of Registration and the denial of any pending applications for renewal of that registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AT3700134, previously issued to Eugene H. Tapia, M.D., be, and it hereby is, revoked. The Administrator further orders that any outstanding applications for registration be, and they hereby are, denied. This order is effective September 14, 1987.

Dated: August 11, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-18586 Filed 8-13-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-19,757]

Affirmed Determination Regarding Application for Reconsideration; De Novo Oil and Gas, Inc., Houston, TX

By an application dated July 9, 1987, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of De Novo Oil and Gas, Inc., Houston, Texas. The determination was published in the **Federal Register** on July 21, 1987 (52 FR 27479).

The petitioner claims that De Novo Oil and Gas, Inc., produced and marketed crude oil for the spot market and to other companies some of whom import crude oil.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 31st day of July, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-18640 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,548 and TA-W-19,549]

Negative Determination Regarding Application for Reconsideration; International Resistive Co., Inc.; Philadelphia and Downingtown, PA

By an application dated July 17, 1987, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at the International Resistive Company, Inc., (IRC) Philadelphia and Downingtown, Pennsylvania. The denial notice was signed on June 15, 1987 and published in the **Federal Register** on June 26, 1987 (52 FR 24068).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the "contributed importantly" test of the increased import criterion of the Trade Act was, in fact, met since one of the subject firm's major customers imported metal film, metal oxide and carbon film resistors in place of domestically produced wirewound resistors.

Investigation findings showed that the "contributed importantly" test of the increased import criterion of Section 222 of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The Department's survey showed that major customers accounting for the majority of the subject firm's sales decline in 1986 did not purchase imported wirewound resistors. Customers which increased imports accounted for a small proportion of sales by IRC.

With respect to the union's claim, the Department's survey included a response from the major customer cited by the union. That customer's response indicated that during the period applicable to the petition, it shifted purchase of resistors from the subject firm to another domestic supplier who does not import. The shift to another domestic supplier occurred as the result of a non-trade related reason. Investigation findings also show that an IRC plant in North Carolina has begun production of a newer metal oxide resistor which will replace a major portion of the production of wirewound resistors at the subject facilities.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of August, 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-18636 Filed 8-13-87; 8:45 am]

BILLING CODE 64510-30-M

[TA-W-19,497 et al.]

Negative Determination Regarding Application for Reconsideration; Primary Fuels, Inc., Houston, TX and Frontier Fuels, Inc., a Subsidiary of Primary Fuels, Midland, TX and Denver, CO

By an application dated June 26, 1987, one of the petitioners requested administrative reconsideration of the Department's negative determination on the subject petitions for trade adjustment assistance for workers of Primary Fuels, Inc., Houston, Texas and Frontier Fuels, Inc., Midland, Texas and Denver, Colorado. The denial notice was signed on May 15, 1987 and published in the **Federal Register** on June 16, 1987 (52 FR 22860).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based of a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that PFI purchased the Fluor Oil and Gas Corporation in November, 1985 and that if Fluor's sales of crude oil were disaggregated from PFI's, the sales and production criterion would have been met.

Investigation findings show that the decreased sales and/or production criterion of section 222 of the Trade Act was not met. The volume of crude oil and natural gas produced and sold by Primary Fuels and its subsidiaries increased in 1986 compared with 1985.

The findings show that PFI set up a holding company (Frontier Fuels, Inc.) in 1985 in order to merge Fluor's production assets into PFI and operate them in the interim. Frontier Fuels which did not exist for most of 1985, consequently, had increased production and sales in 1986. All of Fluor's employees were retained by PFI as Frontier Fuels employees. However, Frontier Fuels ceased to exist as an operating entity after December 1986 when its objective of merging Fluor's assets into PFI was accomplished. All of Frontier Fuels employees (formerly Fluor's) not transferred to PFI by the end of December, 1986 were laid off. The accomplishment of Frontier Fuels' mission was so dominant a cause that worker separations would have occurred irrespective of imports.

In the case of PFI, it is only proper to include Frontier Fuels' sales as PFI's sales since PFI reported such sales as theirs anyway. To break them out would be artificial and capricious. Further, to disaggregate sales by company would serve no purpose since the "contributed importantly" test could not be demonstrated. Company records are not kept which would trace PFI's or the former Fluor's oil sales to specific customers or markets.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of August 1987.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 87-18637 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,459]

Revised Determination on Remand; L.E. Jones Co., Menominee, MI

Pursuant to the U.S. Court of International Trade remand, dated July 15, 1987, in *United Auto Workers Local 566, et.al.* v. *Secretary of Labor* (USCIT 87-04-00624), it is recommended that you issue the following revised determination on remand.

The workers at the L.E. Jones Company, Menominee, Michigan plant produce steel valve inserts that are used primarily in the production of diesel engines for original equipment manufacturers and for distributors.

The United Auto Workers state that the firm was granted adjustment assistance by the Department of Commerce while the Department of Labor denied adjustment assistance to workers of the Menominee plant for the same time period.

The Department of Commerce certified the L.E. Jones Company for firm adjustment assistance on June 3, 1986 (F MI 3282-01).

The investigation on remand obtained additional customer evidence from Commerce. The additional evidence shows that customers decreased their purchases from the company and increased purchases from foreign sources. Investigation findings show that sales and production of valve seat inserts declined in the fourth quarter of 1985 compared to the same quarter in 1984 and declined in 1986 compared to 1985. Average employment of production workers decreased in the fourth quarter of 1985 compared to the same quarter of 1984 and decreased in 1986 compared to 1985. U.S. imports of valve seat inserts increased absolutely in the first nine months of 1985 compared to 1984.

Conclusion

After careful review of the additional evidence obtained on remand, it is concluded that increased imports of valve inserts like or directly competitive with the valve inserts produced at Menominee, Michigan contributed importantly to worker separations and to declines in production and employment at L.E. Jones Company, Menominee, Michigan. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of L.E. Jones Company, Menominee, Michigan who were engaged in employment related to the production of valve seat inserts and who were separated from employment on or after September 29, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of August 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-18639 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,646]

Negative Determination Regarding Application for Reconsideration; U.S. Steel Mining Co., Inc., Cumberland Mine, Kirby, PA

By an application dated July 13, 1987, the United Mine Workers of America (UMW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers of the U.S. Steel Mining Company, Inc., Cumberland mine, Kirby, Pennsylvania. The denial notice was

signed on June 19, 1987 and published in the **Federal Register** on July 9, 1987 (52 FR 25930).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that not all of the coal produced at the Cumberland mine was exported. Some of Cumberland coal shipments in 1986 went to domestic utilities which increased their imports of electrical power from Canada.

Investigation findings show that the "contributed importantly" test of the increased import criterion of section 222 of the Trade Act of 1974 was not met. The entire 1986 sales decline for the Cumberland mine occurred in the export market. Coal exports would not provide a basis for a certification. Also, U.S. coal imports during the past four years ending in 1986 have been negligible.

Investigation findings show that the Cumberland mine works under an arrangement with Ontario-Hydro Electric Power to supply all its coal requirements. Any coal surplus not sold to Ontario-Hydro Electric in 1986 was brokered on the spot market to domestic utilities. The three domestic utilities alleged to be importing electrical power from Canada increased their purchases of coal from the Cumberland mine in 1986 compared to 1985. None of the three mentioned utility companies are owned by U.S. Steel Mining or USX Corporation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of August, 1987.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 87-18638 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor has withdrawn, MN87-8 dated August 7, 1987, Modification No. 5, Big Stone, Douglas, Grant, Otter Tail, Pope, Traverse and Wilkin Counties from General Wage Determination No. MN87-8 dated January 2, 1987, and that the Department of Labor is withdrawing, from the date of this notice, Athens, Champaign, Gallia, Hardin, Lawrence, Logan, Shelby and Union Counties from General Wage Determination No. OH87-29 dated January 2, 1987.

Agencies with construction projects pending to which these wage decisions would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office

document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Alabama:
AL87-3 (January 2, 1987)..... p. 6.
Connecticut:
CT87-1 (January 2, 1987)..... pp.70-71, pp. 73-74, 77.
District of Columbia:
DC87-1 (January 2, 1987)..... pp. 86, 92.
Virginia:
VA87-5 (January 2, 1987)..... p. 1134.

Volume II:

Iowa:
IA87-4 (January 2, 1987)..... pp 38-39.
Michigan:
MI87-1 (January 2, 1987)..... pp. 410-424b.
Ohio:
OH87-29 (January 2, 1987)... pp. 817-857.
Ohio:
OH87-33 (January 2, 1987)... p. 862d.
Texas:
TX87-18 (January 2, 1987).... pp. 966-967.
Listing By Location (index)..... pp. xliv-xlv.

Volume III:

Arizona:
AZ87-2 (January 2, 1987)..... p. 19.
Idaho:
ID87-4 (January 2, 1987)..... p. 162.
Montana:
MT87-1 (January 2, 1987)..... pp. 167-168, p.181.
Nevada:
NV 87-1 (January 2, 1987).... p. 238.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 7th Day of August 1987.

Alan L. Moss,

Director, Divisions of Wage Determinations.

[FR Doc. 87-18358 Filed 8-13-87; 8:45 am]
BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[V-84-4]

Interstate Lead Co., Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for interim order and extension of temporary variance; of denial of interim order; and of hearing.

SUMMARY: This notice announces the application of the Interstate Lead Company, Inc. ("ILCO") for an interim order and for an extension of a temporary variance, which expired on September 1, 1985, from the final medical removal trigger under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)). This notice also announces OSHA's denial of the request for an interim order and provides reasons for this action. This notice further announces a hearing on the application and sets forth issues for the hearing.

DATES: Interested persons wishing to submit written comments or to participate in the hearing may file a request for party status no later than September 14, 1987, at the Office of the Administrative Law Judge listed below.

ADDRESSES: Requests to participate in the hearing must be filed in duplicate with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210; and

Nahum Litt, Chief Administrative Law Judge, U.S. Department of Labor, Vanguard Building, Suite 700, 1111 20th Street, NW., Washington DC 20036

The hearing will begin at 9:30 a.m. on November 17, 1987. The specific location of the hearing will be announced in the Federal Register at a later date. Written comments received and hearing participation requests will be available for inspection and copying in the Office of Variance Determination, Room N-3653 at the above Constitution Avenue address.

I. Background

Interstate Lead Company, Inc. ("ILCO"), a secondary lead smelter and refiner, requested an interim order and an extension of its temporary variance from the final trigger level for medical removal protection (MRP) under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)).

Under the medical removal protection (MRP) provision of the Lead Standard (29 CFR 1910.1025(k)), employers are required to remove an employee from work having an exposure to lead at or above a specified level of micrograms of lead per cubic meter of air (ug/m^3) if the employee's blood lead level is at or above a specified MRP removal trigger. Once removed, the employee must be kept on temporary medical removal until the employee's blood lead level has declined to or below the MRP return trigger. Employees are guaranteed full wages and benefits throughout the duration of the removal period, generally up to a maximum of 18 months.

The purposes of the MRP provisions are to encourage voluntary employee participation in medical surveillance and to provide temporary medical removal protection to workers who appear to be at higher risk of sustaining material impairment to health from continued exposure to lead.

The standard specifies four removal and three return trigger levels, which have been phased in over a five-year period. Phase one, which began on March 1, 1979, required removal of an employee having a blood lead level at or above 80 micrograms of lead per 100 grams of whole blood (80 ug/100g) and allowed return when the employee's blood lead level declined to 60 ug/100g. Phase two, which began on March 1, 1980, required removal at 70 ug/100g and permitted return at 50 ug/100g. Phase three, which began on March 1, 1981, requires removal at 60 ug/100g and authorizes return at 40 ug/100g. The fourth and final phase, which began on March 1, 1983, requires removal at 50 ug/100g and allows return at 40 ug/100g.

The first three MRP removal triggers—80, 70, and 60 ug/100g triggers—require removal of an employee after periodic and follow-up blood sample tests indicate that the employee's blood lead level is at or above the specified trigger. The 50 ug/100g removal trigger, however, requires removal of an employee whenever the average of the last three blood tests or the average of all blood tests taken over the previous

six months, whichever is longer, is at or above 50 ug/100g. Nevertheless, an employuee need not be removed under the 50 ug/100g trigger whenever the employee's most recent blood test indicates a blood lead level of 40 ug/100g or below.

At present and for the indefinite future, the 60 and 50 ug/100g removal triggers are concurrently in effect. Thus, an employee must be removed when the employee's blood lead test results either average 50 ug/100g or are confirmed by a follow-up sample to be 60 ug/100g or over.

In March 1981, the 60/40 MRP triggers went into effect. Prior to that date, the primary and secondary lead smelters and lead battery manufacturers petitioned the Agency for industry-wide stays of the triggers. The petitions were based upon assertions that the companies would be unable to comply with these MRP provisions because the anticiapted removal would result in the unavailability of so many key employees. The petitions were denied because the data submitted by these industries did not demonstrate an industry-wide infeasibility of complying with the MRP triggers or justify the need for an industry-wide stay of these triggers (46 FR 24558, May 15, 1981; and 46 FR 37891, July 23, 1981). However, OSHA did find that there were feasibility problems, on a plant-by-plant basis, owing to the inability of many lead industry employers to reduce employee blood lead levels quickly enough to comply with the scheduled effective date for the 60/40 triggers. Therefore, on July 23 and 24, 1981 (46 FR 37891 and 46 FR 38074, respectively), OSHA announced that the temporary-variance-and-interim-order mechanism, set forth in section 6(b)(6)(A) of the OSHAct and covered by the regulations in 29 CFR Part 1905, would be used to afford relief to lead smelting and battery companies on a plant-by-plant basis.

The July 23 and 24, 1981 **Federal Register** notices (46 FR 37891 and 46 FR 38074) gave the affected plants until August 31, 1981 to demonstrate that 10 percent or more of their total lead-exposed supervisory, maintenance and skilled employees would be subjected to temporary removal because of blood lead levels between 60–70 ug/100g, or, for any plant below the 10 percent figure, to show by compelling evidence that the temporary relief was needed. The 10 percent figure was utilized by OSHA as a rule of thumb for processing large numbers of applications under the statutory criteria set by section 6(b)(6)(A) of the OSHAct. Eligible employers were required to submit to OSHA An application for a temporary variance and an interim order, written acceptance of the terms of the interim order set out in the **Federal Register** notice, certification of notice to the affected employees and certain data to support their application.

Seventy applications for an interim order and a temporary variance from the 60/40 ug/100g triggers were received. Of the 70 plants requesting this relief, 45 plants, including 27 secondary smelters, were granted interim orders (46 FR 48854, October 2, 1981; 47 FR 8431, February 26, 1982; and 47 FR 16434, April 16, 1982), which remained in effect until OSHA, on January 28, 1983, rendered a decision on the application for temporary variance. ILCO was among the plants that requested and received this relief.

The variance record demonstrated that because of the inability of many employers to quickly reduce employee blood lead levels, immediate compliance with the 60/40 ug/100g MRP removal and return triggers presented feasibility problems for the 45 plants, in that:

(1) The plants would have to remove form 10 percent to 66 percent of their total skilled, supervisory and maintenance work force from lead exposure at or above the action level;

(2) Experienced employees who would have to be removed could not easily be replaced by other employees since the companies were unable to recruit other employees with the level of skills necessary to perform these highly skilled positions or to quickly train replacements;

(3) Removal of highly skilled and experienced employees would diminish the health and safety of the remaining employees at the affected plants; and,

(4) Sufficient transfer opportunities did not exist for removed employees to be transferred to other jobs in the affected plants, which meant that extensive medical removal layoffs would result in greatly increased MRP costs.

Based on the above, OSHA concluded that the 45 plants had demonstrated that immediate compliance with the 60/40 ug/100g MRP removal and return triggers was infeasible. Each plant, therefore, was granted a temporary variance on January 28, 1983 (48 FR 4062), which was effective until February 28, 1983.

The order temporarily relieved affected employers of the requirement to comply with the 60 ug/100g removal and 40 ug/100 return triggers. As conditions of the relief, employers were obligated to comply with the 70/50 ug/100g triggers; the other conditions and requirements of the order, which required increased medical surveillance and additional safeguards to protect the health of affected employees; and, with all other provisions of the Lead Standard.

On March 1, 1983, the 50 ug/100g MRP removal trigger level went into effect. Based on data that had been submitted in support of earlier requests for a temporary variance from the 60/40 ug/100g MRP triggers (46 FR 37891, July 23, 1981; and 48 FR 4062, January 28, 1983), the lead rulemaking record (OSHA Docket No. H–004), the judicial history of the Lead Standard and surveys of the lead industries, OSHA recognized that this trigger also was likely to pose feasibility problems for many plants. In fact, 125 employers, including 31 secondary smelters, sought relief from the 50 ug/100g removal trigger, ILCO among them. Of the 125 employers, 28 failed to submit sufficient data to establish need, 13 were referred for State action to the appropriate States with approved occupational safety and health plans, and 12 were not granted relief at that time. Four of the remaining five employers submitted applications in error, and one was withdrawn.

Thus, of the 125 employers only 67, including ILCO and 24 other secondary lead smelters, were considered appropriate for relief at that time. The employers submitted applications for a temporary variance and an interim order, with supporting data to indicate that 10 percent or more of their total skilled, lead-exposed employees would require removal under the 50 ug/100g trigger. Based on those data and additional data generated during discussions with employers and during variance investigations conducted at 12 of the affected plants, OSHA decided to grant an interim order to 65 of the 67 employers (two employers no longer needed relief). The interim order became effective by letter for 48 employers on September 2, 1983; for one employer on September 20, 1983; for nine employers on October 17, 1983; and, for seven employers on August 24, 1984 (49 FR 33757, August 24, 1984).

Of the 65 plants, 34 thereafter ceased to need relief, two closed, and one plant required further evaluation. The remaining 28 plants including 11 secondary smelters, were granted temporary variances from the 50 ug/100g MRP trigger on March 7, 1985, to be effective until September 1, 1985 (50 FR 10550; March 15, 1985). As a condition of the granted relief, the employers continued to comply with the 60/40 ug/100g removal and return triggers and with all other provisions of the Lead

Standard and the conditions and requirements of the variance order.

The variances were granted because the variance record demonstrated that immediate compliance with the 50 ug/100g removal trigger continued to present severe feasibility problems for the 28 employers in that:

(1) The applicants would have had to remove between 10 percent to 100 percent of their total skilled work force from lead exposure at or above the action level;

(2) Experienced employees who would have had to be removed could not easily be replaced by employees with sufficient skills and experience to adequately perform their jobs;

(3) Removal of highly skilled and experienced employees, therefore, would have diminished the health and safety of the remaining employees at the affected plants; and,

(4) Sufficient transfer opportunities did not exist, so extensive removal from the workplace would have resulted in greatly increased MRP costs.

Based on the above, OSHA concluded that the 28 employers had demonstrated that immediate compliance with the 50 ug/100g trigger was infeasible under section 6(b)(6)(A) of the OSHAct.

Of those 28 companies, 17, including 8 secondary smelters, thereafter requested an extension of the temporary variance from the 50 μg/100g MRP trigger level. Eleven of the 17 companies requested the relief prior to the September 1, 1985 expiration date of the variance. These companies were granted interim orders until November 1, 1985, to allow OSHA sufficient time to consider the request and to determine the compliance status of the facilities. Six other companies, including ILCO (October 7, 1985), requested an extension of the temporary variance after the expiration date of the temporary variance and, in accordance with section 6(b)(6)(A) of the OSHAct, were not granted the interim relief. Compliance inspections were conducted at all 17 facilities.

On December 5, 1985, OSHA informed all 17 companies by letter that the Agency did not intend to grant further relief to lead industry employers from the 50 μg/100g trigger. The Agency's decision was based on deficiencies noted during the OSHA compliance inspections at the facilities and the fact that more than 85 percent of the employers who had requested relief from the 50 μg/100g MRP trigger when it first came into effect on March 1, 1983, no longer needed relief. ILCO's failure to achieve comparable results raised serious questions about the company's program for coming into compliance with the standard as quickly as practicable and about whether the company had taken all available steps to safeguard its employees against the hazards covered by the Lead Standard.

On December 19, 1985, ILCO submitted a request by letter for reconsideration of its October 7, 1985 request for an extension of the temporary variance. OSHA further advised ILCO, by letter dated February 21, 1986, that its request for reconsideration was denied, in part because ILCO's initial request for renewal of its temporary variance had not been filed within 90 days prior to the expiration date of its temporary variance, as required by section 6(b)(6)(A) of the OSHAct. On March 25, 1986, OSHA also informed ILCO that, in any event, its request for a variance continued to be defective under 29 CFR 1905.10(b)(4), (5), (6) and (7) and 1905.14. Only thereafter, in April 1986, did ILCO actually file a variance application.

At the time of ILCO's application for a variance, ILCO was contesting OSHA citations issued on February 12, 1986, for the company's allegedly willful, and other violations of various provisions of the Lead Standard. Compliance with these provisions would have contributed substantially to reducing employee blood lead levels. Consequently, OSHA, in its discretion, decided under 29 CFR 1905.5 that it would not entertain ILCO's request for a temporary variance concerning the subjects or issues in the enforcement proceeding until that proceeding was completed. OSHA communicated this decision to ILCO by letter dated September 23, 1986.

In response to these communications, ILCO has maintained that its failure to apply on time should not bar the company from relief; that OSHA has no authority to deny the request on the merits without a hearing, which ILCO first requested in a letter dated February 7, 1986; and, that ILCO would supply the information needed to complete the application. Throughout these communications, OSHA has repeatedly (on five occasions) advised ILCO that the company was not entitled to interim relief and, as a consequence was under an obligation from September 1, 1985 to comply with all the MRP provisions of the Lead Standard. ILCO has maintained, to the contrary, that, because OSHA cannot finally deny its application without a hearing, the company is entitled to interim relief or some assurance it will not be cited for violations of the 50 μg/100g trigger until after the hearing. ILCO, in OSHA's view, continues to be in violation of the 50 μg/100g MRP removal trigger, for which it recently has been cited for an egregious willful violation.

At a meeting on March 25, 1986, sought by ILCO representatives, ILCO again requested reconsideration of its application for an extension of the temporary variance. During that meeting, ILCO claimed that it had been unable to achieve compliance with the 50 μg/100g trigger because of the actions or regulations of other governmental agencies. OSHA advised ILCO at that time that the Assistant Secretary might be willing to reconsider its application if ILCO could prove that its noncompliance had been caused by a kind of legal impossibility, due to the actions or regulations of other government agencies.

However, based on court and other documents and blood lead data, OSHA has determined that the evidence does not show that ILCO's failure to come into compliance with the 50 μg/100g trigger was caused by the actions or regulations of other government agencies. Rather, the evidence and data strongly suggest that the company's efforts to come into compliance with the 50 μg/100g trigger and to protect its employees have been grossly inadequate.

Thus, for all the above reasons, OSHA continued to find ILCO's application inappropriate for reconsideration and informed ILCO, by letter dated September 23, 1986, that unless and until the status of its application changed, ILCO had no right under section 6(b)(6)(A) to a hearing on the merits of the application.

On February 13, 1987, ILCO and OSHA entered into a settlement agreement concluding the enforcement proceeding on the alleged willful violations in the citations issued in February 1986. Pursuant to this settlement, ILCO withdrew its notice of contest to these citations, which were recharacterized as serious rather than willful violations, OSHA is now granting ILCO's request for a hearing on its application. In doing so, OSHA does not intend to waive any of its objections to the adequacy of ILCO's application that may be preserved.

II. Notice of Application

Notice is hereby given that Interstate Lead Company, Inc., has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), 29 CFR 1905.13 and the Secretary of Labor's Order No. 9–83 (48 FR 35736) for an extension of its relief from the medical removal protection (MRP) provision prescribed in 29 CFR 1910.1025(k)(1)(i)(D) of the standard for Occupational Exposure to Lead.

The address of the place of employment that will be affected by the application is: Interstate Lead Company, Inc., Bordon Avenue, Leeds, Alabama 35094.

Regarding the merits of the application, ILCO contends that the implementation of the 50 ug/100g removal trigger is currently impossible for the company because of the anticipated removal and consequent unavailability of a significant number of skilled and supervisory employees. To support these arguments, ILCO submitted pre-March 1986 blood lead data. Essentially, ILCO argues that the immediate imposition of the 50 ug/100g MRP trigger would require ILCO to remove many supervisory and highly skilled employees whose blood lead levels are between 50 and 59 ug/100g. Such removal, it claims, would have a profound and deleterious effect upon the continued operation of the ILCO facility. The removal, for example, of four of 16 battery wrecker personnel, 13 of 33 furnace personnel, five of eight refinery personnel and seven of 14 maintenance personnel allegedly would result in the shutdown of these operations at ILCO's facility. The impact of the loss of these employees would be so severe, ILCO asserts, as to preclude operations even on a curtailed basis.

ILCO further alleges that it has implemented and anticipates implementing the engineering controls necessary to minimize employee exposure to airborne contaminants. In September 1985, the company states, it installed additional dust collection equipment to increase face velocities on hooping at the refining kettles, reverbatory furnace slag tap and metal tap. On March 17, 1986, ILCO contends, it implemented a water treatment system (a wet wash program) for the entire smelting, refining and materials handling section of the facility. According to ILCO, its ongoing compliance effort has markedly reduced the blood lead concentration at the facility since the Lead Standard came into effect. The average blood lead level, ILCO contends, has decreased plant-wide by 35 percent since 1979. The company also states that it will install a flue dust handling system, which will automatically convey all metallurgical and sanitary flue dust directly to the furnace operation through a totally enclosed system.

During the time period of any extension of the temporary variance, ILCO states it will continue to comply with the same conditions required by OSHA in the prior variance order granting relief from the 50 ug/100g trigger. At the time of the application ILCO also contended that it would comply with the 50 MRP trigger no later than June 1, 1987.

The applicant certifies that employees who would be affected by the variance have been notified of the application by the company posting a copy at all places where notices to employees and their authorized employees' representative are normally posted.

Copies of the application for extension of the temporary variance will be made available for inspection and copying upon request at the Office of Variance Determination, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. All interested persons, including employers and employees who believe they would be affected by the grant of denial of the application for variance, are invited to submit written data, views, and arguments relating to the application no later than September 14, 1987. Submission of written comments should be in quadruplicate and must be addressed to the Office of Variance Determination at the above address.

III. Notice of Denial of the Request for Interim Relief

The applicant has requested an interim order to be effective until a decision is rendered on the application for an extension of its temporary variance from the final MRP removal trigger.

If granted, the variance order would relieve ILCO of the requirement to comply with the 50 ug/100g removal trigger. As a condition of the relief, ILCO agrees to continue to comply with the 60/40 removal and return triggers and all other provisions of the Lead Standard and to satisfy the conditions and requirements of the variance order.

OSHA, by letter dated December 5, 1985, denied ILCO's request for an interim order from the 50 ug/100g MRP trigger and gave notice of its intention to deny ILCO's application for extension of the relief.

OSHA's decision was based on the following:

1. The intent of section 6(b)(6)(A) of the Act is to provide an employer, where necessary, a reasonable period of additional time to come into compliance with a standard. It is not intended to provide long-term relief to companies that fail to come into compliance with the standard. The Agency has allowed ILCO a liberal amount of time to come into compliance with the MRP requirements of the standard.

2. In 1983, the Agency decided that relief from section 1910.1025(k)(1)(i)(D) should be granted to a large number of employers in the lead industry who were unable to bring the blood lead levels of employees down quickly enought to be able to comply with the applicable MRP triggers without disrupting their operations and increasing the hazards to non-removed employees. Now that over 85 percent of the employers who originally requested relief from the 50 ug/100g trigger no longer need relief, and ignoring those employers who came into compliance without seeking relief at the time the 50 ug/100g trigger went into effect on March 1, 1983, the vast majority of employers in the lead industry no longer find compliance with the 50 ug/100g removal trigger infeasible. Thus, no further relief appears to be justified to companies that have failed to take adequate steps to reduce their employees' blood lead levels and to come into compliance with the standard as quickly as practicable.

3. During the period of temporary variance relief (1983–1985), ILCO was found on several occasions to be violation of relevant provisions of the Lead Standard, which contributed to maintaining elevated employee blood lead levels. For instance, in 1984 ILCO was cited for improper selection of respiratory protection for six employees, failure to perform quarterly monitoring where employees were exposed above the 50 ug/m^3 permissible exposure level (PEL), and failure to place nine employees whose blood levels were above 60 ug/100g on MRP. Similarly, in a 1985 inspection, ILCO was found to have violated the Lead Standard in many ways: It failed to conduct quarterly monitoring where air lead levels exceeded the PEL and failed to monitor when there was a suspected change in a production process that may have resulted in new or additional exposures; it failed to implement adequate engineering and work practice controls; it exposed more than 22 employees to an 8-hour TWA above the 50 ug/m^3 PEL without providing appropriate respiratory protection; it failed to develop a compliance plan for implementing engineering controls; its respirator program, respirator fit testing, and selection of respirators were inadequate; it failed to clean contaminated surfaces; it failed to provide a temperature-controlled, positive-pressure, filtered air supply in a lunchroom; its cleaning of employees' personnel protective clothing prior to their entering the lunchroom was inadequate; its exposure monitoring and medical surveillance records were inadequate; it failed to remove 10 employees on MRP to areas below the

30 ug/m³ action level; and it failed to provide MRP benefite

Also, during the 1984 and 1985 inspections, OSHA noted that ILCO had documented 23 cases of employees with lead intoxication on the OSHA Form 200 (Log and Summary of Occupational Injuries and Illnesses).

During the 1987 inspection, further violations of the medical removal, respiratory, engineering, and other pertinent requirements of the Lead Standard were found. For example, OSHA found that 10 employees whose blood lead levels exceeded the 50 ug/100g MRP trigger level had not been placed on MRP; nine employees with blood lead levels over 40 ug/100g had not been given blood tests at least every two months; and, seven employees on MRP had not been given blood lead tests at least monthly.

Such poor compliance with the Lead Standard does not appear to be typical in the secondary lead smelter industry.

4. ILCO, beginning on April 3, 1982, has been granted relief from the MRP triggers. Thus, the company had four and one-half years of relief under the temporary variance mechanism, during which time it was legally required to develop health programs and methods to protect its employees and meet the requirements of the Lead Standard.

5. Nevertheless, based on the company's December 1986 blood lead data, ILCO still would have had to remove approximately 35 percent of its total skilled work force if it complied with the 50 ug/100g trigger. ILCO's failure to achieve compliance with the 50 ug/100g trigger and its many citations for violations of the Lead Standard suggest that ILCO has not, as required by section 6(b)(6)(A) of the OSHAct, taken all available steps to safeguard its employees against the hazards covered by the lead standard or developed effective programs for coming into compliance as quickly as practicable with 29 CFR 1910.1025(k)(1)(i)(C) and (D) of the Lead Standard.

Based on the above, OSHA concluded that additional relief through the temporary variance mechanism is not warranted and, if granted, does not appear likely to result in Interstate Lead Company, Inc., coming into full compliance with the 50 ug/100g trigger of the Lead Standard. Since OSHA believes ILCO failed to establish a prima facie case for receiving a temporary variance, the company is not entitled to an interim order.

Therefore, pursuant to the authority in 29 CFR 1905.13 and the Secretary of Labor's Order No. 9–83 (48 FR 35736), OSHA announces its denial of the request of the Interstate Lead Company, Inc. for an interim order from the 50 ug/100g medical removal trigger of the Lead Standard.

IV. Notice of Hearing

On February 7, 1986, ILCO, requested by letter a hearing on the application. Notice is hereby given, pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR 1905.20, that a hearing will be held on ILCO's application for an extension of its temporary variance, which expired on September 1, 1985, from the standard prescribed in 29 CFR 1910.1025(k)(1([i)(D).

V. Hearing Issues

1. Did OSHA properly decline to extend the variance relief afforded ILCO, Inc. from the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard beyond September 1, 1985?

2. Has ILCO shown that it has taken all available steps to safeguard its employees against the hazards covered by the Lead Standard?

3. Has ILCO shown that it has had, and continues to have, an effective program for coming into compliance with the Lead Standard as quickly as practicable?

4. Upon expiration of the temporary variance granted to employers in the lead industry from the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard, 29 CFR 1910.1025(k)(1([i)(D), could OSHA properly decline to afford further relief by notifying employers individually that they would not be granted additional relief because the majority of employers previously granted a temporary variance had come into compliance with the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard?

VI. Participation in the Hearing

All interested persons, including employees, who believe they might be affected by the grant or denial of the application for a variance may file a request for party status no later than September 14, 1987, to present views and evidence at the hearing. Such request shall contain a statement of the position to be taken and a concise summary of the evidence to be adduced in support of the position.

Requests to participate in the hearing must be filed by September 14, 1987, with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210

and

Nahum Litt, Chief Administrative Law Judge, U.S. Department of Labor, Vanguard Building, Suite 700, 1111 29th Street, NW., Washington, DC 20036

These submissions will be available for inspection and copying in the Office of Variance Determination, Room N–3653 at the above Constitution Avenue address.

The applicant; the authorized employee representative, the International Molders and Allied Workers Union (IMAWU); and OSHA, represented by the Office of the Solicitor, are hereby granted party status and need not submit additional requests to participate in the hearing.

The grant of party status to additional interested persons will be made, if at all, by the to-be-appointed Administrative Law Judge under the terms of 29 CFR 18.10.

The hearing will convened on November 17, 1987 at 9:30 a.m. The specific location of the hearing will be announced in the **Federal Register** at a later date. During the hearing proceedings, ILCO, IMAWU, OSHA and any person who has been granted party status in accordance with the above requirements may submit written or oral data, views or arguments and call and cross examine witnesses. Conduct of the hearing is subject to regulations on hearings contained in 29 CFR 1905.20 et seq., and in 29 CFR Part 18, to the pertinent provisions of the Occupational Safety and Health Act, the Administrative Procedure Act, the Federal Rules of Civil Procedure and the rulings of the Administrative Law Judge.

Under section 6(b)(6)(A) of the OSHAct, the applicant is required to demonstrate by a preponderance of the evidence that: (1) It is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or materials or equipment; (2) it is taking all available steps to safeguard its employees against the hazards covered by the Lead Standard; and (3) it has an effective program for coming into compliance with the standard as quickly as practicable.

I hereby designate as hearing examiner to conduct this hearing an Administrative Law Judge to be appointed by the Chief Administrative Law Judge of the United States Department of Labor.

Notice is hereby given pursuant to section 6(b)(6)(A) of the Occupational

Safety and Health Act of 1970, Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR 1905.20, that a hearing will be held on the application of Interstate Lead Company of Leeds, Alabama for an extension of a temporary variance from 29 CFR 1910.1025(k)(1)(i)(D) concerning the 50 ug/100g medical removal protection trigger.

Signed at Washington, DC, this 7th day of August, 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87–18635 Filed 8–13–87; 8:45 am]

BILLING CODE 4510–26–M

[V–84–4]

Extension of Temporary Variance; Sanders Lead Co., Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for interim order and extension of temporary variance; of denial of interim order; and of hearing.

SUMMARY: This notice announces the application of the Sanders Lead Company, Inc. for an interim order and for an extension of a temporary variance, which expired on September 1, 1985, from the final medical removal trigger under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)). This notice also announces OSHA's denial of the request for an interim order and provides reasons for this action. This notice further announces a hearing on the application and sets forth the issues for the hearing.

DATES: Interested persons wishing to submit written comments or to participate in the hearing may file a request for party status no later than September 14, 1987, at the Office of the Administrative Law Judge listed below.

ADDRESSES: Requests to participate in the hearing must be filed in duplicate with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210; and

Nahum Litt, Chief Administrative Law Judge, U.S. Department of Labor, Vanguard Building, Suite 700, 1111 20th Street, NW., Washington, DC 20036

The hearing will begin at 9:30 a.m. on January 12, 1988. The specific location of the hearing will be announced in the **Federal Register** at a later date. Written comments received and hearing participation requests will be available for inspection and copying in the Office of Variance Determination, Room N-3653 at the above Constitution Avenue address.

I. Background

Sanders Lead Company, Inc. ("Sanders"), a secondary lead smelter and refinery, requested an interim order and an extension of its temporary variance from the final trigger level for medical removal protection (MRP) under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)).

Under the medical removal protection (MRP) provision of the Lead Standard (29 CFR 1910.1025(k)), employers are required to remove an employee from work having an exposure to lead at or above a specified level of micrograms of lead per cubic meter of air (ug/m^3) if the employee's blood lead level is at or above a specified MRP removal trigger.

Once removed, the employee must be kept on temporary medical removal until the employee's blood lead level has declined to or below the MRP return trigger. Employees are guaranteed full wages and benefits throughout the duration of the removal period, generally up to a maximum of 18 months.

The purposes of the MRP provisions are to encourage voluntary employee participation in medical surveillance and to provide temporary medical removal protection to workers who appear to be at higher risk of sustaining material impairment to health from continued exposure to lead.

The standard specifies four removal and three return trigger levels, which have been phased in over a five-year period. Phase one, which began on March 1, 1979, required removal of an employee having a blood lead level at or above 80 micrograms of lead per 100 grams of whole blood (80 ug/100g) and allowed return when the employee's blood lead level declined to 60 ug/100g. Phase two, which began on March 1, 1980, required removal at 70 ug/100g and permitted return at 50 ug/100g. Phase three, which began on March 1, 1981, requires removal at 60 ug/100g and authorizes return at 40 ug/100g. The fourth and final phase, which began on March 1, 1983, requires removal at 50 ug/100g and allows return at 40 ug/100g.

The first three MRP removal triggers—80, 70, and 60 ug/100g triggers— require removal of an employee after periodic and follow-up blood sample tests indicate that the employee's blood lead level is at or above the specified trigger. The 50 ug/100g removal trigger, however, requires removal of an employee whenever the average of the last three blood tests or the average of all blood tests taken over the previous six months, whichever is longer, is at or 50 ug/100g. Nevertheless, an employee need not be removed under the 50 ug/100g trigger whenever the employee's most recent blood test indicates a blood lead level of 40 ug/100g or below.

At present and for the indefinite future, the 60 and 50 ug/100g removal triggers are concurrently in effect. Thus, an employee must be removed when the employee's blood lead test results either average 50 ug/100g or are confirmed by a follow-up sample to be 60 ug/100g or over.

In March 1981, the 60/40 MRP triggers went into effect. Prior to that date, the primary and secondary lead smelters and lead battery manufacturers petitioned the Agency for industry-wide stays of the triggers. The petitions were based upon assertions that the companies would be unable to comply with these MRP provisions because the anticipated removal would result in the unavailability of so many key employees. The petitions were denied because the data submitted by these industries did not demonstrate an industry-wide infeasibility of complying with the MRP triggers or justify the need for an industry-wide stay of these triggers (46 FR 24558, May 15, 1981; and 46 FR 37891, July 23, 1981). However, OSHA did find that these were feasibility problems, on a plant-by-plant basis, owing to the inability of many lead industry employers to reduce employee blood lead levels quickly enough to comply with the scheduled effective date for the 60/40 triggers. Therefore, on July 23 and 24, 1981 (46 FR 37891 and 46 FR 38074, respectively), OSHA announced that the temporary-variance-and-interim-order mechanism, set forth in section 6(b)(6)(A) of the OSHAct and covered by the regulations in 29 CFR Part 1905, would be used to afford relief to lead smelting and battery companies on a plant-by-plant basis.

The July 23 and 24, 1981 **Federal Register** notices (46 FR 37891 and 46 FR 38074) gave the affected plants until August 31, 1981 to demonstrate that 10 percent or more of their total lead-exposed supervisory, maintenance and skilled employees would be subjected to temporary removal because of blood lead levels between 60–70 ug/100g, or, for any plant below the 10 percent figure, to show by compelling evidence that the temporary relief was needed. The 10 percent figure was utilized by OSHA as a rule of thumb for processing large numbers of applications under the

statutory criteria set by section 6(b)(6)(A) of the OSHAct. Eligible employers were required to submit to OSHA an application for a temporary variance and an interim order, written acceptance of the terms of the interim order set out in the **Federal Register** notice, certification of notice to the affected employees and certain data to support their application.

Seventy applications for an interim order and a temporary variance from the 60/40 ug/100g triggers were received. Of the 70 plants requesting this relief, 45 plants, including 27 secondary smelters, were granted interim orders (46 FR 48854, October 2, 1981; 47 FR 8431, February 26, 1982; and 47 FR 16434, April 16, 1982), which remained in effect until OSHA, on January 28, 1983, rendered a decision on the application for temporary variance. Sanders was among the plants that requested and received this relief.

The variance record demonstrated that because of the inability of many employers to quickly reduce employee blood lead levels, immediate compliance with the 60/40 ug/100g MRP removal and return triggers presented feasibility problems for the 45 plants, in that:

(1) The plants would have to remove from 10 percent to 66 percent of their total skilled, supervisory and maintenance work force from lead exposure at or above the action level;

(2) Experienced employees who would have to be removed could not easily be replaced by other employees since the companies were unable to recruit other employees with the level of skills necessary to perform these highly skilled positions or to quickly train replacements;

(3) Removal of highly skilled and experienced employees would diminish the health and safety of the remaining employees at the affected plants; and,

(4) Sufficient transfer opportunities did not exist for removed employees to be transferred to other jobs in the affected plants, which meant that extensive medical removal layoffs would result in greatly increased MRP costs.

Based on the above, OSHA concluded that the 45 plants had demonstrated that immediate compliance with the 60/40 ug/100g MRP removal and return triggers was infeasible. Each plant, therefore, was granted a temporary variance on January 28, 1983 (48 FR 4062), which was effective until February 28, 1983.

The order temporarily relieved affected employers of the requirement to comply with the 60 ug/100g removal and 40 ug/100 return triggers. As conditions of the relief, employers were obligated to comply with the 70/50 ug/100g triggers; the other conditions and requirements of the order, which required increased medical surveillance and additional safeguards to protect the health of affected employees; and, with all other provisions of the Lead Standard.

On March 1, 1983, the 50 ug/100g MRP removal trigger level went into effect. Based on data that had been submitted in support of earlier requests for a temporary variance from the 60/40 ug/100g MRP triggers (46 FR 37891, July 23, 1981; and 48 FR 4062, January 28, 1983), the lead rulemaking record (OSHA Docket No. H–004), the judicial history of the Lead Standard and surveys of the lead industries, OSHA recognized that this trigger also was likely to pose feasibility problems for many plants. In fact, 125 employers, including 31 secondary smelters, sought relief from the 50 ug/100 removal trigger, Sanders among them. Of the 125 employers, 28 failed to submit sufficient data to establish need, 13 were referred for State action to the appropriate States with approved occupational safety and health plans, and 12 were not granted relief at that time. Four of the remaining five employers submitted applications in error, and one was withdrawn.

Thus, of the 125 employers only 67, including Sanders and 24 other secondary smelters, were considered appropriate for relief at that time. The employers submitted applications for a temporary variance and an interim order, with supporting data to indicate that 10 percent or more of their total skilled, lead-exposed employees would require removal under the 50 ug/100g trigger. Based on those data and additional data generated during discussions with employers and during variance investigations conducted at 12 of the affected plants, OSHA decided to grant an interim order to 65 of the 67 employers (two employers no longer needed relief). The interim order became effective by letter for 48 employers on September 2, 1983; for one employer on September 20, 1983; for nine employers on October 17, 1983; and, for seven employers on August 24, 1984 (49 FR 33757, August 24, 1984).

Of the 65 plants, 34 thereafter ceased to need relief, two closed, and one plant required further evaluation. The remaining 28 plants, including 11 secondary smelters, were granted temporary variances from the 50 ug/100g MRP trigger on March 7, 1985 (50 FR 10550, March 15, 1985), to be effective until September 1, 1985. As a condition of the granted relief, the employers continued to comply with the 60/40 ug/100g removal and return triggers and with all other provisions of the Lead Standard and the conditions and requirements of the variance order.

The variances were granted because the variance record demonstrated that immediate compliance with the 50 ug/100g removal trigger continued to present severe feasibility problems for the 28 employers in that:

(1) The applicants would have had to remove between 10 percent to 100 percent of their total skilled work force from lead exposure at or above the action level;

(2) Experienced employees who would have had to be removed could not easily be replaced by employees with sufficient skills and experience to adequately perform their jobs;

(3) Removal of highly skilled and experienced employees, therefore, would have diminished the health and safety of the remaining employees at the affected plants; and

(4) Sufficient transfer opportunities did not exist, so extensive removal from the workplace would have resulted in greatly increased MRP costs.

Based on the above, OSHA concluded that the 28 employers had demonstrated that immediate compliance with the 50 ug/100g trigger was infeasible under section (6)(b)(6)(A) of the OSHAct.

Of those 28 companies, 17, including 8 secondary smelters, thereafter requested an extension of the temporary variance from the 50 ug/100g MRP trigger level. Eleven of the 17 companies requested the relief prior to the September 1, 1985 expiration date of the variance. These companies were granted interim orders until November 1, 1985, to allow OSHA sufficient time to consider the request and to determine the compliance status of the facilities. Six other companies, including Sanders (October 8, 1985), requested an extension of the temporary variance after the expiration date of the temporary variance and, in accordance with section 6(b)(6)(A) of the OSHAct, were not granted the interim relief. Compliance inspections were conducted at all 17 facilities.

On December 5, 1985, OSHA informed all 17 companies by letter that the Agency did not intend to grant further relief to lead industry employers from the 50 ug/100g trigger. The Agency's decision was based on deficiencies noted during the OSHA compliance inspections at the facilities and the fact that more than 85 percent of the employers who had requested relief from the 50 ug/100g MRP trigger when it first came into effect on March 1, 1983, no longer needed relief. Sanders failure to achieve comparable results raised serious questions about the company's

program for coming into compliance with the standard as quickly as practicable and about whether the company had taken all available steps to safeguard its employees against the hazards covered by the Lead Standard.

On December 11, 1985, Sanders submitted a request by letter for reconsideration of its October 8, 1985 request for an extension of the temporary variance. OSHA further advised Sanders, by letter dated February 21, 1986, that its request for reconsideration was denied, in part because Sanders initial request for renewal of its temporary variance had not been filed within 90 days prior to the expiration date of its temporary variance, as required by section 6(b)(6)(A) of the OSHAct. On March 24, 1986, OSHA informed Sanders that, in any event, its request for a variance continued to be defective under 29 CFR 1905.10(b) (4), (5), (6) and (7) and 1905.14. Only thereafter, in April 1986, did Sanders actually file a variance application.

In response to these communications, Sanders has maintained that its failure to apply for an extension of its temporary variance on time should not bar the company from relief; that OSHA has no authority to deny the request on the merits without a hearing, which Sanders first requested in a letter dated December 11, 1985; and, that Sanders would supply the necessary information. On five occasions throughout the communications, OSHA advised Sanders that the company was not entitled to interim relief and, as a consequence was under an obligation from September 1, 1985 to comply with all the MRP provisions of the Lead Standard. Sanders has maintained, to the contrary, that because OSHA cannot finally deny its application without a hearing, the company is entitled to interim relief or some assurance it will not be cited for violations of the 50 ug/100g trigger until after the hearing.

At a meeting on March 25, 1986, sought by Sanders representatives, Sanders again requested reconsideration of its application for an extension of the temporary variance. During that meeting, Sanders claimed that it had been unable to achieve compliance with the 50 ug/100g trigger because of the actions or regulations of other government agencies. OSHA advised Sanders that the Assistant Secretary might be willing to reconsider its application if Sanders could prove that non-compliance was caused by a kind of legal impossibility, due to actions, laws or regulations of other Federal, State or local agencies of government. Sanders, however, did not submit the court and other documents requested by OSHA. Instead, Sanders submitted an unsubstantiated explanation of its negotiations with the Alabama Department of Environmental Management. Thus, after numerous attempts by OSHA to obtain the necessary information from Sanders, OSHA decided that the evidence Sanders had submitted failed to prove that its noncompliance with the 50 MRP trigger was caused by the actions or regulations of other government agencies.

II. Notice of Application

Notice is hereby given that Sanders Lead Company, Inc., has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), 29 CFR 1905.13 and the Secretary of Labor's Order No. 9–83 (48 FR 35736) for an extension of its relief from the medical removal protection (MRP) provision prescribed in 29 CFR 1910.1025(k)(1)(i)(D) of the standard for Occupational Exposure to Lead.

The address of the place of employment that will be affected by the application is: Sanders Lead Company, Inc., Sanders Road, Troy, Alabama 36081.

Regarding the merits of the application, Sanders contends that the implementation of the 50 ug/100g removal trigger is currently impossible for the company because of the anticipated removal and consequent unavailability of a signficiant number of skilled and supervisory employees. To support these arguments Sanders submitted data containing pre-April 1986 blood lead data. Essentially, Sanders argues that the immediate imposition of the 50 ug/100g MRP trigger would require the company to remove 21 of 166 highly skilled and essential employees, whose blood lead levels are between 50 and 59 ug/d100g. Such removal, it claims, would have a profound deleterious effect upon the continued operation of the Sanders' facility. These employees are virtually irreplaceable. Other employees in similar job classifications would have to provide excessive overtime to fill in for them or would have to severely curtail plant operations. Since these employees are highly paid, crucially-positioned and extremely difficult to replace, Sanders asserts that putting them on MRP not only would be costly but also would result in reduced production. Sanders estimates that ". . . the cost of paying the new hires plus those on medical removal would add approximately $450,000 per year to the company's operating cost, not counting additional costs for losses in productivity." Thus, Sanders states that immediate compliance with the 50 ug/100g removal trigger is clearly infeasible.

During the time period of any extension, Sanders states it will continue to comply with the same conditions required by OSHA in the prior variance order granting relief from the 50 ug/100g trigger. At the time of its application, Sanders also contended that it would comply with the 50 MRP trigger no later than June 1, 1987.

Sanders argues that OSHA, in its preamble to the standard recognized that immediate compliance with the final MRP trigger levels would be infeasible for the lead industry and provided a five-year phase-in period. By this temporary variance request, Sanders asserts it is only requesting an extension of the phase-in period that OSHA recognized as necessary when it promulgated the Lead Standard.

Sanders states that it has already reduced the average employee blood lead level by a significant amount, that the proposed stringent programs will reduce these levels even further, and that since the promulgation of OSHA's Lead Standard, it has made substantial progress toward meeting the 50 MRP trigger level. According to Sanders, employees on its "Special Status" list (which contains all employees whose blood lead levels are over 50 ug/100g) wear full-face respirators and receive special training, bi-monthly medical consultations and semi-annual physical examinations. The company alleges that the average number of employees on the special status list has been reduced by 50 percent. For example, for the period April 1984 to March 1985 there were 51 employees whose blood leads were over 50 ug/100g. The average number on the list for the period April 1985 to April 1986 was 25 employees.

Additionally, Sanders contends that it has a detailed and rigorously-enforced respirator program which has been instrumental in reducing the blood-lead levels of its employees. The program will be carefully monitored, improved and enforced.

The applicant certifies that employees who would be affected by the variance have been notified of the application by the company posting a copy at all places where notices to employees are normally posted.

Copies of the application for extension of the temporary variance will be made available for inspection and copying upon request at the Office of Variance Determination, Room N–3653, 200 Constitution Avenue, NW.,

Washington, DC 20210. All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance, are invited to submit written data, views, and arguments relating to the application no later than September 14, 1987. Submission of written comments should be quadruplicate and must be addressed to the Office of Variance Determination at the above address.

III. Notice of Denial of the Request for Interim Relief

The applicant has requested an interim order to be effective until a decision is rendered on the application for an extension of its temporary variance from the final MRP removal trigger.

If granted, the variance order would relieve Sanders of the requirement to comply with the 50 ug/100g removal trigger. As a condition of the relief, Sanders agrees to continue to comply with the 60/40 removal and return triggers and all other provisions of the Lead Standard and to satisfy the conditions and requirements of the variance order.

OSHA, by letter dated December 5, 1985, denied Sanders the request for an interim order from the 50 ug/100g MRP trigger and gave notice of its intention to deny Sanders' application for extension of the relief.

OSHA's decision was based on the following:

1. The intent of section 6(b)(6)(A) of the Act is to provide an employer, where necessary, a reasonable period of additional time to come into compliance with a standard. It is not intended to provide long-term relief to companies that fail to come into compliance with the standard. The Agency has allowed Sanders a liberal amount of time to come into compliance with the MRP requirements of the standard.

2. In 1983, the Agency decided that relief from § 1910.1025(k)(l)(i)(D) should be granted to a large number of employees in the lead industry who were unable to bring blood lead levels of employees down quickly enough to be able to comply with the applicable MRP triggers without disrupting their operations and increasing the hazard to non-removed employees. Now that over 85 percent of the employers who originally requested relief from the 50 ug/100g trigger no longer need relief, and ignoring those employers who came into compliance without seeking relief at the time the 50 ug/100g removal trigger went into effect on March 1, 1983, the vast majority of employers in the lead industry no longer find compliance with the 50 ug/100g removal trigger infeasible. Thus, no further relief appears to be justified to companies that have failed to take adequate steps to reduce their employees' blood lead levels and to come into compliance with the standard as quickly as practicable.

3. During the period of temporary relief (1983–1985), Sanders on several occasions was found to be in violation of relevant provisions of the Lead Standard, which contributed to maintaining elevated employee blood lead levels. For instance, in 1983, Sanders was cited for failure to implement feasible engineering and work practice controls for eight employees, failure to conduct quarterly monitoring, improper selection of respirators, inadequate housekeeping and methods of removing lead accumulations from work surfaces, and failure to provide a vacuum for removing lead dust from employees clothing prior to entering the lunchroom. Similarly in the 1985 inspection, it was found that Sanders failed to implement adequate engineering controls for eight employees and to place on MRP 20 employees whose blood lead levels were over 50 ug/100g (after the September 1, 1985 expiration date of the temporary variance).

During the August 7, 1986, inspection further violations were found. OSHA field staff noted 33 instances of willful violations, 12 instances of serious violations and one repeated violation from 13 separate requirements of the Lead Standard. In 12 of the alleged violations there was a substantial probability that death or serious physical harm could result. The violations affected the respiratory protection program, engineering controls, and other pertinent requirements of the Lead Standard, and probably contributed significantly to elevated blood lead levels in a large number of employees. For instance, 15 skilled employees were not removed from lead exposure when their blood lead levels exceeded the 50 MRP trigger even though OSHA had previously notified Sanders in writing on five occasions that these employees had to be removed. In addition, Sanders did not provide adequate fit testing and selection of respirators, and air monitoring was not conducted every three months as required by § 1910.1025(e)(5)(i).

Such poor compliance with the Lead Standard does not appear to be typical in the secondary smelter and battery industries.

4. Sanders was granted relief, beginning October 2, 1981, from the MRP triggers. Thus, the company had nearly five years of relief under the temporary variance mechanisms, during which time it was legally required to develop health programs and methods to protect its employees and meet the requirements of the Lead Standard.

5. Nevertheless, based on the company's August 1986 blood lead data, Sanders still would have to remove approximately 15 percent of its total skilled work force if it complied with the 50 ug/100g trigger. Sanders' failure to achieve compliance with the 50 ug/100g trigger and its many citations for violation of the Lead Standard suggest that Sanders has not, as required by section 6(b)(6)(A) of the OSHAct, taken all available steps to safeguard its employees against the hazards covered by the Lead Standard or developed effective programs for coming into compliance as quickly as practicable with 29 CFR 1910.1025(k)(l)(i) (C) and (D) of the Lead Standard.

Based on the above, OSHA concluded that additional relief through the temporary variance mechanism is not warranted and, if granted, does not appear likely to result in Sanders Lead Company, Inc., coming into full compliance with the 50 ug/100g trigger of the Lead Standard. Since OSHA believes Sanders failed to established a prima facie case for receiving a temporary variance, the company is not entitled to an interim order.

Therefore, pursuant to the authority in 29 CFR 1905.13 and the Secretary of Labor's Order No. 9–83 (48 FR 35736), OSHA announces its denial of the request of Sanders Lead Company, Inc. for an interim order from the 50 ug/100g medical removal trigger of the Lead Standard.

IV. Notice of Hearing

On December 11, 1985, Sanders requested by letter a hearing on the application. Notice is hereby given, pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR 1905.20, that a hearing will be held on Sanders' application for an extension of its temporary variance, which expired on September 1, 1985, from the standard prescribed in 29 CFR 1910.1025(k)(l)(i)(D).

V. Hearing Issues

1. Did OSHA properly decline to extend the variance relief afforded Sanders Lead Company, Inc. from the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard beyond September 1, 1985?

2. Has Sanders shown that it has taken all available steps to safeguard its employees against the hazards covered by the Lead Standard?

3. Has Sanders shown that it has had, and continues to have, an effective program for coming into compliance with the Lead Standard as quickly as practicable?

4. Upon expiration of the temporary variance granted to employers in the lead industry from the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard , 29 CFR 1910.1025(k)(l)(i)(D), could OSHA properly decline to afford further relief by notifying employers individually that they would not be granted additional relief because the majority of employers previously granted a temporary variance had come into compliance with the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard?

VI. Participation in the Hearing

All itnerested persons, including employees who believe they would be affected by the grant or denial of the application for a variance may file a request for party status no later than September 14, 1987, to present views and evidence at the hearing. Such request shall contain a statement of the position to be taken and a concise summary of the evidence to be adduced in support of the position.

Requests to participate in the hearing must be filed by September 14, 1987, with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210

and

Nahum LITT, Chief Administrative Law Judge, U.S. Department of Labor, Vanguard Building, Suite 700, 1111 20th Street, NW., Washington, DC 20036

These submissions will be available for inspection and copying in the Office of Variance Determination, Room N–3653 at the above Constitution Avenue address.

The applicant and OSHA, represented by the Office of the Solicitor, are hereby granted party status and need not submit additional requests to participate in the hearing.

The grant of party status to additional interested persons will be made, if at all, by the to-be-appointed Administrative Law Judge under the terms of 29 CFR 18.10.

The hearing will be convened on January 12, 1988 at 9:30 a.m. The specific location of the hearing will be announced in the **Federal Register** at a later date. During the hearing proceedings OSHA and any person who has been granted party status in accordance with the above requirements, may submit written or oral data, views or arguments and call and cross examine witnesses. Conduct of the hearing is subject to regulations on hearings contained in 29 CFR 1905.20 et seq., and in 29 CFR Part 18, to the pertinent provisions of the Occupational Safety and Health Act, the Administrative Procedure Act, the Federal Rules of Civil Procedure and the rulings of the Administrative Law Judge.

Under section 6(b)(6)(A) of the OSHAct, the applicant is required to demonstrate by a preponderance of the evidence that: (1) It is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or materials or equipment; (2) it is taking all available steps to safeguard its employees against the hazards covered by the Lead Standard; and, (3) it has an effective program for coming into compliance with the standard as quickly as practicable.

I hereby designate as hearing examiner to conduct this hearing an Administative Law Judge to be appointed by the Chief Administrative Law Judge of the United States Department of Labor.

Notice is hereby given pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR 1905.20, that a hearing will be held on the application of Sanders Lead Company of Troy, Alabama for an extension of the temporary variance from 29 CFR 1910.1025(k)(l)(i)(D) concerning the 50 ug/100g medical removal protection trigger.

Signed at Washington, DC, this 7th day of August, 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87–18634 Filed 8–13–87; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87–65]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review Change.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 29319, Notice Number 87–62, August 6, 1987.

DATES: Previously announced comment date has been changed from August 7, 1987 to September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, Code NPN–1, NASA Headquarters, Washington, DC 20546, (202) 453–1090.

Rayburn A. Metcalfe,

Acting Director, General Management Division.

August 10, 1987.

[FR Doc. 87–18532 Filed 8–13–87; 8:45 am]

BILLING CODE 7510–01–M

[87–66]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Task Team on Spacecraft Power for Future Missions.

DATE AND TIME: September 10, 1987, 8:15 a.m. to 4:30 p.m.

ADDRESS: Room 467, Federal Office Building 10B, National Aeronautics and Space Administration Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Wasel, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2855.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address special topics. The ad hoc team on Spacecraft Power and Future Missions, chaired by Dr. Beno Sternlicht, is comprised of seven members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

September 10, 1987

8:15 a.m.—Status Review by Chairperson.

8:30 a.m.—Review of NASA Power Program.

12:30 p.m.—Discuss NASA Power Program and Draft Final Team Report.

4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronatics and Space Administration.

August 7, 1987.

[FR Doc. 87–18533 Filed 8–13–87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Future LWR Designs; Meeting

The ACRS Subcommittee on Future LWR Designs will hold a meeting on September 8, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 8, 1987—1:00 P.M. until the conclusion of business

The Subcommittee will discuss a proposed ACRS reply to the 4/22/87 Staff Requirements Memorandum regarding the feasibility, benefit, and cost effectiveness of selected and combined systems as recommended in the ACRS letter of 1/15/87 on Improve LWRs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 11, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–18625 Filed 8–13–87; 8:45 am]

BILLING CODE 7590-01-M

Meeting of the Auxiliary Systems Subcommittee of the Advisory Committee on Reactor Safeguards; Postponement and Addition of Topics

The ACRS Subcommittee meeting on Auxiliary Systems scheduled to be held on August 18, 1987, Room 1167, notice of which was published in the **Federal Register** on July 31, 1987 (52 FR 28627), has been *postponed to September 30, 1987,* 8:30 A.M., Room 1046, 1717 H Street, NW., Washington, DC.

In addition to the topics previously announced, the Subcommittee will also discuss: criteria used by the utilities to design Chilled Water Systems, associated regulatory requirements, and the criteria being used by the NRC staff to review the Chilled Water Systems design.

Dated: August 11, 1987.

Morton W. Libarkin,

Assistant Executive, Director for Project Review.

[FR Doc. 87–18624 Filed 8–13–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–410]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Niagara Mohawk Power Corp.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–69 issued to Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas and Electric Corporation, New York Electric and Gas Corporation, and Long Island Lighting Company (the licensee),* for operation of the Nine Mile Point Nuclear Station Unit 2 plant, located in Oswego County, New York.

The proposed amendment would revise the service water supply header discharge temperature limit in Technical Specification 3/4.7.1 to 81 °F. The proposed amendment is in accordance with the licensee's application of August 3, 1987 as amended August 6, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's requlations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; of (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of these criteria by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870).

The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaulated for the following reasons.

The proposed amendment involves increasing the plant service water system operating temperature limit in the Technical Specifications from 71 °F to 81 °F. The licensee has stated that all components cooled by the plant service water system have been evaluated and been found to be able to perform their intended function under normal operation, shutdown, abnormal and accident conditions with a service water temperature of up to 82 °F. Further, the licensee has stated that the proposed change does not adversely affect the environmental qualification of any plant

*Niagara Mohawk Power Corporation is authorized to act as agent for the other listed owners and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

equipment, nor does it impact post-accident containment response. By the determination that the suppression pool is not affected in the post-accident containment response, assurance is provided that the LOCA analysis also remains valid. Finally, the integrity of the service water operating temperature limit to 81 °F will not involve a signficant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

The containment post-accident response to previously evaluated accidents remains within previously assessed limits of temperature and pressure. This also applies to the LOCA analysis. Further, all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility or a new or different kind of accident.

In addition, the environmental qualification of plant equipment is not adversely affected by the proposed changes, further assuring that components are not challenged in a manner not previously assessed. In summary, the proposed changes does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not involve a significant reduction in a margin of safety for the following reasons. A number of conservatisms were used in establishing the design basis for the service water system. The margins of safety resulting from these conservatisms are not significantly affected by the proposed change to the Technical Specifications. The change in the margin of safety is insignificant compared to the remaining margin of safety from conservatisms applied in the analyses.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in a shutdown of the plant.

Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If during the comment period, the lake temperature should exceed 77 degrees Fahrenheit for sustained periods, the Commission may issue the license amendment before August 31, 1987, provided that its final determination involves no significant hazards considerations and that the application satisfies the provisions of 10 CFR 50.92(a)(5).

If the proposed determination becomes final, an opportunity for a hearing will be published in the Federal Register at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the Federal Register and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Robert A. Capra, Acting Director, Project Directorate I-1, by collect call to 301-492-4556 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. All comments received by August 31, 1987 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Penfield Library, State University College, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 10th day of August 1987.

For the Nuclear Regulatory Commission.

Joseph D. Neighbors,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 87-18596 Filed 8-13-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327, 50-328]

Withdrawal of Application for Amendments to Facility Operating Licenses; Tennessee Valley Authority

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (TVA) to withdraw its October 2, 1984 application for proposed amendments to Facility Operating Licenses Nos. DPR-77 and DPR-79 for the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

By submittal dated May 18, 1987, TVA requested to withdraw its proposed amendments supporting a plant staff reorganization, which would have affected section 6, "Administrative Controls," of the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS). This plant staff reorganization related TS change has been re-submitted by the same May 18, 1987 submittal, at the request of the Commission, so as to incorporate all desired changes to section 6 of the TS into one change request. This change request will be the subject of a separate licensing action.

The Commission has issued Notice of Consideration of Issuance of Amendments to Licenses published in the Federal Register on December 31, 1984 (49 FR 50826) for the October 2, 1984 application. Pursuant to 10 CFR 2.107, the Commission has granted TVA's request to withdraw its application.

For further details with respect to this action, see (1) the application for amendments dated October 2, 1984 and (2) TVA's submittal dated May 18, 1987, withdrawing the application for amendments. The above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room in the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland this 6th day of July 1987.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 87-18597 Filed 8-13-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24783; File No. SR-NYSE-87-20]

Self Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 124 To Modify Pricing Procedures for Standard Odd-Lot Market Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1987, the New York Stock Exchange, Inc. filed with the

Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change consists of amendments to Rule 124 to modify pricing procedures for standard odd-lot market orders and to adopt a policy that no commission shall be charged on standard systematized odd-lot market orders. Additionally, the proposed amendments will delete sections of the rule which are obsolete or no longer applicable to the handling of odd-lot orders in light of the proposed modifications. An amendment is also proposed to Rule 123A.47 extending the "½ point error guarantee" to systematized odd-lot orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B) and (C) below.

(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of the proposed rule change is to provide a simplified, efficient system for the execution, processing and reporting of odd-lot orders.

Odd lot orders are orders to purchase or sell a security in an amount less than the unit of trading. Standard odd-lot market orders are odd-lot orders to purchase, sell or sell short exempt "at the market," which contain no qualifying notations.

Execution of Standard Odd-Lot Market Orders

Currently, standard odd-lot market orders are executed at a price based on the next NYSE round-lot sale after the order has been received in the Exchange system designated to process odd-lot orders, and a differential may be charged on such orders. The provisions for executing and processing odd-lot orders are set forth in Exchange Rule 124.

The Exchange proposes to amend Rule 124 to allow standard odd-lot market orders to be executed at a price based on the prevailing NYSE quotation in the stock at the time the order reaches the system, i.e. buy orders will be executed on the NYSE offer and sell orders will be executed on the NYSE bid. No odd-lot differential will be charged on these orders.

The system presently used for the pricing and reporting of all odd-lot orders executed on the Exchange is APARS (Automated Pricing and Reporting System). The Exchange has determined that it is no longer feasible to maintain APARS and will eliminate that system. Instead, odd-lot orders will be re-directed into the Exchange's Limit System. In instances in which NYSE quotation information is not available, e.g., the quotation spread fails validation, standard regular way odd-lot market orders will be executed by means of the "odd-lot system" at the price of the *last* NYSE round lot sale or will be executed by the odd-lot dealer at a price deemed appropriate under prevailing market conditions. This situation is most likely to arise where preferred stocks are processed for execution and the last sale is not reflective of the current market.

It should be noted that the proposed "new" pricing procedures discussed herein have already been tested by the Exchange in the pilot program implemented in 1983 for handling standard odd-lot orders of the American Telephone and Telegraph (AT&T) divestiture issues. That pilot is currently in place and has provided an efficient system for the execution and reporting of these AT&T divestiture odd-lot trades. (See SR–NYSE–83–44)

The proposed amendments to Rule 124 which will effect the modified pricing procedures are set forth in Exhibit A attached hereto. Further, this rule will be simplified and reduced in length as several provisions are proposed for deletion because they refer to obsolete terms, to orders which are not eligible for automatic pricing but will receive manual handling, and, of course, to odd-lot market orders which will be subject to the proposed modifications.

In effect, the Exchange proposes to adopt the pricing procedures used in the AT&T pilot for all standard odd-lot market orders, i.e. the price will be based on the prevailing NYSE bid or offer (rather than on the next round-lot sale) and no differential will be charged.

Upon receipt of Commission approval of the proposed amendments to Rule 124, the Exchange will notify the Commission in a separate filing of the termination of the pilot program for the odd-lot orders of the AT&T divestiture issues. Those orders will be processed through the Limit system in accordance with the pricing procedures discussed herein.

No Commission Policy

The Exchange proposes to adopt the policy that the specialist may not charge a commission or differential for systematized executions of *all* standard odd-lot market orders. The "no commission" policy promotes the Exchange's objective of assuring cost-effective executions of systematized orders for members and member firms, and promotes the purposes of Section 11A(a)(1)(c)(i), which calls for "economically efficient execution of securities transactions". However, as noted elsewhere in this filing, odd-lot limit orders and orders requiring special handling may be charged a differential.

Execution of Odd-Lot Limit Orders

As currently provided in Rule 124, odd-lot limit orders will continue to be executed at the penetrated sale price, plus or minus any differential that may be charged. "Marketable" limit orders in the odd-lot system may be charged a differential and will be processed in the same manner as limit orders, just as they are currently handled.

Openings

All standard odd-lot market orders entered prior to the opening of trading will automatically receive the opening price, as will all odd-lot limit orders eligible to receive the opening price. All limit orders and "marketable" limit orders received prior to the opening and executed at the opening price may be charged a differential.

Comparison and Clearance

After execution all standard odd-lot market and limit orders will be included in specialist inventory accumulations. The new odd-lot system (APARS II) will provide comparison reports, facilities for handling claims and adjustments and will send a direct input of compared trades to the appropriate clearing systems. Specialists will continue to act as registered odd-lot dealers in all odd-lot orders processed through the system.

Comparison reports on executed trades will not be submitted on a locked-in basis, since the DOT/TOD contra designations will not be available to systematized odd-lot orders; rather,

the name of the appropriate specialist organization will appear as the contra party on all comparison reports.

PRL Orders and Orders Requiring Special Handling

PRL (part of round-lot) orders will be handled in the same manner as at present, i.e., the odd-lot portion receives the same price as the round-lot portion, and the entire order receives one execution report and is handled through the round-lot system.

Orders not eligible for automated reporting in the new odd-lot mechanism will be manually handled by the Odd-Lot Services Area, and given to the specialist for execution, as they are today. Orders requiring such special handling will print for manual handling at the Odd-Lot Services Desk. Because of the small and infrequent number of trades which would require such special handling, it is not cost-effective to program the necessary enhancements to process orders with qualifying conditions through the APARS II. These orders will be reported through the Odd-Lot Services area only after an employee in that unit has consulted with the specialist to record the appropriate price designated by the specialist for the order. Because orders which print as just described require special handling, specialists may charge a differential on such orders.

Half-Point Error Guarantee

The existing specialist ½ point error guarantee now afforded to system-delivered round lots will apply to all systematized odd-lot order executions. The Exchange proposes to amend Rule 123A.47 to reflect the applicability of the ½ point guarantee to odd-lot systematized order executions. The proposed revisions to Rule 123A.47 are set forth in Exhibit B of the filing.

Statutory Basis

The proposed rule change is designed to provide more simplified, efficient executions of standard odd-lot orders, as well as providing for efficient clearance and settlement of these transactions. Implementation of the proposed pricing procedures and systems enhancements will be consistent with those provisions of the Securities and Exchange Act of 1934 ("the Act") which encourage the use of new data processing and communications techniques which create the opportunity for more efficient and effective market operations, as well as providing for economically efficient execution of securities transactions. It will also advance the prompt and accurate clearance and settlement of securities transactions. See Sections 11A(a)(1) and 17A(a)(1) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not in furtherance with the purposes of the Act. Moreover, the proposed pricing procedures will make the odd-lot system similar to the round-lot system and comparable to the way off-Board market-makers execute odd-lot market orders. The proposed rule change will benefit both the public and member firm community as well.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited or received written comments on these rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register of within such longer period (i) as the Commission may designate up to 90 days of such date if it finds longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 4, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 7, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18614 Filed 8-13-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to Intergovernmental Review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund two presently existent Small Business Development Centers (SBDCs) on September 15, 1987. Currently, there are 49 SBDCs operating in the SBDC program. The SBDCs intended to be refunded are the Texas SBDC at Lubbock and the Texas SBDC at Dallas. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 14, 1987.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness

of the pending application of two presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC Program in detail.

This notice is being published one month in advance of the expected date of refunding of these SBDCs instead of the usual 60 days due to inadvertent administrative delays. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 30 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 30-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coodinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer services coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to

small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Dated: August 11, 1987.

James Abdnor,

Administrator.

Addresses of Relevant SBDC Directors

Mr. J.E. Cadou, Lubbock Region SBDC Director, Texas Tech University, 2005 Broadway, Lubbock, Texas 79401, (806) 744–5343

Mr. Norbert R. Dettmann, Dallas Region SBDC Director, Dallas County Community College, Business & Professional Institute, 302 N. Market, 3rd Floor, Dallas, Texas 75202–3299, (214) 746–2222.

[FR Doc. 87–18648 Filed 8–13–87; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/12–0083]

Surrender of License; H & R Investment Capital Co.

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1987)), H & R Investment Capital Company, 801 American Street, San Carlos, California 94070–4101, incorporated under the laws of the State of California has surrendered its license, No. 09/12–0083, issued by the SBA on December 14, 1962.

H & R Investment Capital Company has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of H & R Investment Capital Company is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 7, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–18578 Filed 8–13–87; 8:45am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

University Transportation Centers Program; Solicitation of Pre-applications

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: DOT is soliciting pre-applications from universities for its University Transportation Centers Program. The purpose of the pre-application process is to determine which universities are eligible to participate in the program based on four criteria, including minimum levels of transportation research already ongoing. Once the Department has made this determination, eligible universities will be given detailed guidance which will be the basis for grant applications for the four-year program. The selection of centers and award of grants is expected to be finalized in FY 1988.

DATES: The determination of institutions which qualify to receive the program guidance will be made by the Department of Transportation from those pre-application submissions received by 4:00 p.m. on September 14, 1987. The pre-applications will undergo review, and institutions will be notified of their eligibility within two months.

ADDRESS: Institutions which believe they qualify for the program should send a brief letter-type pre-application containing a description of how they meet each of the four criteria listed in the **SUPPLEMENTARY INFORMATION** below. The letter should be mailed to University Transportation Centers Program, Office of the Secretary, Procurement Division (M–66, Room 9134), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION, CONTACT: Gracie C. Carter, (202) 366–5442.

SUPPLEMENTARY INFORMATION: A University Transportation Centers grant program was authorized by 49 U.S.C. 1607c. Grants will be made to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions. The responsibilities of each center shall include, but not be limited to, the conduct of infrastructure research concerning transportation and research and training concerning transportation of passengers and property and the interpretation, publication, and dissemination of the results of such research. The research will be directed toward intermediate and long-range problems and issues. The research is intended to complement, rather than replace existing programs at the centers host institutions.

Institutions qualifying to receive the program guidance shall be screened on the basis of the following criteria. To be eligible an institution must:

1. Be a nonprofit institution of higher learning which offers baccalaureate and/or graduate degrees in fields related to transportation.

2. Be accredited by one of the six regional accrediting associations in the United States.

3. Present documentation which indicates that the university has an established transportation program or programs encompassing two or more modes of transportation.

4. Present documentation that demonstrates that the university has a commitment to supporting ongoing transportation research programs with regularly budgeted institutional funds of at least $200,000 per year for the past two years.

The University Transportation Centers Program is located in the Office

of the Assistant Secretary for Policy and International Affairs. Determination of institutions to receive the program guidance, which will be the basis for grant application, does not imply that grants will be awarded. Only institutions determined to be eligible as a result of the pre-application process may submit an additional and more detailed application at a later time. The final application will be the sole basis for grant award and will be evaulated by persons with appropriate technical and scientific backgrounds. The written evaluations will be sent to the University Transportation Centers Review Board which is the source selection board for the program. The Deputy Secretary of Transportation is the source selection authority for the program and will select the applications to receive grant awards under the program. This pre-application announcement which is being concurrently published in the *Commerce Business Daily* will be the only announcement of the program.

Issued in Washington, DC, on August 7, 1987.

Elizabeth Dole,

Secretary of U.S. Department Transportation.

[FR Doc. 87-18703 Filed 8-12-87; 1:04 pm]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department of the Treasury Order No. 101-18]

Delegation of Authority to the Treasurer of the United States to Designate Financial Institutions as Depositaries of Public Money for United States Mint Coin Consignment Programs

Dated: August 5, 1987.

By virture of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 301 and 321(b), and by 12 U.S.C. 90, 265, 266, 391, 1452(c), 1464(k), 1725(d), 1767, 2012, 2072, and 2122, it is ordered that the Treasurer of the United States is authorized and directed to take all necessary and proper measures, including direction of other officials of the Department and utilization of the services of other government agencies, to establish depositary accounts with financial institutions, and to designate financial agents, only as are necessary to support United States Mint coin consignment programs.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 87-18604 Filed 8-13-87; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Tax Forms Coordinating Committee Release of Tax Forms

The Internal Revenue Service is publishing advance proof copies of a number of major 1987 Federal tax forms. This release includes proofs of forms not previously released this year and proofs of forms that were released earlier this year but were subsequently revised due to public comments, IRS forms testing efforts, or internal review. The new items, developed to reflect provisions of the Tax Reform Act of 1986, are: Form 8582 (relating to passive activity loss limitations); Form 8598 (relating to the home mortgage interest deduction); the IRA deduction instructions and worksheets for Form 1040A; and Form 8606 (relating to nondeductible contributions to IRA's). The rereleased items are: Forms 1040EZ; 1040A; 1040; Schedules A, B, and E of Form 1040; and Form 2106. (Please note that Form 2106 has been completely revised. The revised portions of the other forms are circled.)

Persons needing proof copies of any of these items may write to: IRS-CADC, 2402 East Empire, Bloomington, IL 61799.

Please note that these proofs are subject to change and OMB approval before being released for printing in earlier October.

Suggestions for improving these forms should be sent by September 14, 1987, to: Tax Forms Committee, Attn: Early Release, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

Although IRS is not required to publish copies of the tax forms under section 1505 of the Federal Register Act or section 552 of the Administrative Procedures Act, we are doing so at this time due to wide public interest in changes to the forms caused by the Tax Reform Act of 1986 and to give the forms broad public exposure. We may be unable to give detailed replies to the comments we receive. However, each suggestion will be carefully considered before the final versions of the forms are issued.

Dated: August 7, 1987.

Approved:

Edmund I. Goldwag,

Director, Tax Forms and Publications Division.

BILLING CODE 4830-01-M

Form **8582**

Department of the Treasury
Internal Revenue Service

Passive Activity Loss Limitations

► See separate instructions.

► Attach to Forms 1040, 1041, 1041S, or 1120 (Personal service corporation).

OMB No. 1545-xxxx

1987

Attachment Sequence No **88**

Name(s) as shown on return | Identifying number

Part I Computation of 1987 Passive Activity Loss

Caution: See the worksheets on page 4 of the instructions before completing Part I.

Rental Real Estate Activities With Active Participation (See the definition of active participation under **Rental Activities** on page 1 of the instructions.)

Activities acquired before 10-23-86:

1a	Activities with net income	1a	
1b	Activities with net loss	1b	
1c	Combine lines 1a and 1b	1c	

Activities acquired after 10-22-86:

1d	Activities with net income	1d	
1e	Activities with net loss	1e	
1f	Combine lines 1d and 1e	1f	
1g	Net Income or (loss). Combine lines 1c and 1f.		1g

All Other Passive Activities (See **All Other Passive Activities** on page 3 of the instructions.)

Activities acquired before 10-23-86:

2a	Activities with net income	2a	
2b	Activities with net loss	2b	
2c	Combine lines 2a and 2b	2c	

Activities acquired after 10-22-86:

2d	Activities with net income	2d	
2e	Activities with net loss	2e	
2f	Combine lines 2d and 2e	2f	
2g	Net income or (loss). Combine lines 2c and 2f.		2g
3	Combine lines 1g and 2g. If the result is net income, see the instructions for line 3. If this line and line 1g are both losses, go to line 4; otherwise, enter -0- on line 9 and go to line 10		3

Part II Computation of the Special Allowance for Rental Real Estate With Active Participation

Note: *See page 4 of the instructions for how to treat numbers as if they were all positive in Parts II and III.*

4	Enter the smaller of the loss on line 1g or the loss on line 3		4
5	Enter $150,000 ($75,000 if married filing separately and you lived apart for the entire year)	5	
6	Enter modified adjusted gross income, but not less than -0-, (see instructions). If line 6 is equal to or greater than line 5, skip lines 7 and 8, enter -0- on line 9, and then go to line 10. Otherwise, go to line 7.	6	
7	Subtract line 6 from line 5	7	
8	Multiply line 7 by 50% (.5). Do not enter more than $25,000 ($12,500 if married filing separately and you lived apart for the entire year)		8
9	Enter the smaller of line 4 or line 8		9

Part III Computation of Passive Activity Loss Allowed

10	Combine lines 1c and 2c and enter the result. If the result is -0- or net income, skip to line 16		10
11a	If line 9 is -0-, enter -0- and go to line 12.		
11b	If line 1c shows income, has no entry, or shows -0-, enter -0- and go to line 12; otherwise, enter the smaller of line 1c or line 8		11
12	Subtract line 11 from line 10. (See instructions.)		12
13	Subtract line 9 from line 3. (See instructions.)		13
14	Enter the smaller of line 12 or line 13		14
15	Multiply line 14 by 65% (.65) and enter the result		15
16	Enter the amount from line 9		16
17	**Passive Activity Loss Allowed for 1987.** Add lines 15 and 16		17
18	Add the income, if any, on lines 1a, 1d, 2a, and 2d and enter the result		18
19	**Total losses allowed from all passive activities for 1987.** Add lines 17 and 18. See page 4 of the instructions to see how to report the losses on your tax return		19

1987

Department of the Treasury
Internal Revenue Service

Instructions for Form 8582

Passive Activity Loss Limitations

(Section references are to the Internal Revenue Code unless otherwise noted.)

General Instructions

Paperwork Reduction Act Notice

We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give this information.

Purpose of Form

Form 8582 is used to figure the amount of passive activity loss allowed for the current tax year and the loss to be reported on your tax return.

Who Must File

Form 8582 is filed by individual taxpayers, estates, trusts, and personal service corporations (as described in section 469(j)(2)), who have one or more passive activities with net losses.

Passive Activities

A passive activity is any activity involving the conduct of any trade or business (including a research and experimentation activity) in which you did not materially participate. See the **Trade or Business Activities** section below.

Any rental activity (real property or personal property) is a passive activity regardless of whether you materially participated. See the **Rental Activities** section below.

Under regulations a passive activity may also include an activity conducted for profit (within the meaning of section 212), including an activity that is not a trade or business.

Activities That Are Not Passive Activities

Working Interest in Oil and Gas Property.—A working interest in oil and gas property that you hold directly or through an entity that does not limit your liability is not a passive activity even if you do not materially participate. An interest owned by a limited partnership interest is not treated as a working interest with regard to any limited partner, and an interest owned by an S corporation is not treated as a working interest with regard to any shareholder. For example, a general partner in a partnership that owns a limited partnership interest in a partnership that owns a working interest is not treated as owning a working interest.

Interest on Taxpayer's Residence.—Interest on debt secured by the taxpayer's residence or a second residence is not subject to the limitation under the passive loss rules as long as the interest meets the definition of qualified residence interest under section 163(h). For example, if a taxpayer rents out a vacation home and a portion of the mortgage interest is allocable to rental use of the home that would otherwise be treated as a passive activity, such interest expense is not subject to the passive loss rules if the vacation home was selected as the taxpayer's second residence and the mortgage interest meets the definition of qualified residence interest.

Low-Income Housing.—Transitional relief is provided in the case of low-income housing activities. Losses from certain investments after 1983 in low-income housing are not treated as from a passive activity for a period of up to 10 years from the taxpayer's original investment. See **Publication 925,** Passive Activity and At-Risk Rules, for more details.

Passive Activity Losses

Deductions from a passive activity are allowed against income from that activity and against income from other passive activities. If the deductions exceed the income from all of the passive activities, they become passive activity losses and cannot be used to offset income from non-passive activities. The special allowance for rental real estate activities with active participation and the phase-in rule for activities acquired before October 23, 1986, allow additional losses even if the losses exceed passive income. These rules are discussed in more detail below. Passive activity losses that are not allowed in the current year are carried forward until they are allowed either against passive activity income, against the special allowance, if applicable, or when you sell or exchange your entire interest in the activity in a fully taxable transaction to an unrelated party.

Income That Is Not Passive Activity Income.—The following are not considered income from a passive activity:

- Personal service income, including salaries, wages, commissions, self-employment income from a trade or business in which you materially participated, taxable social security and other retirement benefits, and payments from a partnership to a partner for the performance of services.
- Portfolio income, including interest, dividends (including dividends from a REIT, RIC, or REMIC), annuities, and royalties not derived in the ordinary course of a trade or business, and gain or loss from a disposition of property that produces portfolio income or is held for investment. **Note:** *portfolio income is reduced by expenses (other than interest) which are clearly and directly allocable to such gross income, and interest expense properly allocable to such gross income under section 1.163-8T of the regulations. These interest and other expenses are not treated as deductions from a passive activity.*
- Any income, gain, or loss which is attributable to an investment of working capital.
- Income from a working interest in oil and gas property if any loss for any taxable year from the working interest was treated as a loss not from a passive activity (see **"Working Interest in Oil and Gas Property"** earlier).
- Income from any low-income housing activity if losses from the activity would not be treated as losses from a passive activity for the taxable year (see **"Low-Income Housing"** earlier).
- Income from the rental of a home that you also used as a residence during the taxable year (see **"Interest on Taxpayer's Residence"** earlier).

Trade or Business Activities

The material participation standard applies to activities involving the conduct of any trade or business (including a research or experimentation activity).

Individuals.—You will be treated as materially participating in an activity only if you are involved in the operations of the activity on a regular, continuous, and substantial basis.

Except as otherwise provided in regulations, you do not materially participate if you own an interest in a limited partnership. This applies even if you own the limited partnership interest through a tiered entity arrangement. For example, if you own a general partnership interest, or stock in an S corporation, and that partnership or corporation owns a limited partnership interest in another entity, except as otherwise provided in regulations, you will not be considered a material participant.

Certain retired or disabled taxpayers are treated as materially participating in a farming activity if they materially participated for an aggregate of 5 years out of the 8 years preceding retirement or disability. Similarly, a surviving spouse is treated as materially participating in a farming activity if the real property used in the activity meets the estate tax rules for special valuation of farm property passed from a qualifying decedent and the surviving spouse actively manages the farm.

Personal Service Corporations.—A personal service corporation is treated as materially participating if 1 or more shareholders holding stock representing more than 50% (by value) of the outstanding stock of the corporation materially participate in the activity.

Trusts.—When considering the material participation of a nongrantor trust, the fiduciary's degree of participation is taken into consideration. The grantor's degree of participation is considered for a grantor trust.

Estates.—An estate is treated as materially participating if the executor of the estate is participating.

Rental Activities

All rental activities are treated as passive activities without regard to whether you materially participated in the activity. Rental activities include the rental of real estate and tangible property such as equipment.

Active Participation.—You are treated as having actively participated in a rental real

estate activity if you and your spouse, own at least 10% (by value) of all interests in such activity at any time during the year.

The active participation requirement can be met without regular, continuous, and substantial involvement in operations, as long as you participated in making management decisions or arranging for others to provide services (such as repairs), in a significant and bona fide sense. Management decisions that are relevant in this context include approving new tenants, deciding on rental terms, approving capital or repair expenditures, and other similar decisions.

For example, if you own and rent out an apartment that formerly was your primary residence, or that you used as a part-time vacation home, you may be treated as actively participating even if you hire a rental agent and others provide services such as repairs if you participate in management decisions such as those described above.

Except as provided in regulations, a limited partnership interest does not qualify as one in which the partner actively participates.

Special Allowance for Rental Real Estate With Active Participation

Individual taxpayers may offset excess losses from rental real estate activities in which they actively participate against up to $25,000 of nonpassive income. The estate of a deceased taxpayer can also qualify for the special allowance for the two first taxable years following the death of the taxpayer if the decedent was actively participating in the activity at the time of death. Trusts and corporations do not qualify for the special allowance.

However, married individuals who file separate tax returns but did not live apart at all times during the taxable year do not qualify for any of the special allowance.

Married individuals who lived apart at all times during the tax year may each qualify for up to $12,500 of the allowance.

An estate and the surviving spouse each get up to $12,500 of the allowance if they file separate tax returns and both qualify as active participants in a rental real estate activity.

Limited partners, except as provided for by regulations, cannot offset passive losses with the special allowance.

The special allowance is applied after first netting income and loss from all of your rental real estate activities in which you actively participate and then against net passive income, if any, from all other passive activities. If there is still a net loss, the special allowance can be used. If the amount of the passive activity loss from a rental real estate activity exceeds the amount allowed under the special allowance, the loss may be allowable under the rule in a future year if you continue to actively participate in the activity. If the amount of the passive activity loss from such an activity exceeds the amount of nonpassive income against which the loss may be deducted, the excess is treated as a net operating loss.

The allowance is reduced by 50% of the amount that your modified adjusted gross income exceeds $100,000 ($50,000 if married filing separately and you lived apart for the entire year). If modified adjusted gross income exceeds $150,000 ($75,000 if married filing separately and you lived apart for the entire year), none of the special allowance is available. See the specific instructions for line 6 for the definition of modified adjusted gross income.

Transitional Phase-In Rule

Interests in passive activities that you acquired before October 23, 1986, are eligible for a gradual phase-in of the passive activity loss limitations. For the tax years 1987 through 1991, a certain percentage of the current year passive activity loss from these activities (net of any amount of the loss allowed for active participation rental real estate activities) is allowed to offset nonpassive income. The percentage of loss allowed in 1987 is 65%.

The phase-in applies to interests in passive activities acquired before October 23, 1986, and also to activities acquired after that date if there was a written binding contract in effect on that date and at all times thereafter.

To qualify for the phase-in rule, the activity must have commenced before October 23, 1986, unless the property used in the activity was acquired pursuant to a written binding contract in effect on August 16, 1986, and at all times thereafter, or the construction of property used in the activity began on or before August 16, 1986.

Disposition of a Passive Activity

Disposition of an entire interest.—When you dispose of your entire interest in a passive activity in a fully taxable disposition to an unrelated party, any loss allocable to the activity (including any loss disallowed in a previous year, current year loss, and loss on the disposition) is recognized and allowed against income (whether active or passive income). A loss allowed on the disposition of an entire interest in an activity is allowed in full but is treated as passive to the extent of net income from all passive activities and nonpassive to the extent that the losses exceed net income from all passive activities. Under regulations, income or gain from preceding taxable years may be taken into account to the extent necessary to prevent the avoidance of the passive loss limitations. Since 1987 is the first tax year the passive activity loss limitations are in effect, there are no unallowed losses from previous years to take into consideration this year.

Entire interest in an activity.—Your entire interest in an activity includes any interest you hold in any property used or created in the activity. This applies whether you hold the interest directly or through an entity in which you hold any interest directly or through one or more other entities. An entity includes any partnership, corporation, estate, or trust. For example, a disposition of your entire interest in a partnership is not a disposition of your entire interest in any activity the partnership conducts if you continue to hold (directly or indirectly) any interest in property used or created in the activity. See the regulations under section 469 for examples of property used or created in an activity.

Fully taxable disposition.—A disposition is a fully taxable disposition if, and only if, all gain or loss realized on the disposition is recognized. See the regulations under section 469 for more information on qualifying dispositions.

Gains on the disposition of an entire interest and income from the current year operations of that activity can be used to offset other passive activity losses.

Disposition of less than an entire interest.—Gains and losses on the disposition of less than an entire interest are gains and losses from a passive activity and are subject to the passive activity loss rules.

Special rule for formerly nonpassive activities.—Under regulations, if you realize gain on the sale, exchange, or other disposition of any part of an interest in an activity which is a passive activity this year but the activity for a substantial part of the period that you held any interest in the activity would not have been a passive activity if the passive activity loss limitation rules had been in effect for the entire period that you owned the interest, the gain is treated as passive activity gross income for the taxable year only to the extent that it exceeds the unallowed loss from that activity for the taxable year.

Specific Instructions

Only One Activity Reported on Form 8582

If only one activity is reported on Form 8582, line 19 is the loss allowed for the current year and the unallowed loss is your actual loss (line 1b, 1e, 2b, or 2e) minus line 19.

More Than One Activity Reported on Form 8582

If you are reporting more than one activity on Form 8582, complete the worksheet(s) shown in the instructions for lines 1 and 2. If part of the losses are disallowed, the worksheet(s) in the instructions for line 19 will also have to be completed in order to allocate the losses allowed back to the proper activity.

Estates, Trusts, and Personal Service Corporations

Only individuals and certain estates can use the special allowance rule to offset passive losses from rental real estate activities with active participation. Trusts, personal service corporations and certain estates (who do not qualify for the special allowance rule) should complete lines 2a through 2g, enter -0- on line 9 and then skip to line 10.

Beneficiaries of Trusts and Estates

Instructions To Follow

Forms and Schedules Which May Be Affected by the Passive Loss Provisions

Schedule A (Form 1040), Itemized Deductions.—Interest expense from a passive activity is limited under the passive loss rules instead of under the investment interest limitation rules. After figuring the amount of interest expense allowed on Form 8582, see the instructions for Schedule A (Form 1040) on how to report it on that schedule.

Schedule C (Form 1040), Profit or (Loss) From Business or Profession.—If you have a passive activity loss on Schedule C, file Form 8582 to see how much of the loss is allowed. If all of the loss is not allowed, enter the amount allowed on line 31 of Schedule C and to the left of the entry space, write "From Passive Activity."

If you have net profit from a passive activity reported on Schedule C and you also have other passive activities with losses, file Form 8582 so that the net profit from Schedule C can offset the other passive activity losses. Leave the net profit amount on line 31 of Schedule C (and enter it on Form 1040, line 13) but also enter it in the applicable income column of worksheet 2 on page 4 of the instructions for Form 8582.

Schedule D (Form 1040), Capital Gains and Losses and Reconciliation of Forms 1099-B.—A capital gain on the sale or exchange of your entire interest in a passive activity in a fully taxable disposition to an unrelated party is reported on Schedule D (Form 1040). The gain is also included on Form 8582 if you have other passive activity losses.

Capital losses from a fully taxable disposition of an entire interest in a passive activity to an unrelated party are allowed in full under the passive activity loss limitations but may be subject to the capital loss limitations. The loss is treated as a loss from a passive activity to the extent that the loss exceeds net income from all passive activities. Enter the total loss on the appropriate line of Schedule D and enter the amount of the loss that is treated as a passive loss on line 19 of Form 8582.

Capital gains and losses from a disposition of less than an entire interest are treated like any other passive activity gain or loss. The gain is entered on Schedule D and also on Form 8582 as passive activity income. The loss is not entered on Schedule D until the passive activity loss allowed is figured on Form 8582. The amount allowed on Form 8582 is the amount to be entered on Schedule D.

Schedule F (Form 1040), Farm Income and Expenses.—If you have a passive activity loss on Schedule F, file Form 8582 to see how much of the loss is allowed. If all of the loss is not allowed, enter the amount allowed on line 37 of Schedule F and to the left of the entry space write, "From Passive Activity."

If you have a net profit from a passive activity reported on Schedule F and you also have other passive activities with losses, file Form 8582, so that the net farm profit can offset the other passive activity losses. Leave the net profit amount on line 37 of Schedule F (and also enter it on Form 1040, line 18) but also enter it in the applicable income column of worksheet 2 on page 4 of the instructions for Form 8582.

Schedule E (Form 1040), Supplemental Income Schedule.—If you have income or loss from a passive activity reported on Schedule E, see the Form 1040 instructions for Schedule E to see if you must file Form 8582. If you file Form 8582, figure the amount of your loss allowed on Form 8582 and then follow the instructions for Schedule E (Form 1040) to see how to report it on that schedule.

Form 4797, Gains and Losses From Sales or Exchanges of Assets Used in a Trade or Business and Involuntary Conversions.—Any gain on the sale or exchange of your entire interest in a passive activity in a fully taxable disposition to an unrelated party which was used in your trade or business, is reported on Form 4797. The gain is also included on Form 8582 if you have other passive activity losses. This includes section 1231 gains and any ordinary income, including ordinary income from recapture, reported on Form 4797.

Losses from a fully taxable disposition of an entire interest in a passive activity to an unrelated party are allowed in full. The loss is treated as a loss from a passive activity to the extent of net income from all other passive activities and as a nonpassive loss to the extent that the loss exceeds net income from all passive activities. Enter the total loss on the appropriate line of Form 4797 and enter the amount of the loss that is treated as a passive loss on line 19 of Form 8582. If there is no net income on line 3 of Form 8582, the loss is not a passive loss and it is not entered on Form 8582.

Losses and gains from a disposition of less than an entire interest are treated like any other passive activity loss or gain. The gain is entered on Form 4797 and also on Form 8582 as passive activity income. The loss is not entered on Form 4797 until the passive activity loss allowed is figured on Form 8582. The amount allowed on Form 8582 is the amount entered on Form 4797.

Form 4835, Farm Rental Income and Expenses.—Figure your passive activity loss allowed on Form 8582 before transferring line 33 of Form 4835 to Schedule E. If part of the loss is disallowed on Form 8582, enter the amount allowed on line 33 of Form 4835 and to the left of the entry space write, "From Passive Activity". Then enter that amount on Schedule E, line 28.

If Form 4835 has a net farm rental profit and you have other passive activity losses, file Form 8582 so that the net profit can offset the other passive activity losses. Leave the net profit on Form 4835 (and report it on Schedule E, line 28) and also enter it in the applicable income column of worksheet 2 on page 4 of the Form 8582 instructions.

Form 4952, Investment Interest Expense Deduction.—Income and loss from passive activities generally are not treated as investment income or loss when calculating the amount of the investment interest limitation. However, any passive losses allowed by reason of the phase-in of the passive loss provision (other than losses from rental real estate activities in which you actively participate) reduce your net investment income for purposes of the investment interest limitation. Also see the Form 4952 instructions.

Form 6198, Computation of Deductible Loss From an Activity Described in Section 465(c).—Losses from passive activities may also be subject to the at-risk rules. If so, the at-risk rules apply first. When the loss becomes deductible under the at-risk rules, the passive activity rules apply. Figure your deductible loss for the activity on Form 6198 and then bring that amount over to Form 8582 to see how much of the loss is allowed under the passive activity loss rules. Report the amount allowed on Form 8582 on the applicable form or schedule.

Form 6251, Alternative Minimum Tax Computation—Individuals.—Your passive activity losses are an adjustment for alternative minimum tax purposes. See the instructions for Form 6251.

Form 6252, Computation of Installment Sale Income.—Gain from an installment sale of a disposition either of an entire interest in a passive activity or of less than an entire interest in a passive activity is treated as income from a passive activity to the extent of the gain reported this year. If you have other passive activity losses or a loss from the disposition of an entire interest in a passive activity, include the gain on Form 8582 and also include it on Form 4797 or Schedule D, whichever is appropriate.

Part I

Rental Real Estate Activities With Active Participation.—Do not enter amounts on lines 1a through 1g if you do not actively participate in the rental real estate activity. Use lines 2a through 2g when there is no active participation. Personal service corporations, trusts, certain estates, and limited partners are not treated as actively participating in the activity. Taxpayers (including a general partner) whose interest in the activity, at any time during the taxable year, is less than 10 percent of the value of all interests in the activity are not treated as actively participating in the activity.

An estate is treated as actively participating for the 2 years following the death of the taxpayer if the taxpayer actively participated in the rental real estate activity in the taxable year in which he died.

See **Rental Activities** for the definition of active participation.

If you have more than one passive activity, use worksheet 1 to figure the amounts to enter on lines 1a, 1b, 1d, and 1e.

All Other Passive Activities.—Lines 2a through 2g are used for trade or business activities in which you do not materially participate, certain activities with respect to which expenses are deductible under section 212 as investment expenses for the production of income if specified by

regulations as a passive activity, and rental activities including the rental of personal property, and rental real estate activities when you do not actively participate.

If you have more than one passive activity, use worksheet 2 to figure the amounts to enter on lines 2a, 2b, 2d, and 2e.

Lines 1 and 2.—When entering income and loss in the appropriate columns, use the overall net income or net loss from each activity. For example, if you have a passive activity loss reported on Schedule E, the amount to be entered in either columns (b) or (d) would be the net loss reported on line 23 of Schedule E. If you had net income from a passive activity reported on Schedule E, the amount to be entered in either columns (a) or (c) would be the net income reported on line 23 of Schedule E.

Part II

When a line instruction asks for the "smaller of," treat the line entries as if they were positive numbers when taking into consideration which is the smaller number. For example, the instruction on line 9 says to "enter the smaller of line 4 or line 8." If line 4 had a loss of ($32,000) and the line 8 entry was the $25,000 allowance, the smaller amount would be $25,000.

Lines 1a, 1b, 1d, and 1e.—Use the worksheet below to figure the amounts to be entered on lines 1a, 1b, 1d, and 1e. Lines 1a and 1b are used for rental real estate activities with active participation which were acquired before 10-23-86. Lines 1d and 1e are used for rental real estate activities with active participation acquired after 10-22-86.

After you complete the worksheet below, enter the totals of columns (a) through (d) on the corresponding lines of Form 8582 and then complete lines 1c, 1f, and 1g.

Worksheet 1 for lines 1a, 1b, 1d, and 1e (Keep for your records)

Name of Activity	Form or Schedule To be Reported on	Activities acquired before 10-23-86		Activities acquired after 10-22-86	
		(a) Income line 1a	(b) (Loss) line 1b	(c) Income line 1d	(d) (Loss) line 1e
Totals. Enter on lines 1a, 1b, 1d and 1e of Form 8582 . . ▶					

Lines 2a, 2b, 2d, and 2e.—These lines are used for rental real estate activities without active participation, other rental activities, and all other passive activities such as a trade or business in which you do not materially participate. Lines 2a and 2b are used for activities acquired before 10-23-86 and lines 2d and 2e are used for activities acquired after 10-22-86.

Enter the total in columns (a) through (d) on the corresponding lines of Form 8582 and then complete lines 2c, 2f, and 2g.

Worksheet 2 for lines 2a, 2b, 2d, and 2e (Keep for your records)

Name of Activity	Form or Schedule To be Reported on	Activities acquired before 10-23-86		Activities acquired after 10-22-86	
		(a) Income line 2a	(b) (Loss) line 2b	(c) Income line 2d	(d) (Loss) line 2e
Totals. Enter on lines 2a, 2b, 2d and 2e of Form 8582 . . ▶					

Line 3.—If line 3 shows net income, add any losses shown on lines 1b, 1e, 2b, and 2e and enter them on line 19. All of your passive losses are allowed. Take the amount of each individual loss entered on worksheets 1 and 2 in columns 1b, 1d, 2b, and 2d and report the losses on the form or schedule you usually report them on.

Line 6.—Modified adjusted gross income means your adjusted gross income computed by including:

(a) Net income or loss for the taxable year other than losses from passive activities. For this purpose, net income or loss is determined without regard to:

Taxable social security and railroad retirement payments;

Deductible contributions to individual retirement accounts and simplified employee pension plans;

Any amount not allowable as a deduction in computing adjusted gross income; or

any amount treated as a disposition of an entire interest under section 469(g)(1)(A) and regulation section 1.469-3 as a loss for the taxable year that is not from a passive activity.

Lines 12 and 13.—Reserved

Line 19.—If only one activity with a loss is shown on Form 8582, the amount on line 19 is the actual loss allowed for the year. This amount should be entered on the form or schedule that it is normally reported on, such as, Schedule C or Schedule E. Your unallowed amount would be the loss shown on lines 1b, 1e, 2b, or 2e minus the amount on line 19. You must keep a record of this unallowed amount and the activity to which it belongs in order to take the loss when it becomes deductible in a subsequent year.

More Than One Passive Activity Loss Shown on Form 8582.

If you have more than one passive activity loss shown on Form 8582 and part of your losses were not allowed, you will have to allocate the amount on line 19 among the activities. The following worksheets have been provided to help you allocate the losses allowed and the unallowed losses per activity.

Worksheets to allocate allowable losses are still being developed.

Version C

Form **8598**

Department of the Treasury
Internal Revenue Service

Computation of Deductible Home Mortgage Interest

► Attach to Form 1040.
► See Separate Instructions.

OMB No. 1545-XXXX

1987

Attachment Sequence No. **85**

Name(s) as shown on Form 1040

Your social security number

Note: *Complete a separate Form 8598 if you have two qualified homes. See the separate instructions.*

Am I Required To Complete and File This Form?— Complete this form to figure your deductible home mortgage interest if:

- You took out a mortgage on your home (or other debt secured by your home) after August 16, 1986, and
- You took out the mortgage for a purpose **other than** to buy the home.

You **do not** have to complete this form if:

- You took out only one mortgage on your home and that mortgage was to buy your home, or
- You took out all mortgages on your home before August 17, 1986, and you did not refinance any of these mortgages or borrow additional amounts on any of these mortgages after August 16, 1986. However, if the mortgages were above the fair market value of the home at the time you took them out, then you must file this form.

If you have to complete this form, attach it to Form 1040.

How Much of My Home Mortgage Interest May I Deduct?—In general, you may still deduct all interest you paid on any mortgage you took out to buy your home. However, you may not be able to deduct all of your home mortgage interest if the cost of the home (including the cost of improvements you made) is less than the "average balance" of your mortgage(s). "Average balance" means the average principal amount you owed for 1987 on your mortgage, or the total of the average principal amount you owed for 1987 on each mortgage if you had more than one.

Any part of the interest you cannot deduct as home mortgage interest will usually be treated as personal interest. For 1987, only 65% of personal interest is deductible.

Which Parts of the Form Do I Complete?— You must complete Part I to see if you can deduct all interest paid on the home mortgages. If you find that you may deduct all of the mortgage interest, then stop after completing Part I. However, after you complete Part I you find that not all of your interest on the mortgages is deductible, then read on to see if you should complete Part II or Part III to figure the amount of home mortgage interest you may deduct.

You should read the additional separate instructions carefully before you begin to complete Part I. These instructions explain what is meant by cost plus improvements to your home and when you can use an amount higher than cost plus improvements if you had a mortgage on your home before August 17, 1986. These instructions also explain in detail how to determine the average balance of each mortgage.

We have provided several methods you may be able to choose from to figure the average balance of each mortgage. You may be able to use more than one method for each mortgage or different methods for different mortgages.

Note: *In some instances you must use Part III. Or, in other situations, using Part III instead of Part II may result in a larger deduction.*

You must use the special method in Part III instead of Part II if you used any of the proceeds of any mortgage or other debt secured by your home in your trade or business.

You may use the special method in Part III if you used any part of the proceeds of any debt secured by the home to pay for:

a. any qualified medical or educational expenses, or

b. any investment property or expenses, or

c. any passive activity property or expenses.

In Part III, you figure the amount of deductible home mortgage interest separately for each mortgage. By using Part III, you may increase your cost plus improvements to the home by the amount of certain medical or educational expenses and thereby qualify more interest as deductible home mortgage interest. In addition, if you use Part III, the part that is not deductible home mortgage interest may be deducted as investment interest or passive activity interest if applicable.

Part I Complete To Decide If You Can Deduct All Home Mortgage Interest

1 Figure the average balance for 1987 of each mortgage on your home, and enter the sum of the average balances. See the separate instructions 1

2 Enter the cost of the home plus the cost of any improvements. See the separate instructions 2

3 If you had any mortgage on your home that you incurred before August 17, 1986, add the amount of the pre-August 17 debt as determined in the separate instructions for line 3 and enter the total . . . 3

Note: If the home was personal property, such as a boat, see the separate instructions.

4 Enter the **larger of: a)** the amount on line 2 or **b)** the amount on line 3 4

- If line 4 is **equal to or more than** line 1, **STOP HERE** and enter on Schedule A (Form 1040), line 9a or 9b, as applicable, ALL interest paid on the mortgages included on line 1. If you have deductible points, or the mortgage was used other than for personal purposes, see the separate instructions for Part III, lines 15 and 16.
- If line 4 is **less than** line 1, you cannot deduct all interest paid on the mortgages included on line 1. To figure deductible home mortgage interest, you should complete Part II. However, see the **Note** above to determine if you should use Part III.

Part II Regular Method To Figure Deductible Home Mortgage Interest

5 Enter the total interest paid for 1987 on the mortgages included on line 1. See the separate instructions 5

6 Divide the amount on line 4 by the amount on line 1 and enter the percentage . . . . . 6 × .

7 Multiply the amount on line 5 by the percentage on line 6 and enter the result. Also, enter this amount on Schedule A (Form 1040), line 9a or 9b, as applicable, as **home mortgage interest.** If you have deductible points, see the separate instructions 7

8 Subtract the amount on line 7 from the amount on line 5, and enter the result. Also, enter this amount on Schedule A (Form 1040), line 12a, as **personal interest** 8

For **Paperwork Reduction Act Notice, see separate instructions**

Form **8598** (1987)

Version C

Form 8598 (1987) Page 2

Part III Special Method To Figure Deductible Home Mortgage Interest

Note: *Complete one full column at a time starting with the earliest debt in Column A. If you have more than three debts complete a separate Column C, Form 8598 for each additional debt. See separate instructions.*

		Complete Column A first Enter the earliest debt first A	B	C
		(mo., yr.)	(mo., yr.)	(mo., yr.)
1 Enter the date on which you secured the debt with your home. See the separate instructions	1	/	/	/
2 Enter the **average balance** of the debt. See the separate instructions	2			
3 Enter the amount from Part I, line 4. See the separate instructions	3			
4a Enter the amount, if any, from the worksheet in the separate instructions for medical or educational expenses	4a			
4b Enter the amount, if any, from line 4a of the **previous** column	4b	-0-		
4c Add amounts on lines 4a and 4b	4c			
5 Add amounts on lines 3 and 4c	5			
6 Enter the **smaller of: a**. the amount on line 5, or **b**. the fair market value of the home at the time the debt was secured by the home. See the separate instructions	6			
7 Enter the amount from line 9 of the **previous** column	7	-0-	-0-	
8 Enter the **smaller of: a**. line 2 of the **previous** column, or **b**. line 10 of the **previous** column	8	-0-		
9 Add amounts on lines 7 and 8, and enter the total	9	-0-		
10 Subtract the amount on line 9 from the amount on line 6 and enter the result	10			
11 Enter the **total interest** for 1987 that applies to the debt. See the instructions	11			
• If line 10 is **equal to or more than** line 2, skip line 12. Then enter the amount from line 11 on line 13. • If line 10 is **less than** line 2, go to line 12. • If line 10 is **zero,** skip lines 12 and 13. Then enter the amount from line 11 on line 14.				
12 Divide the amount on line 10 by the amount on line 2. Enter the percentage	12	× .	× .	× .
13 Multiply the amount on line 11 by the percentage on line 12. Enter the result	13			
14 Subtract the amount on line 13 from the amount on line 11. Enter the result	14			

15 Add the amounts in the columns on line 13 and enter the total. Also enter this amount on Schedule A (Form 1040), line 9a or line 9b, as applicable. If this total includes deductible points, see the separate instructions. This is the amount you can deduct as **home mortgage interest**	15	
16 Add the amounts in the columns on line 14 and enter the total. See the separate instructions to figure how much, if any, of the total amount of interest on this line may be deducted elsewhere on your tax return	16	

1987

Department of the Treasury
Internal Revenue Service

Instructions for Form 8598

Computation of Deductible Home Mortgage Interest

(Section references are to the Internal Revenue Code, unless otherwise noted.)

General Instructions

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

How Much of My Mortgage Interest May I Deduct? —The Tax Reform Act of 1986 changed the law on deducting home mortgage interest. Usually you may still deduct all the interest you paid on a mortgage you took out to buy your home. However, if you paid interest on more than one mortgage on your home for 1987, you may not be able to deduct all interest on all mortgages if the total of the average balance of each mortgage for 1987 was more than your cost of the home plus improvements made to it.

Am I Required To Complete and File This Form?—You **do not** have to file this form if:

- Your only mortgage on the home was the mortgage you took out to buy the home, or
- You took out all mortgages on the home before August 17, 1986, and you did not refinance any of these mortgages or borrow any additional amounts on these mortgages (such as additional borrowing on a line-of-credit debt) after August 16, 1986. However, if the mortgages were above the fair market value of the home at the time you took out the mortgages you must file this form.

You **must** file Form 8598 if you took out a mortgage on your home (or other loan secured by your home) after August 16, 1986, for purposes other than to buy the home. Also, you must file this form if you took out a mortgage on your home before August 17, 1986, but refinanced the mortgage or borrowed any additional amounts on the mortgage after August 16, 1986.

If you must file this form, you must attach it to Form 1040 even if you determine that all of your mortgage interest is deductible.

What Is a Qualified Home? — A qualified home is your principal home. It also applies to one other home, your "second home." If you rented out a home in 1987 other than your principal home, this home qualifies as a second home if you used it more the greater of **a.** 14 days, or **b.** 10 percent of the number of days during 1987 that the property was rented at a fair rental.

If you have more than one home that you used as a second home, you may choose only one of them to treat as the second home for 1987. Next year you can choose a different home as the "second home" if you want. Generally, you may not choose a different second home during part of 1987. You may, however, choose a different home as your second home for part of 1987 if:

a. you got a new home in 1987; or
b. your principal home no longer qualified as your principal home in 1987; or
c. your second home no longer qualified as your second home or became your principal home in 1987.

If anyone of the three situations above applies to you and you want to elect a new, second qualified home, see **Publication 545,** Interest Expense, for more details on how to do this.

In general, a home includes a house, condominium or cooperative, mobile home, boat or similar property that includes basic living accommodations, including sleeping space, toilet and cooking facilities.

Property that is not used for residential purposes, such as a part of the property that is used in your trade or business, does not qualify as a home.

What Kind of Debt Qualifies for the Mortgage Interest Deduction?—Only a secured debt qualifies. In general, a debt is considered a secured debt only if the papers that you sign for that debt (for example, a mortgage, deed of trust, or land contract, make your interest in that home specific security for the debt. See Publication 545 for more information on what is considered a secured debt and a partially secured debt.

Additional Information and Special Situations.—Publication 545 contains more information about the deduction for home mortgage interest. You will need to get the publication if any of the following applies to you. Special rules apply in these situations that are not covered in these instructions.

- You are married and filing separate income tax returns and paid interest on mortgages on one or more homes.
- Your mortgage or other secured debt was on a home under construction in 1987
- You owned your home under a time-sharing arrangement.
- You were a tenant-shareholder in a cooperative housing corporation.
- You rented out part of your home in 1987
- You elect to treat the debt as not secured by your home.
- You elect to treat the debt as two separate debts because the debt is secured by two qualified homes.

Line-by-line Instructions

We have provided explanations for many lines of the form.

Part I — Computation To Decide If You Can Deduct All Home Mortgage Interest

Purpose of Part I.—You must complete lines 1 through 4 of Part I to determine if all, or only part, of your mortgage interest is deductible in full. When you complete Part I, if it shows that all of your interest is deductible as home mortgage interest, do not complete any more of the form. You should still file it with your Form 1040. If it shows that only some of your interest is deductible home mortgage interest, you will need to complete Part II or Part III to figure how much is deducted as home mortgage interest and how much is deducted as personal interest on Schedule A (Form 1040), or elsewhere on your return.

Before You Complete Part I You Will Need To Know:

- How much you paid for the home if you bought it, or records to show your basis in the home if you got it other than by purchase, such as by gift.
- The cost of any improvements made to the home from the date you got it through the end of 1987.
- The amount of interest you paid on each debt for 1987. Usually this will be the amount shown on **Form 1098,** Mortgage Interest Statement, sent you by the financial institution, or on a financial statement given you during settlement of the mortgage. **Note:** You can only include interest paid during the period in which the home was qualified and in which the debt was secured by your home.
- The highest balance or average balance of each debt for 1987.

In general, if line 1 is less than or equal to line 4, all of the interest on the debt is deductible home mortgage interest. If all of your interest is deductible and all of the debt was used for personal purposes, enter the amount of the interest on Schedule A (Form 1040), line 9a or line 9b, as applicable. If any part of this interest includes deductible points, see the instructions for Part II, line 7, for more details on where to deduct the points on Schedule A.

If any part of any debt was used in connection with your trade or business, investment property or passive activity, you may be able to deduct the interest on Schedules C, E, or F, as applicable, instead of on Schedule A. For more information if this situation applies to you, see Publication 545.

If line 1 is more than line 4, part of the interest will not be deductible home mortgage interest. In this case, read on to see if you should complete Part II or Part III to figure deductible interest on the mortgage.

Line 1.—Add the average balance of each debt and enter the total We have provided **five** acceptable methods that you may choose from to figure the average balance of a debt. You may use any one of these permitted methods as long as you meet the conditions that apply for using that method Although they are intended to give approximately the same result, they may differ in some cases.

You may use the highest principal balance of a debt but it generally will be to your benefit to use the average balance You do not need to use the same method to figure the average balance of each debt during 1987 or of any single debt from year to year.

We have provided worksheets for some of the methods. If you use the same method for more than one debt, prepare a separate worksheet for each debt following the same rules.

Method 1—Average balance reported by lender.—You may not use this method if the debt was outstanding at any time that the home was not a qualified home. You may use the average balance reported to you by the lender in 1987 if the debt was outstanding during the entire time that the property was a qualified home. If the debt was not owed for all of the time that the home was qualified, multiply the average balance reported by the lender by the number of days the debt was owed during 1987. Divide that result by the number of days during 1987 that the property was a qualified home.

Method 2—Average daily balance.—To figure the average daily balance:

1. Add the principal balance of the debt on each day in 1987 that the home was qualified and enter the total. . . . . _____
2. Divide the amount on line 1 by the number of days the home was qualified. Enter the result. This is the average balance of the debt . _____

The debt is treated as having a zero balance on any day during that period in which the debt was not yet incurred or was no longer owed

Method 3—Interest paid divided by interest rate.—You may use this method if the following conditions are met:

- All accrued interest was paid at least monthly; and
- At all times in 1987 that the debt was owed, the debt was secured by your home

To use this method, complete the following worksheet:

1. Enter the interest paid or accrued during 1987 . . . _____
2. Enter the interest rate on the debt stated on an annual basis. (If the interest rate varied during 1987, use the lowest rate for the year) . . . . . _____
3. Divide the amount on line 1 by the amount on line 2. If the home was qualified all of 1987, stop here; this is the average balance of the debt. However, if the home was not qualified all of 1987, go to line 4 . _____
4. Enter the percentage of the year that the home was qualified . . _____
5. Divide the amount on line 3 by the percentage on line 4 Enter the result. This is the average balance of the debt . . . . . _____

Example. Mr. Blue had a line-of-credit loan secured by his principal home all of 1987. The interest rate on the line-of-credit loan was 9 percent throughout the year. The principal balance of the line-of-credit changed throughout 1987. He paid accrued interest of $2 500. His average balance using this method is $27,777 ($2,500/.09).

Method 4—Average of first and last balance.—You may use this method if all three of the following conditions apply.

a. The debt was owed all of 1987, or if the home was qualified for less than the whole year, for the part of 1987 that the home was qualified; and

b. The principal balance of the debt did not increase in 1987; and

c. The debt required level payments in 1987 and the payments were made neither more frequently nor less frequently than required The payments will be treated as being level-payment even if they may be adjusted from time to time because of changes in the interest rate.

To figure the average balance by this method, if the home was qualified ALL of 1987, complete the following worksheet:

1. Enter the balance of the debt as of January 1, 1987 . . . . _____
2. Enter the balance of the debt as of December 31, 1987 . . . _____
3. Add amount on lines 1 and 2 . _____
4. Divide the amount on line 3 by 2. Enter the result. This is the average balance of the debt . _____

If the home was not qualified all year, use the principal balance as of the first day of the year that the home was qualified and the principal balance as of the last day of the year that the home was qualified.

Example: Mr. Brown is required to make level monthly payments of principal and interest to pay off, over 20 years, a loan of $10 000 secured by a second mortgage on his principal home The balance of his second mortgage on January 1, 1987, was $9 658. And on December 31 of the same year it was $9,450. His average balance using this method is: $9,551 (the sum of $9 65 plus $9,450 divided by 2).

Method 5—Average of monthly balance method.— To figure the average balance using this method, either: **a.** add the average monthly balance of the debt and divide that total by 12, or **b.** add the principal balance of the debt as of the end of each calendar month, and divide that total by 12.

If the home was not qualified all of 1987, use either the average monthly balance or the principal balance as of the end of each calendar month that the home was qualified and divide by the number of months that the home was qualified. For this purpose, the home is presumed to be qualified for the entire month if it was qualified for more than 15 days during the month.

Line 2.—Enter the purchase price of the home, plus the cost of any improvements made from the date you got it through the end of 1987. If you got the home other than by purchase, see Publication 545 to determine the amount to enter on line 2.

Do not include the cost of any personal property (such as furniture) in the purchase price.

Do not include property that was not used for residential purposes, such as an office in your home used in your trade or business.

Home improvements include capital expenses, such as additions to the home, installation of central air conditioning, or replacement of a roof.

Line 3.—You may complete this line if you took out any mortgage on your home before August 17, 1986, other than to buy your home. If you had a mortgage on your home before August 17, 1986, and refinanced the mortgage or took out other mortgages on your home before August 17, 1986, the total balance of the mortgage(s) may be greater than your cost plus improvements to the home. If this is the case, to figure deductible home mortgage interest, you can use the total balance of all mortgages incurred and secured before August 17, 1986, instead of cost plus improvements if the total balance is more than your cost plus improvements.

For each pre-August 17, 1986, debt, determine the balance of that debt (called the pre-August 17 balance). However, if your only debt before August 17 was the mortgage taken out to buy your home, do not complete this line. Add the pre-August 17 balance of each of the debts and enter the total on line 3 However, the pre-August 17 balance of the debt cannot exceed the fair market value of the home at the time the debt was incurred. The following rules are provided to figure the pre-August 17 balance of each debt.

Computation of pre-August 17 Balance.—*General rule.*—Use the **average balance** of the **old** debt for 1987 if:

- You did not refinance the debt after August 16,1986; or
- You did not borrow any additional amounts on the debt after August 16, 1986.

Refinancing of a Debt in 1986 or 1987 for the Same Amount As the Old Debt.—A refinanced debt is considered to be refinanced for the same amount as the old debt if:

- All of the proceeds of the new debt were used to refinance one or more old debts; and
- Also, as of the of time of refinancing, you had not borrowed any additional amounts on the old debt after August 16,1986. If you had, see Publication 545.

For purposes of determining whether all of the proceeds were used to refinance the old debt(s), disregard costs of refinancing the debt, including points.

If you completely refinanced the debt in 1986, the pre-August 17 balance of the debt is the average balance of the new debt for 1987. If you completely refinanced the debt in 1987, the pre-August 17 balance of the debt is the sum of the average balance of the old debt and the average balance of the new debt (or debts).

Example. You had a mortgage with a principal balance as of August 16, 1986, of $75,647. On July 1, 1987, the principal balance on the mortgage was $74,749. On that day you refinanced the mortgage with a new mortgage, also secured by your home, with an initial principal balance of $74,749. The average balance of the old mortgage was $37,824 for 1987 and the average balance of the new mortgage was $37,149. Since there were two pre-August 17 debts for 1987, the amount entered on line 2 is the sum of the two average balances.

Refinancing of a Debt in 1987 for More Than the Amount of the Old Debt.—If you refinanced at least 50% of the debt in 1987 and borrowed more than you needed to pay off the old debt, use the following worksheet to figure the pre-August 17 balance of the debt

1. Add the average balance of the old debt and the average balance of the new debt (or debts) and enter the total . . . . . _____
2. Enter the principal balance of the old debt as of August 16, 1986. . _____
3. Enter the total amount of principal payments on the old debt that were made after August 16, 1986, through December 31, 1986 . . _____
4. Subtract the amount on line 3 from the amount on line 2 . . . _____
5. Enter the **smaller of** the amount on line 1, or the amount on line 4 . _____

If you refinanced less than 50% of the debt, use the general rule described on page 2.

Example. You had a debt secured by your principal home, which you incurred before August 17, 1986, that had a principal balance on August 16, 1986, of $50,000 You repaid $2,000 of the debt after August 16, 1986, and before January 1, 1987. On July 1, 1987, when the principal balance of the debt was $40,000, you incurred a new debt secured by your home, which had a principal balance of $80,000 You used the proceeds of that debt to pay off the entire remaining principal balance of the old debt. The average balance of the first debt in 1987 is $22,000 and the average balance of the second debt in 1987 is $37,500 The pre-August 17 balance for both debts for 1987 is the lesser of the combined average balances of the debts ($59,500 = $22,000 + $37,500) or the principal amount of the old debt on August 16, 1986, reduced by principal repayments made throught the end of 1986 ($48,000 = $50,000 – $2,000). Therefore,the combined pre-August 17 balance for both debts is $48,000.

Refinancing of a Debt in 1986 for More Than the Amount of the Old Debt.—If you refinanced the debt in 1986 and borrowed more than you needed to pay off the old debt, use the following worksheet to figure the pre-August 17 balance of the new debt.

1. Enter the average balance of the new debt for 1987 . . . . . _____
2. Enter the principal balance of the original debt as of August 16, 1986 _____
3. Enter the total principal payments made on the old debt and new debt(s) after August 16, 1986, through the end of 1986. Do not include in this total the amount paid off in the refinancing . . . . . _____
4. Subtract the amount on line 3 from the amount on line 2 . . . _____
5. Enter the **smaller of** the amount on line 1, or the amount on line 4 . _____

If you did not pay off the entire amount of the old debt, see Publication 545 for the computation of the pre-August 17 balance.

Special Rule for pre-August 17 Line-of-Credit Debt.—If you borrowed any additional amounts after August 16, 1986, on a pre-August 17 line-of-credit debt the following applies. The pre-August 17 balance for that debt is the **smaller** of:

a. the average balance of the debt for 1987; or

b. the principal balance of the debt on August 16, 1986, reduced by all payments of principal made on the debt after August 16 through the end of 1986.

Example. On May 1, 1986, you obtained a line-of-credit secured by your principal home, which had a credit limit of $10,000 and you borrowed $5,000. On November 1, 1986, you borrowed an additional $5,000. As of that time, you incurred a total debt of $10,000 ($5,000 of which was incurred before August 17, 1986). From August 16, 1986, to December 31, 1986, you repaid $500 of the debt. The average balance of the debt for 1987 was $9,000. The pre-August 17 balance of the debt for 1987 is the lesser of the average balance of the debt ($9,000) or the principal balance on August 16, 1986, reduced by payments made after August 16 through December 31, 1986 ($4,500 = $5,000 – $500). Therefore, the pre-August 17 balance of the debt is $4,500

Line 4.—Enter the larger of the amount on line 2 or the amount on line 3 However, if your home was personal property, such as a recreational vehicle or boat, the amount on this line cannot be more than the lowest fair market value of the home at the time any debt was secured by the property.

Part II — Regular Method To Figure Deductible Home Mortgage Interest

Purpose of Part II.—If Part I shows that you cannot deduct as home mortgage interest all the interest you paid on all the mortgages or other secured debt, you generally should complete Part II to figure your deductible home mortgage interest.

You must use Part III if any part of any debt proceeds was used to pay for trade or business expenses. In this case, you may be able to deduct part of the interest as a trade or business expense.

It may be to your benefit to use Part III instead of Part II if you used any part of the proceeds of any of the debt to pay for:

a. certain medical or educational expenses, or

b. any investment property or expenses, or

c. any passive activity property or expenses.

If you meet anyone of these conditions, you may get a larger interest deduction if you use Part III.

When you use Part II, part of the total amount of interest will be treated as deductible home mortgage interest and part will be treated as personal interest.

Line 5.—Enter the total amount of interest you paid in 1987 on all debt secured by the home. If you paid the interest to a financial institution, the amount of interest should be shown on Form 1098 furnished you by the lender.

If you paid points to buy or improve your personal home, you may be able to include the points as interest. See Publication 545 for more details on deducting points as interest.

Line 7.—If all interest included on line 5 was paid to a financial institution, enter on Schedule A (Form 1040), line 9a, the amount from line 7. If all interest was paid to an individual, enter on Schedule A, line 9b, the amount from line 7.

If the amount on line 5 includes points, divide the total points included on line 5 by the total amount of interest shown on line 5. Then multiply that result by the amount on line 7. This is the amount you should enter on Schedule A, line 10 as deductible points. Subtract this amount from the total amount on line 7 and enter the difference on Schedule A, line 9a or line 9b, as applicable. If you paid interest to an individual and to a financial institution, use the same method to determine how much of the total amount shown on line 7 to enter on Schedule A, lines 9a and 9b.

Line 8.—Enter the amount shown on this line on Schedule A (Form 1040), line 12a. This will be treated as personal interest on Schedule A.

Part III — Optional Method To Figure Deductible Home Mortgage Interest

It will usually be to your advantage to use Part III instead of Part II to figure your deductible home mortgage interest if you used the money from the debt to pay certain medical or educational expenses, investment expenses, or passive activity expenses.

If you took out a second mortgage or other secured debt to pay for certain medical or educational expenses, you may be able to increase the amount of your deductible home mortgage interest by adding these amounts to your cost plus improvements to the home.

If you paid for any investment property or expenses or passive activity property or expenses out of the proceeds of any of the secured debt, then part of the interest, if any, that is not deductible home mortgage interest may be treated as investment or passive activity interest, as applicable. See line 16 instructions for more details.

You must use Part III if any part of any debt proceeds was used to pay for trade or business expenses.

Each debt is separately accounted for in Part III using Columns A through C. The earliest debt is shown in Column A. This is the first mortgage on the home (usually the one to buy the home). Complete Column A in full before going to Column B. Show the next earliest debt in Column B, again completing the column in full. Show any later debt in Column C. If you had more than three debts, you will need to complete a separate Form 8598 for each additional debt. On each separate Form 8598, use only Column C; otherwise, you will arrive at the wrong interest amount for that debt.

Line 2.—Enter the average balance of the debt. See the instructions for Part I, line 1, to determine the method to use to figure the average balance of the debt.

Line 3.—Enter the adjusted cost of the home as determined in Part I, line 4. Enter the same amount in each of the columns you complete on line 3.

Line 4.—Complete this line if you paid for educational expenses after August 16, 1986, with proceeds from a mortgage or other secured debt.

In general, medical expenses that qualify are amounts incurred for medical care for yourself, your spouse, or a dependent that are not reimbursed for by insurance or otherwise. See the **Schedule A (Form 1040)** instructions for the types of expenses that qualify as medical expenses.

Educational expenses that qualify include expenses for yourself, your spouse, or a dependent for tuition, fees, books, supplies and equipment required for enrollment, attendance, or courses of instruction at a qualified educational organization, and for any reasonable living expenses while away from home while attending the institution.

In general, you have used proceeds of a debt to pay for medical or educational expenses if you paid for them 90 days before or 90 days after you incurred the debt.

See Publication 545 for more information on when the debt is considered to have been used to pay for medical and educational expenses, as well as more details on the kinds of medical and educational expenses that qualify.

Use the following worksheet to figure the amount to enter in the applicable column on line 4a.

Worksheet To Figure Amount To Enter on Line 4a for Medical and Educational Expenses

1. Enter the average balance of the debt from applicable column in Part III, line 2. If at least 95% of the proceeds of this debt was used to pay for the medical or educational expenses, stop here, and enter this amount on line 4a of the applicable column. Otherwise, go to line 2. . . . . _____
2. Enter the amount of the debt used to pay for these expenses as of the end of 1987 . . . . . _____
3. Enter the total amount paid on the principal amount of the debt through the end of 1986. However, do not include repayments if they exceeded the amount of the debt used to pay for these expenses at the time the repayment was made. _____
4. Subtract the amount on line 3 from the amount on line 2. Enter the result . . . . . _____
5. Enter the **smaller of: a.** the amount on line 1, or **b.** the amount on line 4. Also, enter this amount in Part III, line 4a, in the appropriate column . . . . . _____

If you had more than one debt used to pay for medical or educational expenses, prepare and complete a separate worksheet for each debt.

See Publication 545 if the debt used to pay for qualified medical or educational expenses was refinanced in 1986 or 1987.

Line 6.—Enter the smaller of: **a.** the amount on line 5, or **b.** the fair market value of the home at the time the debt was secured by the home.

If the home was real property (such as a house), you may enter the greater of the fair market value at the time the debt was secured, or the home's cost plus improvement as of the end of 1987. (If you got the home other than by purchase, see Publication 545 for more information.)

If the home was personal property (such as a boat) under state law, and was security for a line of credit, the fair market value of the home is the **smaller of: a.** the fair market value at the time the debt was secured by the home, or **b.** the fair market value at any time you borrow additional amounts by using the line of credit for that debt.

If the property includes property other than the home, count only that part of the fair market value that applies to the home.

Line 11.—For each debt, enter in the applicable column the amount of interest you paid in 1987 that applied to the debt while it was secured by your home. In general, if you have qualified all of 1987 and the debt was secured by the home all of 1987, enter the total amount of interest you paid on the debt for 1987. If the home qualified for only part of 1987, enter only the interest paid during the part of the year the home qualified and the debt was secured by your home. If you paid the interest to a financial institution, the amount of interest should be shown on Form 1098 furnished you by the lender.

If you paid points on a mortgage, see Publication 545 for more details on deducting points.

Line 15.—Add the amounts entered in the columns for line 14 and enter the total. Also enter this amount on Schedule A (Form 1040) lines 9a, 9b, or 10, as applicable.

If line 15 includes any trade or business interest, you will need to see Publication 545 to determine how much of the interest, if any, you should deduct on Schedule C, E, or F instead of on Schedule A.

Line 16.—Add the amounts in the columns on line 14 and enter the total. This is the amount of interest that is not deductible home mortgage interest. Include as personal interest on Schedule A, line 12a, the total amount shown on line 16 of this form if none of the interest shown on line 16 was:

a. interest in connection with a trade or business or certain low income housing expenses, or

b. interest in connection with a former or current passive activity, or

c. investment interest expense

If line 16 includes trade or business interest, passive activity interest, or investment interest, you will need to see Publication 545 to determine how much of the interest, if any, you may deduct elsewhere on your tax return. In addition, you may also need to get the following publications for more information:

Publication 527, Rental Property

Publication 535, Business Expenses

Publication 925, Passive Activity and At-Risk Rules

—IRA Deduction Instructions—

Step 5
Figuring your adjusted gross income—Lines 11a, 11b, and 12

Note: *These instructions and worksheets for the IRA deduction will appear in the instruction booklet for the 1987 Form 1040A. Similar instructions and worksheets will also be contained in the instruction booklet for the 1987 Form 1040.*

Lines 11a and 11b. Deduction for contributions to an Individual Retirement Arrangement (IRA)

Tax Tip: Earnings on both deductible and nondeductible contributions to your IRA are not subject to tax until they are distributed to you.

You can deduct contributions to your IRA on Form 1040A, line 11a, and contributions to your spouse's IRA (if you file a joint return) on line 11b. Generally, the IRA deduction limits under prior rules still apply. However, beginning in 1987, your IRA deduction may be further reduced or eliminated if you are covered by your employer's retirement plan. You may also now make nondeductible contributions to your IRA (see the Tax Tip to the left and page 18).

Not covered by your employer's retirement plan. If you (and your spouse if you file a joint return) were not covered by a retirement plan at work in 1987, you can continue to take a full IRA deduction. Use Worksheet 1 to figure your deduction. If you are married filing a separate return and you were not covered by a retirement plan at work but your spouse was, you are not considered to be covered by a retirement plan.

Covered by your employer's retirement plan. If you (or your spouse if you file a joint return) were covered by a retirement plan at work in 1987, the Form W-2 you get from that employer should have the "Pension Plan" box in Box 5 checked. Get **Publication 590,** Individual Retirement Arrangements (IRAs), if you need more details on who is considered covered by an employer's retirement plan. If you were covered by an employer's retirement plan, use the chart below to see if you can take an IRA deduction for 1987 and, if you can, which worksheet you should use to figure the amount you may deduct.

If your filing status is:	And Form 1040A, line 10, is:	You:
Single or head of household	$25,000 or less	Can take a full IRA deduction (use Worksheet 1)
	Over $25,000 but less than $35,000	Can take a partial IRA deduction (use Worksheet 2)
	$35,000 or more	Cannot take an IRA deduction
Married filing joint	$40,000 or less	Can take a full IRA deduction (use Worksheet 1)
	Over $40,000 but less than $50,000	Can take a partial IRA deduction (use Worksheet 2)
	$50,000 or more	Cannot take an IRA deduction
Married filing separate	Over -0- but less than $10,000	Can take a partial IRA deduction (use Worksheet 2)
	$10,000 or more	Cannot take an IRA deduction

You should receive a statement by May 31, 1988, showing all contributions made to your IRA for 1987. Before completing the worksheet that applies to you, note that:

- If you made contributions to your IRA in 1987 that you deducted for 1986, DO NOT include those contributions in the worksheet you use.
- If you make contributions to your IRA (or, if applicable, your spouse's IRA) in 1988 by April 15 that you want to treat as contributions for 1987, include these when completing the applicable worksheet.

Note: *If you deduct contributions you have not made and do not make them by April 15, 1988, you must amend your return by filing* ***Form 1040X*** *to show the actual deductible contributions made for 1987.*

- On a joint return, if both spouses worked and both have IRAs, figure each spouse's deduction separately using columns (a) and (b) of the applicable worksheet. Then enter the separate deductions on lines 11a and 11b of Form 1040A.
- If you were married, you must file a joint return to deduct contributions to a nonworking spouse's IRA for 1987. A "nonworking" spouse is one who had no wages or other earned income in 1987, or a working spouse who chooses to be treated as having no earned income for purposes of the deduction.

—IRA Deduction Instructions—

Lines 11a and 11b. Deduction for contributions to an IRA (continued)

If **any** of the following applies, you must use Form 1040 instead of Form 1040A:

- You received any taxable distributions from your IRA.
- You received amounts from one IRA and transferred them to another IRA, or you received amounts from one qualified pension or profit-sharing plan and transferred them to an IRA. The amounts you received and transferred are called "rollover" contributions.
- You owe tax on any early distributions from your IRA, any excess contributions made to your IRA, or any excess accumulations in your IRA account.

For more information, see **How To Use Tele-Tax** (*topic no. 252*) on page 39 or get Publication 590.

Tax Tip: *If you use Worksheet 1 to figure your deductible IRA, you may choose to treat all or part of the amount shown on line 3 of the worksheet (or line 8 if you made contributions to your nonworking spouse's IRA) as a nondeductible contribution instead of taking a deduction for that amount.*

Nondeductible contributions. You may choose to make nondeductible contributions to your IRA regardless of whether you are allowed to deduct all, part, or none of your IRA contributions for 1987. Your nondeductible contribution is the difference between your total IRA contributions (up to the maximum amount) and the amount you are allowed to and actually deduct on your 1987 return.

Example. You file as single. You made a $2,000 IRA contribution for 1987. You cannot take an IRA deduction because you were covered by your employer's retirement plan, and the amount on Form 1040A, line 10, is over $35,000 (all wages). You can, however, treat up to $2,000 as a nondeductible contribution.

If you use Worksheet 2 to figure your deductible IRA, figure any nondeductible IRA contributions on line 8 of the worksheet (also on line 17 if you make nondeductible contributions for your nonworking spouse).

If you make nondeductible contributions, you must complete and attach **Form 8606,** Nondeductible IRA Contributions, IRA Basis, and Nontaxable IRA Distributions. Use that form to figure the basis (nontaxable part) of your IRA. If you have a basis in your IRA, that form is also used to determine how much of any distribution from your IRA is taxed and how much is not taxed. If you and your spouse each make a nondeductible IRA contribution, each of you must complete and attach a separate Form 8606.

IRA Worksheet 1 (Keep for your records). **Caution:** Use this worksheet ONLY if:

(1) you (and your spouse if you file a joint return) were not covered by a retirement plan at work; **OR**

(2) you (or your spouse if you file a joint return) were covered by a retirement plan at work and the amount on Form 1040A, line 10, is:

- $25,000 or less, and your filing status is single or head of household; or
- $40,000 or less, and your filing status is married filing a joint return.

		(a) Your IRA	(b) Your working spouse's IRA
1.	Enter IRA contributions you made for 1987, but **do not** enter more than $2,000. 1.		1.
2.	Enter your wages, salaries, and tips. 2.		2.
3.	Enter your IRA deduction. Compare the amounts on lines 1 and 2, and enter the **smaller** of the two amounts on line 3. Enter on Form 1040A, line 11a, the amount from line 3, column (a); and, if applicable, enter on Form 1040A, line 11b, the amount from line 3, column (b). If you are married and made contributions to an IRA for your nonworking spouse, go on to line 4. 3.		3.

Complete lines 4 through 8 only if contributions were made to an IRA for your nonworking spouse (as defined on page 17) and you file a joint return.

4.	Enter the **smaller** of $2,250 or the amount from line 2. 4.	
5.	Enter the amount from line 3. 5.	
6.	Subtract amount on line 5 from amount on line 4. 6.	
7.	Enter IRA contributions made for 1987 for your nonworking spouse, but **not more than** $2,000. 7.	
8.	Enter nonworking spouse's IRA deduction. Compare the amounts on lines 2, 6, and 7, and enter the **smallest** of the three amounts on line 8. Also enter this amount on Form 1040A, line 11b. 8.	

—IRA Deduction Instructions—

Lines 11a and 11b. Deduction for contributions to an IRA (continued)

IRA Worksheet 2 (keep for your records)

Caution: Use this worksheet ONLY if you (or your working spouse if you file a joint return) were covered by a retirement plan at work and the amount on Form 1040A, line 10, is:

Over—	But not over—	And your filing status is—
$25,000	$35,000	Single or head of household
$40,000	$50,000	Married filing a joint return
$-0-	$10,000	Married filing a separate return

1.	Enter: $35,000 if your filing status is single or head of household; $50,000 if your filing status is married filing a joint return; $10,000 if your filing status is married filing a separate return.	1.	
2.	Enter the amount from Form 1040A, line 10. (If this amount is equal to or larger than the amount on line 1, none of your IRA contributions are deductible. Stop here; see Form 8606.)	2.	
3.	Subtract the amount on line 2 from the amount on line 1. Enter the result. If the result is $10,000 or more, stop here; complete Worksheet 1.	3.	
4.	Multiply the amount on line 3 by 20% (.20). Enter the result. If it is not a multiple of $10, round it up to the next multiple of $10 (for example, round $490.30 to $500). However, if the result is less than $200, enter $200 on line 4. Go to line 5.	4.	

	Deductible IRA contributions		(a) Your IRA	(b) Your working spouse's IRA
5.	Enter your wages, salaries, and tips.	5.		5.
6.	Enter IRA contributions you made for 1987, but **do not** enter more than $2,000.	6.		6.
7.	Enter your IRA deduction. Compare the amounts on lines 4, 5, and 6, and enter the **smallest** of the three amounts on line 7. Enter on Form 1040A, line 11a, the amount from line 7, column (a); and, if applicable, enter on Form 1040A, line 11b, the amount from line 7, column (b). (If the amount on line 6 is more than the amount on line 7 and you want to make a nondeductible IRA contribution, go on to line 8.)	7.		7.
	Nondeductible IRA contributions			
8.	Subtract the amount on line 7 from the amount on line 5 or line 6, whichever is **smaller,** and enter the result. Enter the amount from line 8, column (a), on your Form 8606, line 3; and, if applicable, enter the amount from line 8, column (b), on your spouse's Form 8606. (This amount cannot be more than $2,000 for each.)	8.		8.

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—IRA Deduction Instructions—

IRA Worksheet 2 (continued)

If contributions were made to an IRA for your nonworking spouse (as defined on page 17) and you file a joint return, complete lines 9 through 17.

Deductible IRA contributions for nonworking spouse

9.	Enter the **smaller** of $2,250 or the amount from line 5.	9.	
10.	Add the amounts on lines 7 and 8, column (a), and enter the result.	10.	
11.	Subtract the amount on line 10 from the amount on line 9. Enter the result. If zero or less, stop here; you cannot make deductible or nondeductible IRA contributions for your nonworking spouse.	11.	
12.	Enter the **smallest** of: (a) IRA contributions you made for 1987 that are for your nonworking spouse; (b) $2,000; or (c) the amount on line 11.		12.
13.	Multiply the amount on line 8 by 22.5% (.225). Enter the result. If it is not a multiple of $10, round it up to the next multiple of $10. However, if the result is less than $200, enter $200 on line 13.	13.	
14.	Enter the amount from line 7, column (a).	14.	
15.	Subtract the amount on line 14 from the amount on line 13. Enter the result, but **not more** than the amount on line 12.	15.	
16.	Nonworking spouse's IRA deduction. Compare the amounts on lines 12, 13, and 15, and enter the **smallest** of the three amounts on line 16. Also enter this amount on Form 1040A, line 11b. (If you want to make a nondeductible IRA contribution for your nonworking spouse, go on to line 17.)		16.

Nondeductible IRA contributions for nonworking spouse

17.	Subtract the amount on line 16 from the amount on line 12 and enter the result. Enter the amount from line 17 on line 3 of the Form 8606 for your nonworking spouse.	17.

Form **8606**

Department of the Treasury
Internal Revenue Service

Nondeductible IRA Contributions, IRA Basis, and Nontaxable IRA Distributions

► Attach to Form 1040, Form 1040A, or Form 1040NR.

OMB No. 1545-XXXX

1987

Attachment Sequence No. **86**

Name

Your social security number

Present home address (number and street) (or P.O. Box number if mail is not delivered to street address)

City, town or post office, state, and ZIP code

			Value on 12/31/87
1	Enter name of trustee and value of all your IRAs— Name of trustee		
a		1a	
b		1b	
c		1c	
2	Total value of all IRAs. Add lines 1a through 1c	2	
3	Enter your designated nondeductible contributions for 1987 (see instructions)	3	
4	Enter designated nondeductible contributions for 1987 made in 1988 by April 15, 1988	4	
5	Subtract the amount on line 4 from the amount on line 3. Enter the result (but not less than zero)	5	
6	Adjustments (see instructions)	6	
7	Combine lines 5 and 6 and enter the result. If you did not receive any IRA distributions in 1987, skip lines 8 through 12 and enter the amount from line 7 on line 13	7	
8	Enter the value of all your IRAs as of 12/31/87 (from line 2). Include any outstanding rollovers	8	
9	Enter total IRA distributions received during 1987. Do not include amounts rolled over before 1/1/88	9	
10	Add amounts on lines 8 and 9 and enter the total	10	
11	Divide the amount on line 7 by the amount on line 10 and enter the result	11	× .
12	Multiply the amount on line 9 by the percentage on line 11. Enter the result. This is the amount of your nontaxable distributions for 1987 ►	12	
13	Subtract the amount on line 12 from the amount on line 7. Enter the result. This is your basis in your IRA(s) as of 1/1/88 ►	13	

Please Sign Here

Under penalties of perjury, I declare that I have examined this form, and to the best of my knowledge and belief, it is true, correct, and complete.

► Your signature ► Date

For Paperwork Reduction Act Notice, see instructions.

Form **8606** (1987)

General Instructions

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

Purpose of Form.—Form 8606 is used to report your nondeductible IRA contributions and to figure the basis (nontaxable part) of your IRA. If you have a basis in your IRA, this form is also used to determine how much of any distributions from your IRA is taxed and how much is not taxed because it is a return of your basis.

Who Must File.—You must file Form 8606 for 1987 if you make nondeductible contributions to your IRA(s). If you and your spouse each choose to make nondeductible IRA contributions, you each must file a Form 8606.

Report your deductible contributions on Form 1040, Form 1040A, or Form 1040NR and not on Form 8606.

When and Where To File.—Attach Form 8606 to your 1987 Form 1040, Form 1040A, or Form 1040NR.

If you do not have to file an income tax return because you do not meet the requirements for filing a return, you still have to file a Form 8606 with the Internal Revenue Service at the time and place you would normally be required to file Form 1040, Form 1040A, or Form 1040NR.

Name and Social Security Number.—Enter your name and social security number on Form 8606. Your address and signature are required only if you are not filing Form 8606 with your income tax return (Form 1040, Form 1040A, or Form1040NR).

Note: *If you file a joint return on Form 1040 or Form 1040A and attach Form(s) 8606, show the name and social security number of the spouse whose IRA information is shown.*

Recordkeeping Requirements.—To be able to verify the nontaxable part of distributions from your IRA, keep a copy of this form together with copies of the following forms and records until all distributions are made from your IRA(s):

- Forms 1040 (or Forms 1040A or Forms 1040NR) filed for each year you made a nondeductible contribution;
- Forms 5498 received each year showing contributions you made;
- Forms 5498 or similar statements you received showing the value of your IRA(s) for each year you received a distribution; and
- Forms 1099R and W-2P received for each year you received a distribution.

Additional Information.—For more information on nondeductible contributions, get **Publication 590**, Individual Retirement Arrangements (IRAs).

Specific Instructions

We have provided instructions for many of the lines on the form except those that are self-explanatory.

Line 1

Separately list all of your IRAs and their values at the end of the year, regardless of whether you make deductible or nondeductible contributions to them. For married couples, each spouse must list his or her own IRA(s) on a separate Form 8606.

You should receive a statement by February 1, 1988, for each IRA account showing the value on December 31, 1987.

Line 3

Covered by a Retirement Plan at Work.—If you were covered by a retirement plan at work and used Worksheet 2 in the Instructions for Form 1040, Form 1040A, or Form 1040NR, you should enter on line 3 of Form 8606 any nondeductible contributions shown on line 8 of Worksheet 2. If you made any nondeductible contributions to an IRA for your nonworking spouse, you should complete a separate Form 8606 for your spouse and enter on line 3 of your spouse's Form 8606 the amount from line 17 of Worksheet 2.

If you were covered by a retirement plan at work but you used Worksheet 1 because your income was $25,000 or less ($40,000 or less if you are married filing a joint return), follow the instructions below under "Not Covered by a Retirement Plan at Work."

You may also choose to designate any part of deductible contributions as nondeductible. To do this, enter on line 3 of Form 8606 the total of the contributions shown on line 8 of Worksheet 2 (or line 17 if applicable) plus the amount of any deductible contributions shown on line 7 (or line 16 if applicable) of Worksheet 2 that you are designating as nondeductible.

Note: *You cannot take a deduction for any part of the deductible contributions you are designating as nondeductible.*

If none of your contributions are deductible, you may still designate as a nondeductible contribution up to a maximum of $2,000 of your contributions (but not more than your earned income). Enter the amount of your contributions that you are designating as nondeductible on line 3 of Form 8606.

If contributions were also made to an IRA for your nonworking spouse and none of the contributions are deductible, you may still designate as nondeductible contributions up to a maximum of $2,250 (but not more than your earned income). Enter on line 3 of your Form 8606 the total that you are designating to your IRA. Enter the balance on line 3 of your nonworking spouse's Form 8606. You cannot designate more than $2,000 to either your or your spouse's IRA. Also, the total of the two amounts cannot be more than $2,250 and not more than your earned income.

Not Covered by a Retirement Plan at Work.—If you were not covered by a retirement plan at work or were covered, but had income of $25,000 or less ($40,000 or less if married filing a joint return), complete Worksheet 1 in the Instructions for Form 1040, Form 1040A, or Form 1040NR. The amount shown on line 3 of the worksheet is the amount of your contributions that you may deduct. However, you may designate all or part of that amount as nondeductible. Enter on line 3 of your Form 8606 the difference between the amount you are deducting and the amount shown on line 3 of Worksheet 1.

If contributions were made to an IRA for your nonworking spouse, the amount shown on line 8 of Worksheet 1 is the amount of the allowable deduction for your nonworking spouse's IRA. However, you can designate all or part of that amount as nondeductible. Enter on line 3 of your nonworking spouse's Form 8606 the difference between the amount that is deducted for your nonworking spouse and the amount on line 8 of Worksheet 1.

Line 4

Enter your nondeductible contributions for 1987 shown on line 3 that were made in 1988 by April 15, 1988. (This amount will be figured in your basis for 1988.)

Line 6

Use this line if you wish to change a nondeductible contribution made on a prior-year's return to a deductible contribution, or vice versa. For example, if you were eligible to deduct your IRA contributions for 1987 but you chose to designate them as nondeductible when you filed your 1987 tax return, you can at a later date change the designation to a deductible contribution by filing an amended tax return on **Form 1040X**, Amended U.S. Individual Income Tax Return, and show the change in designation on line 6 of Form 8606.

Note: *Since contributions must be made by April 15 of the year following the year for which the contributions are made, no additional contributions may be made after that date.*

Line 8

Enter on line 8 the total value of all your IRAs as of December 31, 1987, from line 2. Include on line 8 any outstanding rollovers. A **rollover** is a tax-free distribution from one IRA which is then contributed to another IRA. The rollover contribution must be made within 60 days of receiving the distribution from the first IRA. An **outstanding rollover** is any amount distributed to you from one IRA within 60 days of the end of 1987 (between November 2 and December 31) that you did not roll over to another IRA by December 31, 1987, but that you roll over to another IRA in 1988 within the normal 60-day rollover period.

Line 9

Do not include on line 9 any distributions received in 1987 that you rolled over to another IRA by December 31, 1987.

Version C

Department of the Treasury - Internal Revenue Service

Form **1040EZ**

Income Tax Return for Single filers with no dependents **1987**

OMB No. 1545-0675

Name & address

Use the IRS mailing label. If you don't have one, please print.

▶ Print your name above (first, initial, last)

PLACE LABEL HERE

Present home address (number and street). (If you have a P.O. box, see instructions.)

City, town, or post office, state, and ZIP code

Please print your numbers like this: 1 2 3 4 5 6 7 8 9 0

Your social security number

Please read the instructions for this form on the reverse side.

Presidential Election Campaign Fund

Do you want $1 to go to this fund? Note: Checking "Yes" will not change your tax or reduce your refund. ▶ Yes ☐ No ☐

		Dollars	Cents
Report your income			
	1 Total wages, salaries, and tips. This should be shown in Box 10 of your W-2 form(s). (Attach your W-2 form(s).) 1		
	2 Taxable interest income of $400 or less. If the total is more than $400, you cannot use Form 1040EZ. 2		
Attach Copy B of Form(s) W-2 here	3 Add line 1 and line 2. This is your **adjusted gross income.** 3		
	4 Can you be claimed as a dependent on another person's return? ☐ Yes. Do worksheet on back; enter amount from line E here. ☐ No. Enter 2,540 as your standard deduction. 4		
	5 Subtract line 4 from line 3. 5		
	6 If you checked the "Yes" box on line 4, enter 0. If you checked the "No" box on line 4, enter 1,900. This is your **personal exemption.** 6		
	7 Subtract line 6 from line 5. If line 6 is larger than line 5, enter 0 on line 7. This is your **taxable income.** 7		
Figure your tax	8 Enter your Federal income tax withheld. This should be shown in Box 9 of your W-2 form(s). 8		
	9 Use the **single** column in the tax table on pages 31-36 of the Form 1040A instruction booklet to find the **tax** on the amount shown on **line 7** above. Enter the amount of tax. 9		
Refund or amount you owe	10 If line 8 is larger than line 9, subtract line 9 from line 8. Enter the **amount of your refund.** 10		
Attach tax payment here	11 If line 9 is larger than line 8, subtract line 8 from line 9. Enter the **amount you owe.** Attach check or money order for the full amount, payable to "Internal Revenue Service." 11		

Sign your return

I have read this return. Under penalties of perjury, I declare that to the best of my knowledge and belief, the return is true, correct, and complete.

Your signature Date

For IRS Use Only—Please do not write in boxes below.

Version C

1987 **Instructions for Form 1040EZ**

Use this form if:

- Your filing status is single.
- You do not claim any dependents.
- You are not 65 or over, OR blind.
- Your taxable income is less than $50,000.
- You had **only** wages, salaries, and tips, and your taxable interest income was $400 or less. **Caution:** If you received tips (including allocated tips) that are not included in Box 14 of your W-2 form, you may not be able to use Form 1040EZ. See page 15 in the **Instructions for preparing 1040EZ and 1040A.**

If you can't use this form, you must use Form 1040A or Form 1040. See pages 4 through 6 in the instruction booklet. If you are uncertain about your filing status, see page 7 of the booklet.

Completing your return

It will make it easier for us to process your return if you print your numbers (do not type) and keep them inside the boxes. Do not use dollar signs. You may find calculations easier if you round off cents to whole dollars. See page 13 of the instruction booklet for details.

Name & address

Use the mailing label we sent you. After you complete your return, carefully place the label in the name and address area. Mark through any errors on the label and print the correct information on the label. Use of the label saves processing time. If you don't have a label, print the information on the name and address lines. If your post office does not deliver mail to your street address and you have a P.O. box, enter your P.O. box number on the line for your present home address instead of your street address.

Presidential campaign fund

Congress set up this fund to help pay for Presidential election campaigns. You may have one of your tax dollars go to this fund by checking the "Yes" box. Checking the "Yes" box does not change the tax or refund shown on your return.

Report your income

Line 1. Enter on line 1 the total amount you received in wages, salaries, and tips. This should be shown in Box 10 of your 1987 wage statement(s), **Form W-2.** If you don't receive your W-2 form by February 15, contact your local IRS office. You must still report your earnings even if you don't get a Form W-2 from your employer. Attach the first copy or Copy B of your W-2 form(s) to your return.

Line 2. Enter on line 2 the total taxable interest income you received from all sources, such as banks, savings and loans, and credit unions. You should receive a **Form 1099-INT** from each institution that paid you interest. You cannot use Form 1040EZ if your total taxable interest income is over $400. If you received tax-exempt interest, in the space to the left of line 2, write "TEI" and show the amount of your tax-exempt interest. DO NOT include tax-exempt interest in the total entered in the boxes on line 2.

Line 4. If you checked the "Yes" box because you can be claimed as a dependent on another person's return (such as your parents'), complete the following worksheet to figure the amount to enter on line 4. For information on dependents, see page 11 of the instruction booklet.

Standard deduction worksheet

A.	Enter the amount from line 1 on front.	**A.** _____
B.	Minimum amount.	**B.** 500.00
C.	**Compare** the amounts on lines A and B above. Enter the LARGER of the two amounts here.	**C.** _____
D.	Maximum amount.	**D.** 2,540.00
E.	**Compare** the amounts on lines C and D above. Enter the SMALLER of the two amounts here and on line 4 on front.	**E.**

Line 6. Generally, you should enter 1,900 on line 6 as your personal exemption. However, if you can be claimed as a dependent on another person's return (such as your parents'), you cannot claim a personal exemption for yourself; enter 0 on line 6. If you are entitled to additional exemptions for your spouse, for your dependent children, or for other dependents, you cannot use Form 1040EZ.

Figure your tax

Line 8. Enter the amount of Federal income tax withheld. This should be shown in Box 9 of your 1987 W-2 form(s). If you had two or more employers and had total wages of over $43,800, see page 25 of the instruction booklet. If you want IRS to figure your tax for you, complete lines 1 through 8, sign and date your return. If you want to figure your own tax, continue with these instructions.

Line 9. Use the amount on line 7 to find your tax in the tax table on pages 31–36 of the instruction booklet. Be sure to use the column in the tax table for **single** taxpayers. Enter the amount of tax on line 9. If your tax from the tax table is zero, enter 0.

Refund or amount you owe

Line 10. If line 8 is larger than line 9, you are entitled to a refund. Subtract line 9 from line 8, and enter the result on line 10.

Line 11. If line 9 is larger than line 8, you owe more tax. Subtract line 8 from line 9, and enter the result on line 11. Attach your check or money order for the full amount. Write your social security number, daytime phone number, and "1987 Form 1040EZ" on your payment.

Sign your return

You must sign and date your return. If you pay someone to prepare your return, that person must also sign it below the space for your signature and supply the other information required by IRS. See page 28.

Mailing your return

File your return by **April 15, 1988.** Mail it to us in the addressed envelope that came with the instruction booklet. If you don't have an addressed envelope, see page 30 for the address.

VERSION C

Form **1040A**

Department of the Treasury—Internal Revenue Service

U.S. Individual Income Tax Return 1987

OMB No. 1545-0085

Step 1 Label

Use IRS label. Otherwise, please print or type.

Your first name and initial (if joint return, also give spouse's name and initial) Last name

Present home address (number and street). (If you have a P.O. Box, see page 9 of the instructions.)

PLACE LABEL HERE

City, town or post office, state, and ZIP code

Your social security no.

Spouse's social security no.

For **Privacy Act and Paperwork Reduction Act Notice**, see page 31.

Presidential Election Campaign Fund

Do you want $1 to go to this fund? ☐ Yes ☐ No

If joint return, does your spouse want $1 to go to this fund? ☐ Yes ☐ No

Note: *Checking "Yes" will not change your tax or reduce your refund.*

Step 2 Check your filing status (Check only one)

1 ☐ Single (See if you can use Form 1040EZ)

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return. Enter spouse's social security number above and spouse's full name here. _____

4 ☐ Head of household (with qualifying person). If the qualifying person is your child but not your dependent, enter this child's name here. _____

Step 3 Figure your exemptions (See page 12 of instructions.)

5a ☐ **Yourself** b ☐ **Spouse**

Caution: If you can be claimed as a dependent on another person's tax return (such as your parents'), do not check box 5a. But be sure to check the box on line 14b.

c Dependents: 1. Name (first, initial, and last name)	2. Check if under age 5	3. If age 5 or over, dependent's social security number	4. Relationship	5. No. of months lived in your home

If more than 7 dependents, attach statement.

No. of boxes checked on 5a and 5b _____

No. of children on 5c who lived with you _____

No. of children on 5c who didn't live with you due to divorce or separation _____

No. of parents listed on 5c _____

No. of other dependents listed on 5c _____

Attach Copy B of Form(s) W-2 here.

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ ☐

Add numbers entered on lines above ☐

e Total number of exemptions claimed. (Also complete line 16.)

Step 4 Figure your total income

6 Wages, salaries, tips, etc. This should be shown in Box 10 of your W-2 form(s). (Attach Form(s) W-2.) 6

7a **Taxable** interest income (see page 17). (If over $400, also complete and attach Schedule 1, Part II.) 7a

Attach check or money order here.

b **Tax-exempt** interest income (see page 17). (DO NOT include on line 7a.) 7b

8 Dividends. (If over $400, also complete and attach Schedule 1, Part III.) 8

9 Unemployment compensation (insurance) from Form(s) 1099-G. 9

10 Add lines 6, 7a, 8, and 9. Enter the total. This is your **total income**. ▶ 10

Step 5 Figure your adjusted gross income

11a Your IRA deduction, from Worksheet 1 or 2 (whichever applies) on page 20. 11a

b Spouse's IRA deduction, from Worksheet 1 or 2 (whichever applies) on page 20. 11b

c Add lines 11a and 11b. Enter the total. These are your **total adjustments.** 11c

12 Subtract line 11c from line 10. Enter the result. This is your **adjusted gross income.** (If this line is less than $15,432 and a child lived with you, see "Earned Income Credit" (line 21b) on page 27 of instructions.) ▶ 12

VERSION C

1987 **Form 1040A** Page 2

Step 6
Figure your taxable income

13 Enter the amount from line 12. 13

14a Check if: ☐ **You** were 65 or over ☐ Blind ☐ **Spouse** was 65 or over ☐ Blind — Enter number of boxes checked ▶ 14a

b If you can be claimed as a dependent on another person's return, check here . . . ▶ 14b ☐

c If you are married filing separately and your spouse files Form 1040 and itemizes deductions, check here . . . ▶ 14c ☐

d **Standard deduction.** Enter the amount shown below for your filing status. **Caution:** If you completed line 14a, b, or c, see page 22 of the instructions for the amount to enter on line 14d.

Filing status from page 1:
- Single or Head of household, enter $2,540
- Married filing joint return, enter $3,760
- Married filing separate return, enter $1,880

14d

15 Subtract line 14d from line 13. Enter the result. 15

16 Multiply $1,900 by the total number of exemptions claimed on line 5e or see the chart on page 22 of the instructions. 16

17 Subtract line 16 from line 15. Enter the result. This is your **taxable income.** ▶ 17

Step 7
Figure your tax, credits, and payments (including advance EIC payments)

If You Want IRS To Figure Your Tax, See Page 22 of the Instructions.

Caution: If you are under age 14 and have more than $1,000 of investment income, see page 23 of the instructions and check here . . . ▶ ☐

18 Find the tax on the amount on line 17. Check if from: ☐ Tax Table (pages 32–37); or ☐ Form 8615, Computation of Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000. 18

19 Credit for child and dependent care expenses. Complete and attach Schedule 1, Part I. 19

20 Subtract line 19 from line 18. Enter the result. (If line 19 is more than line 18, enter -0- on line 20.) This is your **total tax.** ▶ 20

21a Total Federal income tax withheld. This should be shown in Box 9 of your W-2 form(s). (If line 6 is more than $43,800, see page 26.) 21a

b Earned income credit. From the worksheet on page 28 of the instructions. Also see page 27. 21b

22 Add lines 21a and 21b. Enter the total. These are your **total payments.** ▶ 22

Step 8
Figure your refund or amount you owe

23 If line 22 is larger than line 20, subtract line 20 from line 22. Enter the result. This is the **amount of your refund.** 23

24 If line 20 is larger than line 22, subtract line 22 from line 20. Enter the result. This is the **amount you owe.** Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number, daytime phone number, and "1987 Form 1040A" on it. 24

Step 9
Sign your return

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge.

Your signature — Date — Your occupation

X

Spouse's signature (if joint return, both must sign) — Date — Spouse's occupation

X

Paid preparer's use only

Preparer's signature — Date — Preparer's social security no.

X

Firm's name (or yours if self-employed) — Employer identification no.

Address and ZIP code — Check if self-employed ☐

VERSION C

1987 **Schedule 1 (Form 1040A)** OMB No. 1545-0085

Name(s) as shown on Form 1040A | Your social security number

You MUST complete and attach Schedule 1 to Form 1040A only if you:

- Claim the credit for child and dependent care expenses (complete **Part I**)
- Have over $400 of taxable interest income (complete **Part II**)
- Have over $400 of dividend income (complete **Part III**)

Part I **Credit for child and dependent care expenses** (see page 24 of the instructions)

Complete this part to figure the amount of credit you can take on Form 1040A, line 19. Attach Schedule 1 to Form 1040A.

Note: *If you paid cash wages of $50 or more in a calendar quarter to an individual for services performed in your home, you must file an employment tax return. Get* ***Form 942*** *for details.*

1 Enter the number of qualifying persons who were cared for in 1987. (See the instructions for the definition of a qualifying person.) 1

2 Enter the amount of **qualified** expenses you incurred and actually paid in 1987 for the care of the qualifying person. (See the instructions for which expenses qualify for the credit.) DO NOT enter more than $2,400 ($4,800 if you paid for the care of two or more qualifying persons). 2

3 a You **must** enter your earned income on line 3a. 3a

b If you are married, filing a joint return for 1987, you must enter your spouse's earned income on line 3b. (If spouse is a full-time student or is disabled, see the instructions for amount to enter on this line.) 3b

c If you are married, compare the amounts on lines 3a and 3b, and enter the **smaller** of the two amounts on line 3c. 3c

4 • If you were unmarried at the end of 1987, compare the amounts on lines 2 and 3a, and enter the **smaller** of the two amounts on line 4.
• If you are married, filing a joint return for 1987, compare the amounts on lines 2 and 3c, and enter the **smaller** of the two amounts on line 4. 4

5 Enter the percentage from the table below that applies to the amount on Form 1040A, line 13.

If line 13 is: Over—	But not over—	Percentage is:	If line 13 is: Over—	But not over—	Percentage is:
$0	10,000	30% (.30)	$20,000	22,000	24% (.24)
10,000	12,000	29% (.29)	22,000	24,000	23% (.23)
12,000	14,000	28% (.28)	24,000	26,000	22% (.22)
14,000	16,000	27% (.27)	26,000	28,000	21% (.21)
16,000	18,000	26% (.26)	28,000		20% (.20)
18,000	20,000	25% (.25)			

5 × .

6 Multiply the amount on line 4 by the percentage on line 5. Enter the result here and on Form 1040A, line 19. 6 =

VERSION C

1987 **Schedule 1 (Form 1040A)** OMB No. 1545-0085

Name(s) as shown on Form 1040A. (Do not complete if shown on other side.) Your social security number

Part II **Interest Income** (see page 17 of the instructions)

Complete this part and attach Schedule 1 to Form 1040A if you received over $400 in taxable interest income.

Note: *If you received a Form 1099-INT or Form 1099-OID from a brokerage firm, enter the firm's name and the total interest shown on that form.*

1 List name of payer	Amount
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$

2 Add amounts on line 1. Enter the total here and on Form 1040A, line 7a. 2

Part III **Dividend Income** (see page 18 of the instructions)

Complete this part and attach Schedule 1 to Form 1040A if you received over $400 in dividends.

Note: *If you received a Form 1099-DIV from a brokerage firm, enter the firm's name and the total dividends shown on that form.*

1 List name of payer	Amount
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$

2 Add amounts on line 1. Enter the total here and on Form 1040A, line 8. 2

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **1987**

For the year Jan.–Dec. 31, 1987, or other tax year beginning , 1987, ending 19 OMB No. 1545-0074

Label

Use IRS label. Otherwise, please print or type.

Your first name and initial (if joint return, also give spouse's name and initial) Last name

Present home address (number and street or rural route). (If you have a P.O. Box, see page 5 of Instructions.)

PLACE LABEL HERE

City, town or post office, state, and ZIP code

Your social security number

Spouse's social security number

For Privacy Act and Paperwork Reduction Act Notice, see Instructions.

Presidential Election Campaign Do you want $1 to go to this fund? Yes No

If joint return, does your spouse want $1 to go to this fund? Yes No

Note: *Checking "Yes" will not change your tax or reduce your refund.*

Filing Status

Check only one box.

1 ☐ Single

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here.

4 ☐ Head of household (with qualifying person). (See page 6 of Instructions.) If the qualifying person is your child but not your dependent, enter child's name here.

5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See page 7 of Instructions.)

Exemptions

(See Instructions on page 7.)

6a ☐ Yourself b ☐ Spouse

Caution: If you can be claimed as a dependent on another person's tax return (such as your parents' return), do not check box 6a. But be sure to check the box on line 32b.

c Dependents

(1) Name (first, initial, and last name)	(2) Check if under age 5	(3) If age 5 or over, dependent's social security number	(4) Relationship	(5) No. of months lived in your home

If more than 7 dependents, attach statement.

No. of boxes checked on 6a and 6b ▶

No. of children on 6c who lived with you ▶

No. of children on 6c who didn't live with you due to divorce or separation ▶

No. of parents listed on 6c ▶

No. of other dependents listed on 6c ▶

Add numbers entered in boxes above ▶

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ ☐

e Total number of exemptions claimed (also complete line 35)

Income

Please attach Copy B of your Forms W-2, W-2G, and W-2P here.

If you do not have a W-2, see page 5 of Instructions.

7	Wages, salaries, tips, etc. *(attach Form(s) W-2)*		7
8	**Taxable** interest income *(also attach Schedule B if over $400)*		8
9	**Tax-exempt** interest income (see page 9). DO NOT include on line 8	9	
10	Dividend income *(also attach Schedule B if over $400)*		10
11	Taxable refunds of state and local income taxes, if any, from worksheet on page 10 of Instructions		11
12	Alimony received		12
13	Business income or (loss) *(attach Schedule C)*		13
14	Capital gain or (loss) *(attach Schedule D)*		14
15	Other gains or (losses) *(attach Form 4797)*		15
16a	Pensions, IRA distributions, annuities, and rollovers. Total received	16a	
b	Taxable amount, if any (see page 10)		16b
17	Rents, royalties, partnerships, estates, trusts, etc. *(attach Schedule E)*		17
18	Farm income or (loss) *(attach Schedule F)*		18
19	Unemployment compensation (insurance) (see page 11)		19
20a	Social security benefits (see page 11)	20a	
b	Taxable amount, if any, from the worksheet on page 12		20b
21	Other income (list type and amount—see page 11)		21
22	Add the amounts shown in the far right column for lines 7, 8, and 10–21. This is your **total income** ▶		22

Please attach check or money order here.

Adjustments to Income

(See Instructions on page 12.)

23	Reimbursed employee business expenses from Form 2106	23	
24a	Your IRA deduction, from applicable worksheet on page 13	24a	
b	Spouse's IRA deduction, from applicable worksheet on page 13	24b	
25	Self-employed health insurance deduction, from worksheet on page 14	25	
26	Keogh retirement plan and self-employed SEP deduction	26	
27	Penalty on early withdrawal of savings	27	
28	Alimony paid (recipient's last name and social security no.)	28	
29	Add lines 23 through 28. These are your **total adjustments** ▶		29

Adjusted Gross Income

30	Subtract line 29 from line 22. This is your **adjusted gross income.** *If this line is less than $15,432 and a child lived with you, see "Earned Income Credit" (line 56) on page 18 of Instructions. If you want IRS to figure your tax, see page 14 of Instructions* ▶	30

Form 1040 (1987) Page 2

Tax Computation

31	Amount from line 30 (adjusted gross income)		31
32a	Check if: ☐ **You** were 65 or over ☐ Blind; ☐ **Spouse** was 65 or over ☐ Blind. Add the number of boxes checked and enter the total here ▶	32a	
b	If you can be claimed as a dependent on another person's return, check here ▶	32b ☐	
c	If you are married filing a separate return and your spouse itemizes deductions, or you are a dual-status alien, see page 15 and check here ▶	32c ☐	
33a	**Itemized deductions.** See page 15 to see if you should itemize. If you itemize, attach Schedule A, enter the amount from Schedule A, line 26, and skip line 33b		33a
b	**Standard deduction.** Enter amount shown below for your filing status, unless **Caution** to left applies. Filing status from page 1: Single or Head of household, enter $2,540; Married filing jointly or Qualifying widow(er), enter $3,760; Married filing separately, enter $1,880		33b
34	Subtract line 33a or 33b, whichever applies, from line 31. Enter the result here		34
35	Multiply $1,900 by the total number of exemptions claimed on line 6e. See chart on page 16		35
36	**Taxable income.** Subtract line 35 from line 34. Enter the result (but not less than zero)		36
	Caution: If under age 14 and you have more than $1,000 of investment income, check here ▶☐ and see page 16 to see if you have to use Form 8615 to figure your tax.		
37	Enter tax. Check if from ☐ Tax Table, ☐ Tax Rate Schedules, ☐ Schedule D, or ☐ Form 8615		37
38	Additional taxes (see page 16). Check if from ☐ Form 4970 or ☐ Form 4972		38
39	Add lines 37 and 38. Enter the total ▶		39

Caution: If you completed line 32a, b, or c **and** you don't itemize, see page 15 for the amount to enter on line 33b.

Credits (See Instructions on page 16.)

40	Credit for child and dependent care expenses *(attach Form 2441)*	40		
41	Credit for the elderly or for the permanently and totally disabled *(attach Schedule R)*	41		
42	Add lines 40 and 41. Enter the total			42
43	Subtract line 42 from line 39. Enter the result (but not less than zero)			43
44	Foreign tax credit *(attach Form 1116)*	44		
45	General business credit. Check if from ☐ Form 3800, ☐ Form 3468, ☐ Form 5884, ☐ Form 6478, ☐ Form 6765, or ☐ Form 8586	45		
46	Add lines 44 and 45. Enter the total			46
47	Subtract line 46 from line 43. Enter the result (but not less than zero) ▶			47

Other Taxes (Including Advance EIC Payments)

48	Self-employment tax *(attach Schedule SE)*	48
49	Alternative minimum tax *(attach Form 6251)*	49
50	Tax from recapture of investment credit *(attach Form 4255)*	50
51	Social security tax on tip income not reported to employer *(attach Form 4137)*	51
52	Tax on an IRA or a qualified retirement plan *(attach Form 5329)*	52
53	Add lines 47 through 52. This is your **total tax** ▶	53

Payments Attach Forms W-2, W-2G, and W-2P to front.

54	Federal income tax withheld	54		
55	1987 estimated tax payments and amount applied from 1986 return	55		
56	Earned income credit (see page 18)	56		
57	Amount paid with Form 4868 (extension request)	57		
58	Excess social security tax and RRTA tax withheld (see page 18)	58		
59	Credit for Federal tax on gasoline and special fuels *(attach Form 4136)*	59		
60	Regulated investment company credit *(attach Form 2439)*	60		
61	Add lines 54 through 60. These are your **total payments** ▶			61

Refund or Amount You Owe

62	If line 61 is larger than line 53, enter amount **OVERPAID** ▶		62
63	Amount of line 62 to be **REFUNDED TO YOU** ▶		63
64	Amount of line 62 to be applied to your 1988 estimated tax ▶	64	
65	If line 53 is larger than line 61, enter **AMOUNT YOU OWE.** Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number, daytime phone number, and "1987 Form 1040" on it		65
	Check ▶ ☐ if Form 2210 (2210F) is attached. See page 19. **Penalty:** $		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Your signature	Date	Your occupation
▶ Spouse's signature (if joint return, BOTH must sign)	Date	Spouse's occupation

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ☐	Preparer's social security no.
Firm's name (or yours if self-employed) and address ▶		E.I. No.	
		ZIP code	

SCHEDULES A&B (Form 1040)
Department of the Treasury
Internal Revenue Service

Schedule A—Itemized Deductions

(Schedule B is on back)

▶ Attach to Form 1040. ▶ See Instructions for Schedules A and B (Form 1040).

OMB No. 1545-0074
1987
Attachment Sequence No. 07

Name(s) as shown on Form 1040 | Your social security number

Medical and Dental Expenses (Do not include expenses reimbursed or paid by others.) (See Instructions on page 21.)	1a	Prescription medicines and drugs, insulin, doctors, dentists, nurses, hospitals, insurance premiums you paid for medical and dental care, etc.	1a	
	b	Transportation and lodging	1b	
	c	Other (list—include hearing aids, dentures, eyeglasses, etc.) ▶	1c	
	2	Add lines 1a through 1c, and enter the total here	2	
	3	Multiply the amount on Form 1040, line 31, by 7.5% (.075)	3	
	4	Subtract line 3 from line 2. If zero or less, enter -0-. **Total** medical and dental ▶		4
Taxes You Paid (See Instructions on page 21.)		**Note:** Sales taxes are no longer deductible.		
	5	State and local income taxes	5	
	6	Real estate taxes	6	
	7	Other taxes (list—include personal property taxes) ▶	7	
	8	Add the amounts on lines 5 through 7. Enter the total here. **Total** taxes ▶		8
Interest You Paid (See Instructions on page 22.)		**Caution:** If your home mortgage interest includes interest on a loan taken out **after** August 16, 1986, and if the loan proceeds were **not used to buy** your home, attach Form 8598 and check here ▶ ☐		
	9a	Deductible home mortgage interest you paid to financial institutions (report deductible points on line 10)	9a	
	b	Deductible home mortgage interest you paid to individuals (show that person's name and address) ▶	9b	
	10	Deductible points	10	
	11	Deductible investment interest	11	
	12a	Personal interest you paid (see page 22) 12a		
	b	Multiply the amount on line 12a by 65% (.65). Enter the result	12b	
	13	Add the amounts on lines 9a through 11, and 12b. Enter the total here. **Total** interest ▶		13
Contributions You Made (See Instructions on page 22.)	14a	Cash contributions. (If you gave $3,000 or more to any one organization, report those contributions on line 14b.)	14a	
	b	Cash contributions totalling $3,000 or more to any one organization. (Show to whom you gave and how much you gave.) ▶	14b	
	15	Other than cash. (You must attach Form 8283 if over $500.)	15	
	16	Carryover from prior year	16	
	17	Add the amounts on lines 14a through 16. Enter the total here. **Total** contributions ▶		17
Casualty and Theft Losses	18	Casualty or theft loss(es) (attach Form 4684). (See page 23 of the Instructions.) ▶		18
Moving Expenses	19	Moving expenses (attach Form 3903 or 3903F). (See page 23 of the Instructions.) ▶		19
Miscellaneous Deductions Subject to 2% AGI Limit (See Instructions on page 23.)	20	Unreimbursed employee business expenses (attach Form 2106)	20	
	21	Other expenses (list type and amount) ▶	21	
	22	Add the amounts on lines 20 and 21. Enter the total	22	
	23	Multiply the amount on Form 1040, line 31, by 2% (.02). Enter the result here	23	
	24	Subtract line 23 from line 22. Enter the result (but not less than zero) ▶		24
Other Miscellaneous Deductions	25	Miscellaneous deductions not subject to 2% AGI limit (see page 23). (List type and amount.) ▶ ▶		25
Total Itemized Deductions	26	Add the amounts on lines 4, 8, 13, 17, 18, 19, 24, and 25. Enter the total here and on Form 1040, line 33a ▶		26

Schedules A&B (Form 1040) 1987 OMB No. 1545-0074 Page 2

Name(s) as shown on Form 1040. (Do not enter name and social security number if shown on other side.) | Your social security number

Schedule B—Interest and Dividend Income

Attachment Sequence No. 08

Part I Interest Income

(See Instructions on pages 9 and 24.)

Also complete Part III.

Note: If you received a Form 1099–INT or Form 1099–OID from a brokerage firm, enter the firm's name and the total interest shown on that form.

If you received more than $400 in taxable interest income, you must complete Part I and list ALL interest received. If you received, as a nominee, interest that actually belongs to another person, or you received or paid accrued interest on securities transferred between interest payment dates, see page 24.

Interest Income		Amount
1 Interest income from seller-financed mortgages. (See Instructions and list name of payer.) ▶	1	
2 Other interest income (list name of payer) ▶	2	
3 Add the amounts on lines 1 and 2. Enter the total here and on Form 1040, line 8. ▶	3	

Part II Dividend Income

(See Instructions on pages 9 and 24.)

Also complete Part III.

Note: If you received a Form 1099-DIV from a brokerage firm, enter the firm's name and the total dividends shown on that form.

If you received more than $400 in gross dividends and/or other distributions on stock, complete Part II. If you received, as a nominee, dividends that actually belong to another person, see page 24.

Dividend Income		Amount
4 Dividend income (list name of payer. Include on this line capital gain distributions, nontaxable distributions, etc.) ▶	4	
5 Add the amounts on line 4. Enter the total here	5	
6 Capital gain distributions. Enter here and on line 13, Schedule D.*	6	
7 Nontaxable distributions. (See Schedule D Instructions for adjustment to basis.)	7	
8 Add the amounts on lines 6 and 7. Enter the total here	8	
9 Subtract line 8 from line 5. Enter the result here and on Form 1040, line 10 ▶	9	

*If you received capital gain distributions but do not need Schedule D to report any other gains or losses or to figure your tax (see the **Tax Tip** under **Capital gain distributions** on page 10), enter your capital gain distributions on Form 1040, line 14. Write "CGD" on the dotted line to the left of line 14.

Part III Foreign Accounts and Foreign Trusts

(See Instructions on page 24.)

If you received more than $400 of interest or dividends, OR if you had a foreign account or were a grantor of, or a transferor to, a foreign trust, you must answer both questions in Part III.

	Yes	No
10 At any time during the tax year, did you have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See page 24 of the Instructions for exceptions and filing requirements for Form TD F 90-22.1.)		
If "Yes," enter the name of the foreign country ▶		
11 Were you the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not you have any beneficial interest in it? If "Yes," you may have to file Forms 3520, 3520-A, or 926		

SCHEDULE E (Form 1040)

Department of the Treasury
Internal Revenue Service

Supplemental Income Schedule

(From rents, royalties, partnerships, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, Form 1041, or Form 1041S.
▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

1987

Attachment Sequence No. 13

Name(s) as shown on Form 1040

Your social security number

Part I Rental and Royalty Income or (Loss) **Caution:** Your rental loss may be limited. See Instructions.

1 In the space provided below, show the kind and location of each rental property.

2 For each property listed, did you or a member of your family use for personal purposes any of the properties for more than the greater of 14 days or 10% of the total days rented at fair rental value during the tax year?

3 For each rental real estate property listed, did you actively participate in the operation of the activity during the tax year? (See Instructions.)

	2 Yes	2 No	3 Yes	3 No
Property A ▶				
Property B ▶				
Property C ▶				

Rental and Royalty Income		Properties A	Properties B	Properties C	Totals (Add columns A, B, and C)
4 Rents received					4
5 Royalties received					5
Rental and Royalty Expenses					
6 Advertising	6				
7 Auto and travel	7				
8 Cleaning and maintenance	8				
9 Commissions	9				
10 Insurance	10				
11 Legal and other professional fees	11				
12 Mortgage interest paid to financial institutions (see Instructions)	12				12
13 Other interest	13				
14 Repairs	14				
15 Supplies	15				
16 Taxes (Do **not** include windfall profit tax here. See Part V, line 40.)	16				
17 Utilities	17				
18 Wages and salaries	18				
19 Other (list) ▶					
20 Total expenses other than depreciation and depletion. Add lines 6 through 19	20				20
21 Depreciation expense (see Instructions), or depletion (see Publication 535)	21				21
22 Total. Add lines 20 and 21	22				
23 Income or (loss) from rental or royalty properties. Subtract line 22 from line 4 (rents) or 5 (royalties)	23				
24 Deductible rental loss. **Caution:** Your rental loss on line 23 may be limited. See Instructions to determine if you must file **Form 8582**, Passive Activity Loss Limitations	24				
25 **Profits.** Add rental and royalty profits from line 23, and enter the total profits here					25
26 **Losses.** Add royalty losses from line 23 and rental losses from line 24, and enter the total (losses) here					26 ( )
27 Combine amounts on lines 25 and 26, and enter the net profit or (loss) here					27
28 Net farm rental profit or (loss) from Form 4835, line 34. (Also complete Part VI, line 43.)					28
29 Total rental or royalty income or (loss). Combine amounts on lines 27 and 28, and enter the total here. If Parts II, III, IV, and V on page 2 do not apply to you, enter the amount from line 29 on Form 1040, line 17. Otherwise, include the amount from line 29 in line 42 on page 2 of Schedule E					29

Schedule E (Form 1040) 1987 Attachment Sequence No. 13 Page 2

Name(s) as shown on Form 1040. (Do not enter name and social security number if shown on other side.) | Your social security number

Part II Income or (Loss) from Partnerships and S Corporations

If you report a loss below and have amounts invested in that activity for which you are not at risk, you MUST check "Yes" in column (e) and attach Form 6198. Otherwise, you must check "No." See instructions.

	(a) Name	(b) Enter P for partnership; S for S Corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) At-Risk: Yes	(e) At-Risk: No
A						
B						
C						
D						
E						

	Passive Activities		Nonpassive Activities		
	(f) Passive loss allowed from Form 8582	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 deduction	(j) Nonpassive income from Schedule K-1
A					
B					
C					
D					
E					
30a Totals					
b Totals					

31	Add amounts in columns (g) and (j), line 30a. Enter total income here	31	
32	Add amounts in columns (f), (h), and (i), line 30b. Enter total here	32	( )
33	Total partnership and S corporation income or (loss). Combine amounts on lines 31 and 32. Enter the total here and include in line 42 below	33	

Part III Income or (Loss) from Estates and Trusts

	(a) Name	(b) Employer identification number
A		
B		
C		

	Passive Activities		Nonpassive Activities	
	(c) Passive loss allowed from Form 8582	(d) Passive income from Schedule K-1	(e) Other portfolio loss from Schedule K-1	(f) Other portfolio income from Schedule K-1
A				
B				
C				
34a Totals				
b Totals				

35	Add amounts in columns (d) and (f), line 34a. Enter total income here	35	
36	Add amounts in columns (c) and (e), line 34b. Enter total (loss) here	36	( )
37	Total estate and trust income or (loss). Combine amounts on lines 35 and 36. Enter the total here and include in line 42 below	37	

Part IV Income or (Loss) from Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder

(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see Instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

38	Combine columns (d) and (e) only. Enter the total here and include in line 42 below	38	

Part V Windfall Profit Tax Summary

39	Windfall profit tax credit or refund received in 1987 (see Instructions)	39	
40	Windfall profit tax withheld in 1987 (see Instructions)	40	( )
41	Combine amounts on lines 39 and 40. Enter the total here and include in line 42 below	41	

Part VI Summary

42	TOTAL income or (loss). Combine lines 29, 33, 37, 38, and 41. Enter total here and on Form 1040, line 17 ▶	42	
43	Farmers and fishermen: Enter your share of GROSS FARMING AND FISHING INCOME applicable to Parts I, II, and III (see Instructions)	43	

Form **2106**
Department of the Treasury
Internal Revenue Service

Employee Business Expenses

▶ See separate instructions.
▶ Attach to Form 1040.

OMB No. 1545-0139
1987
Attachment Sequence No. **54**

Your name | Social security number | Occupation in which expenses were incurred

Part I Employee Business Expenses

STEP 1 Enter Your Expenses

		Column A Other than Meals and Entertainment	Column B Meals and Entertainment
1 Vehicle expense from Part II, line 15 or line 22	1		
2 Parking fees, tolls, and local transportation, including train, bus, etc.	2		
3 Travel expense while away from home, including lodging, airplane, car rental, etc. **Do not** include meals and entertainment	3		
4 Business expenses not included in lines 1 through 3. **Do not** include meals and entertainment	4		
5 Meals and entertainment expenses. See Instructions	5		
6 Add lines 1 through 5 and enter the **total expenses** here	6		

Note: *If you were not reimbursed for any expenses in step 1, skip lines 7 through 13 and enter the amount from line 6 on line 14.*

STEP 2 Figure Any Excess Reimbursements to Report in Income

7 Reimbursements for the expenses listed in step 1 that your employer did **not** report to you on Form W-2 or Form 1099	7		
Note: *If, in **both columns**, line 6 is more than line 7, skip lines 8 and 9 and go to line 10. You do not have excess reimbursements.*			
8 Subtract line 6 from line 7. If zero or less, enter zero	8		
9 Add the amounts on line 8 of both columns and enter the total here. Also add this amount to any shown on Form 1040, line 7. This is an **excess reimbursement** reportable as income ▶	9		

STEP 3 Figure Fully Deductible Reimbursed Expenses

10 Subtract line 7 from line 6. If zero or less, enter zero	10		
11 Reimbursements for the expenses listed in step 1 that your employer separately identified to you as a reimbursement on Form W-2 or Form 1099	11		
Note: *The amount entered on line 11 should also have been reported as income on Form 1040, line 7.*			
12 Enter the smaller of line 10 or line 11	12		
13 Add the amounts on line 12 of both columns. Enter here and on Form 1040, line 23. This is your **fully deductible reimbursed expenses** ▶	13		

STEP 4 Figure Expenses to Deduct as an Itemized Deduction on Schedule A (Form 1040)

14 Subtract line 12 from line 10. If zero or less, enter zero	14		
Note: *If **both columns** of line 14 contain a zero, **do not complete the rest of Part I.***			
15 Enter 20% of line 14, Column B	15		
16 Subtract line 15 from line 14	16		
17 Add the amounts on line 16 of both columns and enter the total here. Also enter the total on Schedule A (Form 1040), line 20. This is the amount to deduct as a **miscellaneous itemized deduction**, subject to a 2% limitation ▶	17		

Form 2106 (1987) Page 2

Part II Vehicle Expenses (Use either your actual expenses or the standard mileage rate.)

Section A.—General Information		Vehicle 1	Vehicle 2
1 Enter the date vehicle was placed in service	1	/ /	/ /
2 Total mileage vehicle was used during 1987	2	miles	miles
3 Miles included on line 2 that vehicle was used for business	3	miles	miles
4 Percent of business use (divide line 3 by line 2)	4	%	%
5 Average daily round trip commuting distance	5	miles	miles
6 Miles included on line 2 that vehicle was used for commuting	6	miles	miles
7 Other personal mileage (subtract line 6 plus line 3 from line 2)	7	miles	miles

8 Do you (or your spouse) have another vehicle available for personal purposes? ☐ Yes ☐ No

9 If your employer provided you with a vehicle, is personal use during off duty hours permitted? ☐ Yes ☐ No ☐ Not applicable

10 Do you have evidence to support your deduction? ☐ Yes ☐ No If yes, is the evidence written? ☐ Yes ☐ No

Section B.—Standard Mileage Rate (Do not use this section unless you own the vehicle.)			
11 Enter the smaller of Part II, line 3 or 15,000 miles	11		miles
12 Subtract line 11 from Part II, line 3	12		miles
13 Multiply line 11 by 21¢ (.21) (see instructions for a fully depreciated vehicle)	13		
14 Multiply line 12 by 11¢ (.11)	14		
15 Add lines 13 and 14. Enter total here and on Part I, line 1	15		

Section C.—Actual Expenses		Vehicle 1	Vehicle 2
16 Gasoline, oil, repairs, vehicle insurance, etc	16		
17 Vehicle rentals	17		
18 Value of employer-provided vehicle (applies only if included on Form W-2 at 100% fair rental value, see instructions)	18		
19 Add lines 16 through 18	19		
20 Multiply line 19 by the percentage on Part II, line 4	20		
21 Depreciation from Section D, column (f) (see instructions)	21		
22 Add lines 20 and 21. Enter total here and on Part I, line 1	22		

Section D.—Depreciation of Vehicles (Depreciation can only be claimed for a vehicle you own. If a vehicle is used 50 percent or less in a trade or business, the Section 179 deduction is not allowed and depreciation must be taken using the straight line method over 5 years. For other limitations, see instructions.)

	Cost or other basis (a)	Basis for depreciation (Business use only—see instructions) (b)	Method of figuring depreciation (c)	Depreciation deduction (d)	Section 179 expense (e)	Total column (d) + column (e) (enter in Section C, line 21) (f)
Vehicle 1						
Vehicle 2						

[FR Doc. 87-18508 Filed 8-13-87; 8:45 am]
BILLING CODE 4830-01-C

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 10, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Agreement for Paying Delinquent Loan Payments
3. VA Form 26–6392
4. This information is used in serving VA portfolio loans which are in arrears. It is an effective servicing method since it requires the obligor to express his or her plans for bringing the mortgage loan current and to sign a copy of the statement which if approved by VA, is then returned to the obligor.
5. On occasion
6. Individuals or households
7. 960 responses
8. 80 hours
9. Not applicable

Extension

1. Department of Veterans Benefits
2. Request for Determination of Eligibility and Available Loan Guaranty Entitlement
3. VA Form 26–1880
4. This information is used to determine veteran's eligibility for entitlement to loan guaranty benefits.
5. On occasion
6. Individuals or households
7. 630,000 responses
8. 157,500 hours
9. Not applicable

Reinstatement

1. Department of Veterans Benefits
2. Certification of School Attendance—REPS
3. VA Form 21–8926
4. This information is used to verify a student beneficiary's school attendance and continued eligibility for REPS benefit payments.
5. On occasion
6. Individual or households
7. 900 responses
8. 225 hours
9. Not applicable

Extension

1. Office of the General Counsel
2. Form and Place of Filing Claims
3. VA Form N/A
4. This information is needed from individuals in foreign countries to file claims against the VA for deaths, injuries and losses caused by negligence of VA employees.
5. As the occasion arises
6. Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; and Small businesses or organizations.
7. 1 responses
8. 1 hours
9. Not applicable

Extension

1. Department of Veterans Benefits
2. Computation of Loan Amount for Manufactured Home Unit
3. VA Form 26–8641a
4. This information is use to determine the maximum loan amount and propriety of fees and charges.
5. On occasion
6. Businesses or other for-profit
7. 7,000 responses
8. 1,167 hours
9. Not applicable

[FR Doc. 87–18555 Filed 8–13–87; 8:45am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 157
Friday, August 14, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 28637.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., August 18, 1987.

CHANGE IN THE MEETING: Delete from the agenda—New York Futures Exchange's Preannounced Trading Rules Submission.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-18667 Filed 8-12-87; 10:16 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 20, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 87-18702 Filed 8-12-87; 12:45 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Date of Agency Meetings

Pursuant to the provisions of the Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced meetings of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held on Thursday, August 13, 1987, have been rescheduled for Wednesday, August 12, 1987, at 2:00 p.m. (open session) and 2:30 p.m. (closed session).

No earlier notice of the change in the date of the meetings was practicable.

Dated: August 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-18729 Filed 8-12-87; 3:49 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 52, No. 157
Friday, August 14, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 9

Revision of Freedom of Information Act Regulations; Conforming Amendments

Correction

In proposed rule document 87-17564 beginning on page 29196 in the issue of Thursday, August 6, 1987, make the following corrections:

§ 9.3 [Corrected]

1. On page 29198, in the second column, in § 9.3, in the definition for "Commission", in the second line, "of a quorum" should read "or a quorum".

2. On the same page, in the third column, in the table of contents for Subpart A, remove the entry for § 9.23.

§ 9.13 [Corrected]

3. On page 29199, in the second column, in § 9.13, in the definition for "Educational institution", in the seventh line, "or" should read "of".

4. On the same page, in the third column, in the same section, in the definition for "Search", in the sixth line, "or" should read "of".

5. In the same section and column, in the definition for "Unusual circumstances", paragraph 3, in the fourth line, "interested" should read "interest".

§ 9.17 [Corrected]

6. On page 29200, in § 9.17(a)(7)(ii), in the first column, in the second line, "trial" was misspelled.

7. On the same page, in § 9.17(b), in the same column, in the second line, "of limiting" should read "or limiting" and in the fifth line, "it" should read "is".

§ 9.25 [Corrected]

8. On page 29201, in the third column, in § 9.25(c), in the seventh line, "§ 917(a)" should read "§ 9.17(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AGL-14]

Proposed Alteration of Transition Area; Austin, MN

Correction

In proposed rule document 87-17464 beginning on page 28726 in the issue of Monday, August 3, 1987, make the following correction:

On page 28727, in the second column, under amendatory instruction 1., in the **Authority**, in the first line, "1248(a)" should read "1348(a)".

BILLING CODE 1505-01-D

federal register

Friday
August 14, 1987

Part II

Department of Education

34 CFR Part 607

Postsecondary Education; Strengthening Institutions Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 607

Strengthening Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to govern the new Strengthening Institutions Program authorized by Part A of Title III of the Higher Education Act of 1965 (HEA). These regulations are needed to implement changes made to Title III of the HEA by the Higher Education Amendments of 1986, Pub. L. 99–498, and the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Director, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, DC 20026. Telephone: (202) 732–3308.

SUPPLEMENTARY INFORMATION: In the preamble to the Notice of Proposed Rulemaking for the Strengthening Institutions Program that was published in the **Federal Register** of June 10, 1987, 52 FR 22264–22271, the Secretary included a description of the program and the major issues that the regulations addressed. That discussion will not be repeated in this preamble.

Subsequent to the publication of the NPRM, the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50, revised section 312 of the HEA to provide that an institution of higher education that serves a minimum percentage of certain types of ethnic or minority students must now establish itself as being State-authorized and either accredited or preaccredited, and as offering a bachelor's degree program or being a junior college, to qualify as an eligible institution. Such an institution, however, does not have to satisfy these particular requirements for five academic years. The five-year requirement may also be waived by the Secretary for an institution located near Indian reservations or which serves a substantial population of Indians. In addition, the middle-income portion of the waiver provision in section 352(a)(2) of the HEA was eliminated by the Higher Education Technical Amendments Act of 1987.

To clarify these final regulations, the term "comparable institutions that offer similar instruction" has been included as a definition in § 607.7 and the term is used wherever necessary in the regulations.

The Secretary has noted that proposed § 607.40 merely repeated the criminal provision contained in section 358 of the HEA. Institutions and individuals are, of course, subject to the statutory provision. Accordingly, the Secretary does not see the need to repeat this provision in the regulation and has deleted it.

The Secretary plans to reconsider whether the use of 2.5 times the number of graduate students is the appropriate factor to use to discount the effect of the graduate student enrollment in calculating the educational and general (E&G) expenditures per FTE undergraduate student at institutions that do not differentiate between graduate and undergraduate E&G expenditures.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made to Part 607 based on public comment to the notice of proposed rulemaking, the Secretary has amended §§ 607.2 and 607.3 to implement amendments made to the Strengthening Institutions Program statute by the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act and the Administrative Procedure Act, 5. U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these changes do not implement substantive policy, but merely implement statutory changes contained in Pub. L. 100–50. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations is unnecessary and contrary to public interest.

The Secretary published a Notice of Proposed Rulemaking (NPRM) for the Strengthening Institutions Program in the **Federal Register** on June 10, 1987, 52 FR 22264. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the significant comments received and the Secretary's response to those comments follow.

General Comments

Comment: One commenter asked about the maximum grant award which could be requrested each year for a development grant and whether matching funds were a requirement.

Response: No change was made. Each year the Secretary announces the maximum grant awards through a notice in the **Federal Register**. Matching funds are not required.

Comment: Three commenters stated that the regulations deviated from the law because the regulations omitted the factor of giving the needy student eligibility criterion twice the weight of the educational and general expenditure requirement which is stated in the statute.

Response: No change was made. The statute requires that each applicant meet both the needy student and average educational and general expenditure requirements separately. Therefore, the Secretary believes that the statutory provision that gives the needy student requirement twice the weight of the educational and general expenditure requirement has no practical effect.

Comment: One commenter stated that the statutory funding set-aside for two-year community colleges, and a justification for the set-aside, were omitted from the regulations.

Response: No change was made. The funding set-aside for junior or community colleges is statutory, needs no justification and is not subject to regulation. Section 360(c)(1) of the HEA states that the Secretary must provide not less than $51,400,000 to these institutions each fiscal year that the appropriation for the Strengthening Institution Program exceeds $60,530,000.

Section 607.3 What Is An Enrollment of Needy Students?

Comment: Many commenters noted that section 352(a) of the HEA states that the Secretary shall waive the requirements set forth in section 312(b)(1)(A) of the HEA.

Response: A change has been made and § 607.3(b) has been revised to reflect this statutory provision.

Comment: One commenter requested a clarification on whether all six conditions in § 607.3(b) must be met in order for an institution to receive a waiver.

Response: No change was made. An institution receives a waiver if it satisfies any one of the requirements in § 607.3(b).

Comment: The same commenter stated that § 607.3(b)(1) discriminates against public community colleges because these institutions receive support from both State and local governments. The commenter suggested the paragraph be changed to refer to

support from both State and local government.

Response: No change was made. The requirement is statutory and cannot be changed through regulations.

Comment: Several commenters stated that the collection of information for students who are from low- or middle-income families was an additional burden on institutions because that information is not routinely obtained on admission, application or course enrollment forms.

One commenter noticed an inconsistency between the notice inviting institutions to apply for designation as an eligible institution under the Strengthening Institutions Program that was published in the **Federal Register** on June 22, 1987, and the proposed regulation regarding the waiver requirement for low- and middle-income students. The commenter observed that the notice required that at least 30 percent of the students served should be students from low-income families, while the proposed regulations required at least 90 percent of the students served should be from low- and middle-income families.

Response: A change has been made. The Higher Education Technical Amendments Act of 1987 deleted the waiver provisions for institutions serving middle-income students. The institution is not required to collect data for students form low-income families unless it seeks a waiver under this statutory provision. The 30 percent low-income threshold is consistent with the Secretary's decision to determine the substantial percentage of Pell recipients under the needy student requirement as exceeding the median percent of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. Since the median Pell Grant percentage for the base year is close to 30 percent overall, the Secretary has established 30 percent as this threshold for low-income students for the purpose of the needy student waiver option. The Secretary will reconsider this threshold when more data becomes available.

Comment: Many commenters suggested that $99 was too low a figure to use for the tuition and fee waiver provision. Another commenter indicated that the use of this figure would only benefit institutions located in California and thus discriminate against institutions located in the other states.

Response: No change was made. The intent of the tuition and fee waiver provision in the law is to extend eligibility to institutions that serve students from low-income families in cases where the low-income students enrolled at that institution do not receive Pell Grants or other Federal student financial aid. However, because the purpose of the Pell Grant Program is to provide grants to students from low-income families, few schools serving low-income students are likely to be in need of the waiver.

With regard to an institution's eligibility for fiscal year 1987 funds, the base year for determining institutional eligibility is the 1984–85 school year. In that year, if a student attended an institution that charged *no* tuition and fees, that student would be eligible to receive a Pell Grant if the student's adjusted gross family income did not exceed $19,850 and the student's family consisted of three members. If the student's family consisted of four members that student would be eligible to receive a Pell Grant if the student's adjusted gross family income did not exceed $23,950.

In the 1984–85 school year, the low-income level for a family of three was $13,680 and $16,500 for a family of four. Thus all low-income students attending institutions with *no* tuition and fees were eligible to receive Pell Grants. Accordingly, all low-income students attending institutions with tuition and fees of $99 also were eligible to receive Pell Grants. Moreover, those students were eligible to receive Pell Grants regardless of the state in which the institution was located.

Comment: One commenter asked whether the $99 was applicable to an academic year, a semester, or a quarter.

Response: A change has been made. The $99 covers tuition and fees for the academic year.

Comment: One commenter asked what the phrase "substantially increase higher education opportunities" means in the context of §§ 607.3 (b)(3) through (b)(6). In addition, the commenter asked whether an institution could merely state that it is substantially increasing or will substantially increase the educational opportunity of a specified target population.

Response: No change was made. The Secretary has not defined further the phrase "substantially increase higher education opportunities." Each applicant, therefore, in using any one of these waiver provisions set forth in §§ 607.3(b)(3) through 607.3(b)(6) must provide sufficient documentation to justify that it is "substantially increasing higher educational opportunities." An institution can not merely state that it is substantially increasing or will substantially increase the educational opportunity of a specified target population and comply with these provisions.

Comment: One commenter requested a clarification of the manner in which the Secretary counts degree students for the purpose of determining whether the institution qualified as serving needy students under § 607.3(a).

Response: A change has been made. With regard to determining whether at least 50 percent of an institution's enrollment of degree students received aid under one or more of the following four programs, Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, and Perkins Loan Program, the Secretary uses a head count of the institution's total enrollment of degree students. With regard to whether a substantial percentage of an institution's degree students received Pell Grants, the Secretary looks at the percentage of an institution's degree students who were enrolled as undergraduate students on at least a half-time basis. The Secretary uses these different procedures because only undergraduate students enrolled at least one a half-time basis are eligible for Pell Grants, while under certain of the other three programs, graduate students and less than half-time students are eligible to receive assistance.

Section 607.4 What are Low Educational and General Expenditures?

Comment: One commenter disagreed with establishing the threshold for the educational and general expenditures below the average for similar types of institutions.

Response: No change was made. This is a statutory requirement. The statute states that the average educational and general expenditures per full-time equivalent undergraduate student must be low in comparison with the average general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction.

Comment: One commenter asked whether the list of factors in § 607.4(d) is exhaustive or illustrative and questioned why the operation of high cost technology programs and high cost health programs was not included in the list.

Response: No change was made. The five factors listed in § 607.4(d) are exhaustive not illustrative. The waiver option found under § 607.4(d)(5), however, is illustrative, not exhaustive. Therefore, an applicant, using appropriate justification, may apply for a waiver claiming that high cost technology programs and high cost health programs distort its average educational and general expenditures.

Section 607.8 What Is a Comprehensive Development Plan and What Must It Contain?

Comment: One commenter asked whether an institution which is currently implementing a ten-year long-range plan can submit this plan as the comprehensive development plan required under the Strengthening Institutions Program, if the institution cross-references each objective.

Response: No change was made. Section 607.8 addresses the contents of the comprehensive development plan. Any eligible institution applying for a development grant must describe its strategy for achieving self-sufficiency. Each applicant must also provide information describing the problems of the institution and the activities to be funded and carried out with the Strengthening Institutions Program funds. The applicant must also include the strategy to be used to remedy each problem. Therefore, the institution may use its current plan if it satisfies all these requirements.

Section 607.9 What Are the Type, Duration and Limitations in the Awarding of Grants Under This Part?

Comment: One commenter asked whether a recipient of a non-competing continuation award received under the Strengthening or Special Needs Program and authorized to be funded under section 355 of the HEA could receive a grant under the Strengthening Institutions Program.

Response: No change was made. A recipient of a non-competing continuation award may not receive funds under the Strengthening Institutions Program grant to carry out activities funded under a non-competing continuation grant.

Comment: One commenter asked whether an institution that received a one to three year grant could receive another one to three year grant before its first grant expired. Another asked whether an institution could simultaneously receive more than one Strengthening Institutions Program grant.

Response: No change was made. An institution may not receive a one to three year development grant until its first one to three year grant has expired.

Under the Strengthening Institutions Program, an institution may not simultaneously receive in one fiscal year more than one individual development grant awarded under the Strengthening Institutions Program but may simultaneously receive one individual grant and one cooperative arrangement grant.

Section 607.10 What Activities May and May Not Be Carried Out Under a Grant?

Comment: One commenter asked if an activity funded under a previous grant may be funded again under a new grant.

Response: No change was made. Any developmental activity which is incorporated into an implementation plan designed to meet an objective is allowable as long as it does not duplicate any previously funded activity.

Section 607.22 What Are the Selection Criteria for Development Grants?

Comment: Many commenters objected to assigning points to the evaluation of an institution's comprehensive development plan and requested that such an evaluation be eliminated. Several commenters were concerned that since the institution's plan is reviewed and evaluated by a nationally recognized accrediting agency, it would be redundant for the Department to also review those plans. One commenter stated that the review of an institution's plan exceeds the intent of the law.

Response: No change was made. The Secretary believes that the Strengthening Institution Program statute authorizes the Secretary to evaluate the quality of an applicant's comprehensive development plan under the grant application process. The Secretary further believes that the best plans will produce the best results and that the quality of an applicant's plan should be a significant factor in awarding a grant under this part. Finally, the requirements of the comprehensive development plan for the purpose of receiving a grant under this part are not the same as the requirements for institutional accreditation. Therefore, the Secretary's review is not redundant.

Section 607.23 What Special Funding Consideration Does the Secretary Provide?

Comment: One commenter asked the following questions: How will the Secretary give priority to cooperative arrangements that are geographically and economically sound or will benefit the applicant and should not the Secretary's priority be expressed in a differential point system?

Response: No change was made. The Secretary gives priority to those cooperative arrangement applications that are determined to be geographically and economically sound or will benefit the applicant over those cooperative arrangement applications that do not meet those criteria. The Secretary does not give priority to cooperative arrangements over applications for individual development grants. The Secretary does not believe that a separate priority point system is desirable for this priority.

Comment: One commenter noted that the Secretary may award up to one point if an institution proposed to carry out activities in one or more the areas listed in § 607.23(b)(3). The commenter stated that these are the same activities that are allowable under § 607.10 and questioned whether there was a more discriminating way to give additional points.

Response: No change was made. The special consideration is intended to be used only in tie-breaking situations, and together with the additional points to be awarded to applicants with less than average endowment funds and library expenditures, will help determine the funding of one or more additional development grants if each of the next fundable applications has received the same number of points under § 607.22 The Secretary does not believe that there is a more discriminatory way to give additional points.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 607

Colleges and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031—Strengthening Institutions Program)

Dated: July 31, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 607 to read as follows:

PART 607—STRENGTHENING INSTITUTIONS PROGRAMS

Subpart A—General

Sec.

Subpart B—How Does an Institution Apply for a Grant?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must a Grantee Meet?

Authority: 20 U.S.C. 1057–1059, 1066–1069f, unless otherwise noted.

Subpart A—General

§ 607.1 What is the Strengthening Institutions Program?

The purpose of the Strengthening Institutions Program is to provide grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency, and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

(Authority: 20 U.S.C. 1057)

§ 607.2 What institutions are eligible to receive a grant under the Strengthening Institutions Program?

(a) Except as provided in paragraphs (b), (c) and (d) of this section, an institution of higher education is eligible to receive a grant under the Strengthening Institutions Program if—

(1) It has an enrollment of needy students as described in § 607.3(a), unless the Secretary waives this requirement under § 607.3(b);

(2) It has low average educational and general expenditures per full-time equivalent undergraduate student as described in § 607.4(a), unless the Secretary waives this requirement under § 607.4(c);

(3) It is legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(4) It is accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered; and

(5) It has satisfied the requirements contained in paragraphs (a)(3) and (a)(4) of this section for the five academic years preceding the academic year for which it initially seeks a grant under this part.

(b) An institution of higher education is eligible to receive a grant under the Strengthening Institutions Program even if it does not satisfy the requirements of paragraph (a)(5) of this section if its student enrollment consists of at least—

(1) Twenty percent Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof;

(2) Five percent Native Hawaiian, Asian American, American Samoan, Micronesian, Guamian (Chamorro), or Northern Marianian or any combination thereof; or

(3) Sixty percent American Indian, or in the case of Alaska natives, an enrollment of at least 5 percent Alaska natives.

(c) The Secretary may waive the requirements of paragraph (a)(5) of this section in the case of an institution located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians.

(d) A branch campus of an institution of higher education, if the institution as a whole meets the requirements of paragraphs (a)(1) through (5) of this section, is eligible to receive a grant under the Strengthening Institutions Program even if, by itself, it does not satisfy the requirements of paragraphs (a)(3), (a)(4) and (a)(5) of this section, although the branch must meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(e) For the purpose of paragraphs (b) and (c) of this section, an institution's enrollment consists of a head count of its entire student body.

(Authority: 20 U.S.C. 1058)

§ 607.3 What is an enrollment of needy students?

(a) Except as provided in paragraph (b) of this section, for the purpose of § 607.2(a)(1), an applicant institution has an enrollment of needy students if in the base year—

(1) At least 50 percent of its degree students received student financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, and Perkins Loan; or

(2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction.

(b) The Secretary waives the requirement contained in paragraph (a) of this section if the institution demonstrates that—

(1) The State provides more than 30 percent of the institution's budget and the institution charges not more than $99.00 for tuition and fees for an academic year;

(2) At least 30 percent of the students served by the institution in the base year were students from low-income families;

(3) The institution substantially increases the higher education opportunities for low-income students who are also educationally disadvantaged, underrepresented in postsecondary education, or minority students;

(4) The institution substantially increases the higher education opportunities for individuals who reside in an area that is not included in a "metropolitan statistical area" as

defined by the Office of Management and Budget and who are unserved by other postsecondary institutions;

(5) The institution is located on or within 50 miles of an Indian reservation, or a substantial population of Indians and the institution will, if granted the waiver, substantially increase higher education opportunities for American Indians; or

(6) The institution will, if granted the waiver, substantially increase the higher education opportunities for Black Americans, Hispanic Americans, Native Americans, Asian Americans or Pacific Islanders, including Native Hawaiians.

(c) For the purpose of paragraph (b) of this section, the Secretary considers "low-income" to be an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the United States Bureau of the Census.

(d) Each year, the Secretary notifies prospective applicants through a notice in the Federal Register of the low-income figures.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.4 What are low educational and general expenditures?

(a)(1) Except as provided in paragraph (b) of this section, for the purpose of § 607.2(a)(2), an applicant institution's average educational and general expenditures per full-time equivalent undergraduate student in the base year must be less than the average educational and general expenditures per full-time equivalent undergraduate student of comparable institutions that offer similar instruction in that year.

(2) For the purpose of paragraph (a)(1) of this section, the Secretary determines the average E&G per FTE undergraduate student for institutions with graduate students that do not differentiate between graduate and undergraduate E&G expenditures by discounting the graduate enrollment using a factor of 2.5 times the number of graduate students.

(b) Each year, the Secretary notifies prospective applicants through a notice in the Federal Register of the average educational and general expenditures per full-time equivalent undergraduate student at comparable institutions that offer similar instruction.

(c) The Secretary may waive the requirement contained in paragraph (a) of this section, if the Secretary determines, based upon persuasive evidence provided by the institution, that—

(1) The institution's failure to satisfy the criteria in paragraph (a) of this section was due to factors which, if used in determining compliance with those criteria, distorted that determination; and

(2) The institution's designation as an eligible institution under this part is otherwise consistent with the purposes of this part.

(d) For the purpose of paragraph (c)(1) of this section, the Secretary considers that the following factors may distort an institution's educational and general expenditures per full-time equivalent undergraduate student—

(1) Low student enrollment;

(2) Location of the institution in an unusually high cost-of-living area;

(3) High energy costs;

(4) An increase in State funding that was part of a desegregation plan for higher education; or

(5) Operation of high cost professional schools such as medical or dental schools.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.5 How does an institution apply to be designated an eligible institution?

An institution shall apply to the Secretary to be designated an eligible institution under the Strengthening Institutions Program by submitting an application to the Secretary in the form, manner and time established by the Secretary. The application must contain—

(a) The information necessary for the Secretary to determine whether the institution satisfies the requirements of § 607.2, § 607.3(a) and § 607.4(a);

(b) Any waiver request under § 607.3(b) and § 607.4(c); and

(c) Information or explanations justifying any requested waiver.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.6 What regulations apply?

The following regulations apply to the Strengthening Institutions Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); Part 75 (Direct Grant Programs), except 34 CFR 75.128(a)(2) and 75.129(a) in the case of applications under cooperative arrangements; Part 77 (Definitions That Apply to Department Regulations; and Part 78 (Education Appeal Board).

(b) The regulation in this part.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1057, 1060, 1064)

§ 607.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms that apply to the Institutional Aid Programs are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) The following definitions also apply to this part:

"Accredited" means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

"Activity" means an action or actions which are incorporated into an implementation plan designed to meet an objective. An activity is a subpart of a project.

"Base year" means the second fiscal year preceding the fiscal year for which an institution seeks a grant under this part.

"Branch campus" means a unit of a college or university that is geographically apart from the main campus of the college or university and independent of that main campus. The Secretary considers a unit of a college or university to be independent of the main campus if the unit—

(1) Is permanent in nature;

(2) Offers courses for credit and programs leading to an associate or bachelor's degree; and

(3) Is autonomous to the extent that it has—

(i) Its own faculty and administrative or supervisory organization; and

(ii) Its own budgetary and hiring authority.

"College Work-Study Program" means the part-time employment program authorized under Title IV-C of the HEA.

"Comparable institutions that offer similar instruction" means institutions that are being compared with an applicant institution and that fall within one of the following four categories—

(1) Public junior or community colleges;

(2) Private nonprofit junior or community colleges;

(3) Public institutions that offer an educational program for which they offer a bachelor's degree; or

(4) Private nonprofit institutions that offer an educational program for which they offer a bachelor's degree.

"Cooperative arrangement" means an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part

and another eligible or ineligible institution of higher education, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

"Degree student" means a student who enrolls at an institution for the purpose of obtaining the degree, certificate, or other recognized educational credential offered by that institution.

"Developmental program and services" means new or improved programs and services, beyond those regularly budgeted, specifically designed to improve the self sufficiency of the school.

"Educational and general expenditures" means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

"Full-time equivalent students" means the sum of the number of students enrolled full-time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

"HEA" means the Higher Education Act of 1965, as amended.

"Institution of higher education" means an educational institution defined in section 1201(a) of the HEA.

"Junior or community college" means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree, or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"Nationally recognized accrediting agency or association" means an accrediting agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution in accordance with the provisions contained in 34 CFR Part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the **Federal Register**.

"Operational programs and services" means the regular, ongoing budgeted programs and services at an institution.

"Pell Grant Program" means the grant program authorized by Title IV–A–1 of the HEA.

"Perkins Loan Program", formerly called the National Direct Student Loan Program, means the loan program authorized by Title IV–E of the HEA.

"Preaccredited" means a status that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is progressing toward accreditation within a reasonable period of time.

"Project" means all the funded activities under a grant.

"Self-sufficiency" means the point at which an institution is able to survive without continued funding under the Strengthening Institutions Program.

"Special Needs Program" means the program authorized by Part B of Title III of the HEA before Part B was amended by the Higher Education Amendments of 1986.

"Strengthening Program" means the program authorized by Part A of Title III of the HEA before Part A was amended by the Higher Education Amendments of 1986.

"Supplemental Education Opportunity Grant" means the grant program authorized by Title IV A–2 of the HEA.

(Authority: 20 U.S.C. 1051, 1057–1059 and 1066–1069f)

§ 607.8 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan describes an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Academic quality;

(2) Institutional management; and

(3) Fiscal stability.

(b) The comprehensive development plan must include the following—

(1) The institutional mission statement, i.e. a broad statement of purpose, which identifies certain of its distinguishing characteristics, including the characteristics of the students it proposes to serve and the programs of study it proposes to offer.

(2) Assumptions concerning the institutional environment, enrollment trends and economic factors which affect the institution;

(3) Major problems or deficiencies that inhibit the institution from becoming self-sufficient;

(4) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (b)(3) of this section;

(5) Measurable objectives related to reaching each goal;

(6) Priorities for implementing improvements or corrective actions and for allocating resources to achieve these goals and objectives;

(7) Timeframes for achieving the goals and objectives described in paragraphs (b)(5) and (b)(6) of this section;

(8) Major resource requirements necessary to achieve the goals and objectives of the plan, including personnel, financial, equipment and facilities; and

(9) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(Authority: 20 U.S.C. 1066)

§ 607.9 What are the type, duration and limitations in the awarding of grants under this part?

(a)(1) Under this part, the Secretary may award planning grants and two types of development grants, individual development grants and cooperative arrangement development grants.

(2) Planning grants may be awarded for a period not to exceed one year.

(3) Either type of development grant may be awarded for a period of one through five years.

(b)(1) An institution that receives a planning grant may not subsequently receive another planning grant but may subsequently receive a development grant after its planning grant expires.

(2) An institution that receives a development grant of up to three years may subsequently receive another development grant after its development grant expires.

(3) An institution that receives a development grant of four years may not subsequently receive another development grant for a period of eight years from the date it received the four year grant.

(4) An institution that receives a development grant of five years may not subsequently receive another development grant for a period of ten years from the date it received the five year grant.

(Authority: 20 U.S.C. 1059)

§ 607.10 What activities may and may not be carried out under a grant?

(a) *Planning grants.* Under a planning grant, a grantee shall formulate—

(1) A comprehensive development plan described in § 607.8; and

(2) An application for a development grant.

(b) *Development grants—allowable activities.* Under a development grant, except as provided in paragraph (c) of this section, a grantee shall carry out activities that implement its comprehensive development plan and hold promise for strengthening the institution. Activities that may be carried out include, but are not limited to—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities such as libraries and laboratories; and

(6) Student services.

(c) *Development grants—unallowable activities.* A grantee may not carry out the following activities under a development grant:

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship;

(5) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects;

(6) Development or improvement of nondegree or noncredit courses other than basic skills development courses;

(7) Development or improvement of community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students;

(8) Replacement or upgrading of standard office equipment such as furniture, file cabinets, bookcases, typewriters or word processors;

(9) Services to high school students;

(10) Instruction in the institution's standard courses as indicated in the institution's catalog;

(11) Student activities such as entertainment, cultural, or social enrichment programs, publications or social clubs or associations; and

(12) Activities which are operational in nature rather than developmental.

(Authority: 20 U.S.C. 1057 and 1069c)

Subpart B—How Does an Institution Apply for a Grant?

§ 607.11 What must be included in individual development grant applications?

In addition to the information needed by the Secretary to determine whether the institution should be awarded a grant under the funding criteria contained in Subpart C, an application for a development grant must include—

(a) The institution's comprehensive development plan;

(b) A description of the relationship of each activity for which grant funds are requested to the relevant goals and objectives of its plan; and

(c) A description of any activities that were funded under previous Strengthening or Special Needs Program grants and the institution's justification for not completing the activities under the previous grant, if grant funds are requested to continue or complete the activities;

(d) The provisions required by section 351 of the HEA which are not specified in other sections of this part. These provisions require that an institution applying for more than one activity shall—

(1) Identify those activities that would be a sound investment of Federal funds if funded separately;

(2) Identify those activities that would be a sound investment of Federal funds only if funded with the other activities; and

(3) Rank the activities in preferred funding order.

(Authority: 20 U.S.C. 1066)

(Approved by the Office of Management and Budget under control number 1840–0114)

§ 607.12 What must be included in cooperative arrangement grant applications?

(a)(1) Institutions applying for a cooperative arrangement grant shall submit only one application for that grant regardless of the number of institutions participating in the cooperative arrangement.

(2) The application must include the names of each participating institution, the role of each institution, and the rationale for each eligible participating institution's decision to request grant funds as part of a cooperative arrangement rather than as an individual grantee.

(b) If the application is for a development grant, the application must contain—

(1) Each participating institution's comprehensive development plan;

(2) The information required under § 607.11; and

(3) An explanation from each eligible participating institution of why participation in a cooperative arrangement grant rather than performance under an individual grant will better enable it to meet the goals and objectives of its comprehensive development plan at a lower cost.

(Authority: 20 U.S.C. 1066 and 1069)

(Approved by the Office of Management and Budget under control number 1840–0114)

§ 607.13 How many applications for a development grant may an institution submit?

An institution of higher education may—

(a) Submit only one application for an individual development grant; and

(b) Be part of only one cooperative arrangement application.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

Subpart C—How Does the Secretary Make an Award?

§ 607.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the selection criteria in—

(1) Section 607.21 for a planning grant;

(2) Section 607.22 for a development grant, and;

(3) Section 607.23 with regard to special funding considerations.

(b)(1) The Secretary awards up to 100 points for the criteria in § 607.21, up to 100 points for the criteria in §607.22, up to two additional points for the criteria in § 607.23(a) and up to three additional points for the criteria in § 607.23(b).

(2) The maximum possible score for each complete criterion is in parentheses following the title of that criterion.

(c)(1) The Secretary does not fund an application for a planning grant that scores less than 50 points under § 607.21; and

(2) The Secretary does not fund an application for a development grant that—

(i) Scores less than 50 points under § 607.22;

(ii) Is submitted without a comprehensive development plan;

(iii) Is submitted with a comprehensive development plan that does not satisfy all the elements required of such a plan under § 607.8; or

(iv) In the case of an application for a cooperative arrangement grant, does not demonstrate that funding the cooperative arrangement grant will enable each eligible participant to meet the goals and objectives of its comprehensive development plan better and at a lower cost than if each eligible participant were funded individually.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

§ 607.21 What are the selection criteria for planning grants?

The Secretary uses the following criteria to evaluate an application to determine whether the applicant will produce a good comprehensive development plan and a fundable Strengthening Institutions Program application:

(a) *Design of the planning process.* (Total: 60 points) The Secretary reviews each application to determine the quality of the planning process that the applicant will use to develop a comprehensive development plan and an application for a development grant based on the extent to which—

(1) The planning process is clearly and comprehensively described and based on sound planning practice (15 points);

(2) The president or chief executive officer, administrators and other institutional personnel, students, and governing board members systematically and consistently will be involved in the planning process (15 points);

(3) The applicant will use its own resources to help implement the project (10 points); and

(4) The planning process is likely to achieve its intended results (20 points).

(b) *Key personnel.* (Total: 20 points) The Secretary reviews each application to determine the quality of key personnel to be involved in the project based on the extent to which—

(1) The past experience and training of key personnel such as the project coordinator and persons who have key roles in the planning process are suitable to the tasks to be performed (10 points); and

(2) The time commitments of key personnel are adequate (10 points).

(c) *Project Management.* (Total: 15 points) The Secretary reviews each application to determine the quality of the plan to manage the project effectively based on the extent to which—

(1) The procedures for managing the project are likely to ensure effective and efficient project implementation (10 points); and

(2) The project coordinator has sufficient authority, including access to the president or chief executive officer, to conduct the project effectively (5 points).

(d) *Budget.* (Total: 5 points) The Secretary reviews each application to determine the extent to which the proposed project costs are necessary and reasonable.

(Authority: 20 U.S.C. 1057–1059, 1066–1069)

(Approved by the Office of Management and Budget under control number 1840–0114)

§ 607.22 What are the selection criteria for development grants?

The Secretary uses the following criteria to evaluate applications for development grants:

(a) *Quality of the applicant's comprehensive development plan (CDP)* (Total: 25 points) The extent to which the implementation of the applicant's comprehensive development plan will strengthen the applicant's academic quality, institutional management, fiscal stability and otherwise provide for institutional growth and self-sufficiency.

(b) *Quality of project objectives.* (Total: 10 points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results (5 points); and

(2) Directly related to the problems to be solved and to the goals of the CDP (5 points).

(c) *Quality of implementation strategy.* (Total: 30 points) The extent to which an applicant's—

(1) Implementation strategy for each activity is comprehensive, based on a sound rationale, and likely to be effective (25 points); and

(2) Timetable for each activity is realistic (5 points).

(d) *Quality of key personnel.* (Total: 10 points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity purposes and objectives (7 points); and

(2) The time commitment of key personnel is realistic (3 points).

(e) *Quality of project management plan.* (Total: 10 points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation (5 points); and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively including access to the president or chief executive officer. (5 points).

(f) *Quality of evaluation plan.* (Total: 5 points) The extent to which the evaluation plan—

(1) Includes the information in § 607.8(b)(9); and

(2) Is likely to produce a valid assessment of the implementation strategy and quantifiable evidence of the attainment of objectives for each activity.

(g) *Budget.* (Total: 10 points) The extent to which the proposed costs are necessary and reasonable in relation to the project objectives and scope.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

(Approved by the Office of Management and Budget under control number 1840–0114)

§ 607.23 What special funding consideration does the Secretary provide?

(a) If funds are available to fund only one additional planning grant and each of the next fundable applications has received the same number of points under § 607.21, the Secretary awards additional points, up to a maximum of two points, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at similar type institutions; (one point) or

(2) Has expenditures for library materials per full-time equivalent enrolled student which is less than the average expenditure for library materials per full-time equivalent enrolled student at similar type institutions. (one point)

(b) If funds are available to fund only one additional development grant and each of the next fundable applications has received the same number of points under § 607.22, the Secretary will award additional points, up to a maximum of three points, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at comparable institutions that offer similar instruction; (one point)

(2) Has expenditures for library materials per full-time equivalent enrolled student which is less than the average expenditure for library materials per full-time equivalent enrolled student at comparable institutions that offer similar instruction (one point); or

(3) Propose to carry out one or more of the following activities—

(i) Faculty development;
(ii) Funds and administrative management;
(iii) Development and improvement of academic programs;
(iv) Acquisition of equipment for use in strengthening management and academic programs;
(v) Joint use of facilities; and
(vi) Student services. (one point)

(c) Among applications submitted to carry out cooperative arrangement grants, the Secretary gives priority to those applications where the cooperative arrangement is geographically and economically sound or will benefit the applicant.

(d) As used in this section, an endowment fund does not include any fund established or supported under 34 CFR Part 628.

(e) Each year, the Secretary provides prospective applicants with the average expenditure of endowment funds and library materials per full-time equivalent student.

(Authority: 20 U.S.C. 1057 and 1069)

Subpart D—What Conditions Must a Grantee Meet?

§ 607.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1057–1059 and 1066)

§ 607.31 How does a grantee maintain its eligibility?

(a) A grantee must maintain its eligibility under the requirements contained in § 607.2, other than § 607.2(a)(1) and § 607.2(a)(2), for the duration of the grant period.

(b) An institution that receives a grant for more than one year shall annually submit to the Secretary an assurance that it continues to meet the eligibility requirements described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

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Friday
August 14, 1987

Part III

Department of Education

34 CFR Parts 608 and 609

Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 608 and 609

Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to govern the Strengthening Historically Black Colleges and Universities (HBCU) Program and the Strengthening Historically Black Graduate Institutions Program. The regulations are needed to implement these two new programs, each of which is authorized under Part B of Title III of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99–498, by the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, and by the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Director, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, DC 23868. Telephone: (202) 732–3308.

SUPPLEMENTARY INFORMATION:

Strengthening Historically Black Colleges and Universities (HBCUs) Program

Under this program, the Secretary awards grants to historically Black colleges and universities to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goals of quality of educational opportunity. Grants are awarded based on a statutory formula which is set forth in § 608.31.

In order to receive a grant under section 322 of the HEA, under the HBCU Program, an institution must be accredited or preaccredited and it must be either a junior or community college or an institution which provides an educational program for which it awards a bachelor's degree. In addition, the institution must qualify as a historically Black college or university that was established before 1964 and has a principal mission that was, and is, the education of Black Americans. In interpreting section 322(2) of the HEA to determine whether an institution qualifies as a historically Black college or university, the Secretary relied heavily on the intent of the Congress as expressed in the legislative history. A detailed discussion, with information from congressional reports, was published in the notice of proposed rulemaking in the **Federal Register** of June 10, 1987, 52 FR 22274–22275.

As part of the grant award process, the Secretary will accept applications for grants under the HBCU Program from institutions that satisfy all the eligibility requirements except the requirement dealing with accreditation or pre-accreditation status. The Secretary will notify these institutions of the date by which the appropriate accrediting association must formally accord the accredited or pre-accredited status in order for the institutions to receive a grants under the HBCU Program. If accredited or pre-accredited status is formally given an institution by that date, the institution will receive a grant. If that status is not formally given to the institution by that date, the institution will not receive a grant.

Strengthening Historically Black Graduate Institutions Program

Under the Strengthening Historically Black Graduate Institutions Program, the Secretary may award grants to Morehouse School of Medicine, Meharry Medical School, Charles R. Drew Postgraduate Medical School, Atlanta University, and Tuskegee Institute School of Veterinary Medicine to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

Provisions Common to Both Programs

Under each program, and in contrast to the Strengthening Institutions Program authorized under Part A of Title III of the HEA as well as the Strengthening Institutions and Special Needs Programs previously authorized under Title III of the HEA, a grantee may use grant funds to carry out operational as well as developmental activities. However, a grantee may only use grant funds to supplement and in no case supplant funds that would otherwise be made available by the institution for grant activities.

The Secretary published a Notice of Proposed Rulemaking (NPRM) for the Strengthening Historically Black Colleges and Universities Program and the Strengthening Historically Black Graduate Institutions Program in the **Federal Register** on June 10, 1987, 52 FR 22274. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the significant comments received and the Secretary's response to those comments as well as changes made under the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50, are included below.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made to Part 608 and Part 609 based on public comment to the notice of proposed rulemaking, the Secretary has amended § 609.30 to implement a new statutory provision added by the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this change does not implement substantive policy, but merely implements a statutory change contained in Pub. L. 100–50. Therefore, the Secretary has determined that publication of proposed regulations is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Revisions to the Notice of Proposed Rulemaking

Changes made as a result of the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50

The Higher Education Technical Amendments Act of 1987, Pub. L. 100–50, amended section 326(a)(2) of the HEA by directing the Secretary to award Morehouse School of Medicine a grant of at least $3,000,000 provided that it satisfies the cost-sharing requirement also set forth in section 326(a)(2). Accordingly, the Secretary has revised § 609.30(a) and § 609.30(c) and added § 609.30(d) to reflect this statutory change.

Changes made to the list of institutions qualifying as a "historically Black college or university"

After the proposed regulations were published, many institutions submitted documents to the Secretary seeking to have the Secretary designate them as "historically Black colleges or

universities" under the statutory definition of that term. After evaluating the documentation submitted by these institutions, the Secretary has determined that several of the institutions qualify as a "historically Black college or university" and has added those institutions to the list of qualifying institutions set out in § 608.2(b). These institutions include: Carver State Technical College, Fredd Technical College, J. F. Drake Technical College, Trenholm State Technical College, Alabama; Lewis College of Business, Michigan; Harris-Stowe State College, Missouri; Denmark Technical College, South Carolina; and Saint Philip's College, Texas.

Comments and Responses

The following is a summary of the public comments received on the proposed regulations and the Secretary's response to those comments:

General Comments

Comment: One commenter questioned whether the comprehensive development plan should be evaluated under the Historically Black Colleges and Universities Program.

Response: No change was made. Under the statute governing the HBCU Program, section 325 of the HEA, such a review is not required and the Secretary does not believe that such a review is necessary.

Comment: The same commenter asked for a clarification of whether historically Black colleges and universities can apply for simultaneous grants under the Strengthening Institutions Program and the Historically Black Colleges and Universities Program.

Response: No change was made. The statute does not prohibit an historically Black college or university from applying under the Strengthening Institutions Program if the institution meets the applicable eligibility requirements.

Comment: One commenter stated that section 358 of the statute was explicit regarding penalties for embezzlement, willful misapplication, theft and fraud. The commenter noted that this section was included in the regulations for the Strengthening Institutions Program and asked whether it should be included in the HBCU Program regulations.

Response: No change was made. Since the provision is contained in the statute, the Secretary does not believe it is useful to merely repeat it in this regulation or in Part 609. In addition, the Secretary is removing it from the Strengthening Institutions Program regulation, 34 CFR Part 607.

Section 608.2 What institutions are eligible to receive a grant under the HBCU Program?

Comment: One commenter requested a waiver of the accreditation requirement in order to be considered an eligible institution.

Response: No change was made. The definition of an eligible institution is statutory and requires all institutions to be accredited or preaccredited.

Section 608.4 What definitions apply?

Comment: One commenter asked whether the term "fiscal year" was its fiscal year (July 1 through June 30) or the government fiscal year (October 1 through September 30).

Response: No change was made. Under 34 CFR 77.1(c), the fiscal year is the government fiscal year.

Comment: Several commenters suggested changes in the definitions of the terms "graduate student," "junior or community college" and "school year."

Response: No change was made. These definitions are statutory and cannot be changed by regulation.

Comment: Two commenters asked for a clarification of the accreditation and pre-accreditation eligibility requirement. The commenters stated that the requirement as stated in the regulations in unduly narrow.

Response: No change was made. The statutory definition of a Part B institution requires that the institution be accredited by a nationally recognized accrediting agency or association (accredited) or be determined by a nationally recognized accrediting agency or association to be making reasonable progress toward accreditation (preaccredited) to receive funds under this part.

Section 608.10 What activities may be carried out under a grant?

Comment: Many commenters requested a clarification of allowable activities. Most questioned whether improving funds management or institutional management, assisting in the establishment or maintenance of an institution's endowment, fundraising capabilities, and improvement of a development office to strengthen and increase contributions from alumni are allowable.

Response: No change was made. The statute does not authorize funds to be used on these activities under this part.

Comment: Three commenters wanted a clarification on whether improving academic programs was allowable under this part.

Response: No change has been made. The regulations allow grant funds to be used for the improvement of academic instruction and programs.

Comment: Another commenter requested that grant funds be used for construction, renovation, and improvement of non-academic facilities.

Response: No change is made. The statute does not authorize the use of grant funds for those purposes.

Comment: One commenter asked whether a grantee may use funds it received under Part 608 to carry out allowable activities in its graduate program.

Response: No change was made. A grantee may use funds it received under Part 608 to carry out allowable activities in its graduate program.

Section 608.10 What activities may be carried out under a grant?

Comment: One commenter asked how the Secretary judges the effectiveness of the proposed activities under § 608.10.

Response: No change was made. The Secretary does not evaluate the effectiveness of an applicant's proposed activities in a formula grant program such as the HBCU Program.

Section 608.30 What is the procedure for approving and disapproving grant applications?

Comment: One commenter recommended that since the amount of a grant award is based on the number of students entering graduate school, a separate formula should be established for junior or community colleges because the formula as stated discriminates against these institutions.

Response: No change is made. The formula is statutory and cannot be changed by regulations.

Section 608.31 How does the Secretary determine the amount of a grant?

Comment: Several commenters noted that a part of the formula was not printed.

Response: A change was made. The printing error has been corrected.

Comment: One commenter requested a clarification regarding the formula for calculating grant funds and the $350,000 minimum award provision.

Response: No change was made. Under § 608.31, grant awards are calculated as follows: The Secretary first applies the statutory formula. If an institution under the formula would receive less than $350,000, its grant is increased to $350,000. Funds for that increase are made available by ratably reducing grant awards exceeding the $350,000 minimum under the formula.

Section 608.40 What are allowable costs and what are the limitations on allowable costs?

Comment: Several commenters questioned the statutory basis in section 351(b)(2) of the HEA for applying the supplement and no supplant provision to the HBCU Program.

Response: No change is made. Section 351(b)(2) of the HEA by its very terms makes it applicable to the HBCU Program. That section provides in pertinent part that "Federal funds made available under this title for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 323, and in no case supplant those funds." Section 323 of the HEA lists the activities that may be carried out under this part.

Section 608.41 What are the audit and repayment requirements?

Comment: One commenter asked that since a project must be audited every two years, could the expense of such an audit be paid from grant funds.

Response: No change is necessary. The audit requirements are an administrative responsibility of the institution. Grant funds may not be used to pay for the cost of an audit.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 608 and 609

College and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031B—Strengthening Historically Black Colleges and Universities Program)

Dated: July 29, 1987.

William J. Bennett,

Secretary of Education.

The Secretary of Education amends Title 34 of the Code of Federal Regulations by adding new Parts 608 and 609 to read as follows:

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

Subpart A—General

Sec.

Authority: 20 U.S.C. 1060 through 1063a, 1063c and 1069c, unless otherwise noted.

Subpart A—General

§ 608.1 What Is the Strengthening Historically Black Colleges and Universities (HBCU) Program?

The Strengthening Historically Black Colleges and Universities Program, hereafter called the HBCU Program, provides grants to Historically Black Colleges and Universities (HBCUs) to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

(Authority: 20 U.S.C. 1060)

§ 608.2 What Institutions Are Eligible To Receive a Grant Under the HBCU Program?

(a) To be eligible to receive a grant under this part, an institution of higher education must—

(1) Be a historically black college or university;

(2) Have been established before 1964;

(3) Have a principal mission that was, and is, the education of Black Americans; and

(4) Be, and have been for five academic years preceding the academic year for which it seeks a grant under this part—

(i) Legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(ii) Accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered.

(b) The Secretary has determined that the following institutions satisfy the requirements contained in paragraphs (a)(1) through (a)(3) of this section.

Alabama	
Alabama A & M University	Huntsville.
Alabama State University	Montgomery.
Carver State Technical College	Mobile.
Concordia College	Selma.
Fredd State Technical College	Tuscaloosa.
J.F. Drake State Technical College	Huntsville.
S.D. Bishop State Junior College	Mobile.
Lawson State College	Birmingham.
Miles College	Birmingham.
Oakwood College	Huntsville.
Selma University	Selma.
Stillman College	Tuscaloosa.
Talladega University	Talladega.
Trenholm State Technical College	Montgomery.
Tuskegee University	Tuskegee.
Arkansas	
Arkansas Baptist College	Little Rock.
Philander Smith College	Little Rock.
Shorter College	Little Rock.
University of Arkansas at Pine Bluff	Pine Bluff.
Delaware	
Delaware State College	Dover.
District of Columbia	
Howard University	
University of the District of Columbia	
Florida	
Bethune Cookman College	Daytona Beach.
Edward Waters College	Jacksonville.
Florida A & M University	Tallahassee.
Florida Memorial College	Miami.
Georgia	
Albany State College	Albany.
Atlanta University	Atlanta.
Clark College	Atlanta.
Fort Valley State College	Fort Valley.
Interdenominational Theological Center.	Atlanta.
Morehouse College	Atlanta.
Morris Brown College	Atlanta.
Paine College	Augusta.

Savannah State College	Savannah.
Spelman College	Atlanta.
Kentucky	
Kentucky State University	Frankfort.
Louisiana	
Dillard University	New Orleans.
Grambling State University	Grambling.
Southern University A & M College	Baton Rouge.
Southern University at New Orleans	New Orleans.
Xavier University of Louisiana	New Orleans.
Maryland	
Bowie State College	Bowie.
Coppin State College	Baltimore.
Morgan State University	Baltimore.
University of Maryland-Eastern Shore	Princess Anne.
Michigan	
Lewis College of Business	Detroit.
Mississippi	
Alcorn State University	Lorman.
Coahoma Junior College	Clarksdale.
Jackson State University	Jackson.
Mary Holmes College	West Point.
Mississippi Valley State University	Itta Bena.
Prentiss Normal and Industrial Institute.	Prentiss.
Rust College	Holly Springs.
Tougaloo College	Tougaloo.
Hinds Junior College (Utica Jr Coll)	Raymond.
Missouri	
Lincoln University	Jefferson City.
Harris-Stowe State College	St. Louis.
North Carolina	
Barber-Scotia College	Concord.
Bennett College	Greensboro.
Elizabeth City State University	Elizabeth City.
Fayetteville State University	Fayetteville.
Johnson C. Smith University	Charlotte.
Livingstone College	Salisbury.
North Carolina A & T State University.	Greensboro.
North Carolina Central University	Durham.
Saint Augustine's College	Raleigh.
Shaw University	Raleigh.
Winston-Salem State University	Winston Salem.
Ohio	
Central State University	Wilberforce.
Wilberforce University	Wilberforce.
Oklahoma	
Langston University	Langston.
Pennsylvania	
Cheyney State University	Cheyney.
Lincoln University	Lincoln.
South Carolina	
Allen University	Columbia.
Benedict College	Columbia.
Claflin College	Orangeburg.
Clinton Junior College	Rock Hill.
Denmark Technical College	Denmark.
Morris College	Sumter.
South Carolina State College	Orangeburg.
Voorhees College	Denmark.
Tennessee	
Fisk University	Nashville.
Knoxville College	Knoxville.
Lane College	Jackson.
LeMoyne-Owen College	Memphis.
Meharry Medical College	Nashville.
Morristown College	Morristown.
Tennessee State University	Nashville.
Texas	
Bishop College	Dallas.
Huston-Tillotson College	Austin.
Jarvis Christian College	Hawkins.
Paul Quinn College	Waco.
Prairie View A & M University	Prairie View.
Saint Philip's College	San Antonio.
Southwestern Christian College	Terrell.
Texas College	Tyler.
Texas Southern University	Houston.
Wiley College	Marshall.
U.S. Virgin Islands	
College of the Virgin Islands	St. Thomas.
Virginia	
Hampton University	Hampton.
Norfolk State University	Norfolk.
Saint Paul's College	Lawrenceville.
Virginia State University	Petersburg.
Virginia Union University	Richmond.
West Virginia	
Bluefield State College	Bluefield.
West Virginia State College	Institute.

(c) If an institution has merged with another institution, and, as a result of the merger, would not otherwise qualify to receive a grant under this part, that institution may nevertheless qualify to receive a grant under this part if—

(1) The institution would have qualified to receive a grant before the merger; and

(2) The institution was eligible to receive a grant under the Special Needs Program in any fiscal year prior to fiscal year 1986.

(d) For the purpose of paragraph (a)(4)(ii) of this section, the Secretary publishes a list in the **Federal Register** of the nationally recognized accrediting agencies and associations that he has determined to be a reliable authority as to the quality of education or training offered.

(e) Notwithstanding any other provision of this section, for each fiscal year—

(1) The University of the District of Columbia is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the District of Columbia Self-Government and Governmental Reorganization Act; and

(2) Howard University is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the Act of March 2, 1867, 20 U.S.C. 123.

(Authority: 20 U.S.C. 1061 and 1063(f); House Report 99–861, 99th Cong., 2d Sess. p. 367, September 22, 1986; Senate Report 99–296, 99th Cong., 2d Sess. p. 23, May 12, 1986; Cong. Rec. of June 3, 1986, pp. 6588–6589)

§ 608.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); the following sections in 34 CFR Part 75 (Direct Grant Programs): §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.500, 75.524–75.534, 75.580–75.903; 34 CFR Part 77 (Definitions That Apply to Department Regulations); and 34 CFR Part 78 (Education Appeal Board).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1060–1063a, 1063c)

§ 608.4 What definitions apply?

The following definitions apply to this part:

(a) *Definitions in EDGAR.* The folowing terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project
Project period
Public
Secretary

(b) The following definitions also apply to this part:

"Accredited" means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

"Graduate" means a student who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than five consecutive school years.

"Junior or community college" means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree or an equivalent degree; and

(3) That provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree; or offers a 2-year program in

engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"Pell Grant" means the grant program authorized by Title IV–A–1 of the Higher Education Act of 1965, as amended.

"Preaccredited" means a status, also called candidacy status, that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is making reasonable progress toward accreditation.

"School year" means the period of time from July 1 of one calendar year through June 30 of the subsequent calendar year. (A "school year" is equivalent to an "award year" under the Pell Grant Program.)

(Authority: 20 U.S.C. 1060–1063)

Subpart B—What Kind of Projects Does the Secretary Fund?

§ 608.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities;

(3) Support of faculty exchanges and faculty fellowships to assist these faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials; and

(6) Tutoring, counseling, and student service programs designed to improve academic success.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship; and

(5) Activities provided by a school or department of divinity. For the purpose of this section, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1062, 1063a and 1069c)

§ 608.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 608.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds;

(b) A description of how the grant funds will be used so that they will supplement and, to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds;

(c) An assurance that the institution will provide the Secretary with an annual report on the activities carried out under the grant;

(d) An assurance that the institution will provide for, and submit to the Secretary, the compliance and financial audit described in § 608.41;

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution;

(f) The number of graduates of the applicant institution during the school year immediately preceding the fiscal year for which grant funds are requested; and

(g) The percentage of graduates of the applicant institution who are in attendance at a graduate or professional school in a degree program in a discipline in which Blacks are underrepresented.

(Authority: 20 U.S.C. 1063, 1063a and 1066(b)(2))

(Approved by the Office of Management and Budget under control number 1840–0113)

Subpart D—How Does the Secretary Make a Grant?

§ 608.30 What is the procedure for approving and disapproving grant applications?

The Secretary approves any application which satisfies the requirements of § 608.20 and does not disapprove any application, or any modification of an application, without affording the applicant reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1063a)

§ 608.31 How does the Secretary determine the amount of a grant?

(a) Except as provided in paragraph (b) of this section, for each fiscal year, the Secretary determines the amount of a grant under this part by—

(1) Multiplying fifty percent of the amount appropriated for the HBCU Program by the following fraction—

$$\frac{\text{Number of Pell Grant recipients at the applicant institution during the school year immediately preceding that fiscal year;}}{\text{Number of Pell Grant recipients at all applicant institutions during the school year immediately preceding that fiscal year;}}$$

(2) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction—

$$\frac{\text{Number of graduates of the applicant institution during the school year immediately preceding that fiscal year;}}{\text{Number of graduates of the applicant institution during the school year immediately preceding that fiscal year.}}$$

(3) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction

$$\frac{\text{The percentage of graduates of the applicant institution who are in attendance at a graduate or professional school in a degree program in a discipline in which Blacks are underrepresented.}}{\text{The sum of the percentages of those graduates of all applicant institutions; and;}}$$

(4) Adding the amounts obtained in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(b) For the purpose of paragraph (a)(3) (of this section—

(1) The percentage of graduates of an applicant institution who are in attendance at a graduate or professional school in disciplines in which Blacks are underrepresented is measured by the following fraction:

$$\frac{\text{The number of graduates of an applicant institution who are in attendance at a graduate or professional school in disciplines in which Blacks are underrepresented}}{\text{The number of graduates in the graduating classes of the graduates included in the numerator;}}$$

(2) The Secretary considers that Blacks are underrepresented in a professional or academic discipline if the percentage of Blacks in that discipline is less than the percentage of Blacks in the general population of the United States; and

(3) The Secretary, after consultation with the Commissioner of the Bureau of Labor Statistics, through a notice in the Federal Register, notifies prospective applicants of the disciplines in which Blacks are underrepresented.

(c) Notwithstanding the formula in paragraph (a) of this section—

(1) For each fiscal year, each eligible institution with an approved application must receive at least $350,000; and

(2) If the amount appropriated for a fiscal year for the HBCU Program is insufficient to provide $350,000 to each eligible institution with an approved application, each grant is ratably reduced. If additional funds become available for the HBCU Program during a fiscal year, each grant is increased on the same basis as it was decreased until the grant amount reaches $350,000.

(d) The amount of any grant that the Secretary determines will not be required by a grantee for the period for which the grant was made is available for reallotment by the Secretary during that period to other eligible institutions under the formula set forth in paragraph (a) of this section.

(Authority: 20 U.S.C. 1063)

Subpart E—What Conditions Must a Grantee Meet?

§ 608.40 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraph (b) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility; or

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062)

§ 608.41 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part of a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, 1981 revision, established by the Comptroller General of the United States.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Education Department Inspector General three copies of the audit required in paragraph (a) of this section within 6 months after completion of the audit.

(c) Any individual or firm conducting an audit described in § 626.42(a) shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

§ 608.42 Under what conditions does the Secretary terminate a grant?

If an institution loses its accreditation status, or its State authority, the Secretary terminates any existing grant that was made under this part.

(Authority: 20 U.S.C. 1063a)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

Subpart A—General

Sec.

Subpart B—What Kind of Project Does the Secretary Fund?

Subpart C—How Does an Eligible Institution Apply for a Grant?

Authority: 20 U.S.C. 1063b and 1069c, unless otherwise noted.

Subpart A—General

§ 609.1 What is the Strengthening Historically Black Graduate Institutions Program?

The Strengthening Historically Black Graduate Institutions Program provides grants to the institutions listed in § 609.2 to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

(Authority: 20 U.S.C. 1060 and 1063b)

§ 609.2 What institutions are eligible to receive a grant under this Part?

(a) An institution listed in paragraph (b) of this section is eligible to receive a grant under this part if the Secretary determines that the institution is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans.

(b) The institutions referred to in paragraph (a) of this section are—

(1) Morehouse School of Medicine;

(2) Meharry Medical School;

(3) Charles R. Drew Postgraduate Medical School;

(4) Atlanta University; and

(5) Tuskegee Institute School of Veterinary Medicine.

(Authority: 20 U.S.C. 1063b(e))

§ 609.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); the following sections in 34 CFR Part 75 (Direct Grant Programs) §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.500, 75.524–75.534, 75.580–75.903; 34 CFR Part 77 (Definitions That Apply to Department Regulations); and 34 CFR Part 78 (Education Appeal Board).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1063b)

§ 609.4 What definitions apply?

The following definitions apply to this part: *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project
Project period
Public
Secretary

Subpart B—What kind of Projects Does the Secretary Fund?

§ 609.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities;

(3) Support of faculty exchanges and faculty fellowships to assist the faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials;

(6) Tutoring, counseling, and student service programs designed to improve academic success.

(7) Establishing or improving a development office to strengthen and increase contributions from alumni and the private sector; and

(8) Establishing and maintaining an institutional endowment under 34 CFR Part 628 to facilitate financial independence.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship; and

(5) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1062, 1063a and 1069c)

§ 609.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b)(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 609.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds and how those activities will improve graduate educational opportunities for Black and low-income students and lead to greater financial independence for the applicant;

(b) A description of how the applicant is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans;

(c) An assurance from each applicant requesting in excess of $500,000 that 50 percent of the costs of all the activities to be carried out under the grant will come from non-Federal sources; and

(d) A description of how the grant funds will be used so that they will supplement, and to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds, for the activities described in § 609.10(a)(1) through (a)(8).

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution.

(Authority: 20 U.S.C. 1063d and 1066(b)(2))

(Approved by the Office of Management and Budget under control number 1840-0113)

Subpart D—How Does the Secretary Make a Grant?

§ 609.30 How does the Secretary determine the amount of a grant?

(a) For each year for which funds are appropriated for this program, the Secretary awards a grant of $3,000,000 to the Morehouse School of Medicine if it submits an approved application, and with the remaining funds, a grant to each other eligible institution that submits an approved application.

(b) If the sum of the approved applications does not exceed the amount appropriated, the Secretary awards a grant in the amount requested and approved.

(c) If the sum of the approved requests exceeds the sum appropriated, and Morehouse School of Medicine submits an approved request for $3,000,000, and the amount appropriated exceeds $3,000,000, each grant to Meharry Medical School, Charles F. Drew Medical School, Atlanta University and Tuskegee Institute School of Veterinary Medicine is reduced as the Secretary considers appropriate, so that the sum of the approved grants equals the amount appropriated.

(d) If Morehouse School of Medicine submits an approved request for $3,000,000 and the amount appropriated does not exceed $3,000,000, Morehouse School of Medicine receives all the appropriated funds.

(Authority: 20 U.S.C. 1063b)

Subpart E—What Conditions Must a Grantee Meet?

§ 609.40 What are the matching requirements?

If an institution receives a grant in excess of $500,000, it must spend non-Federal funds to meet the cost of at least 50 percent of the activities approved in its application.

(Authority: 20 U.S.C. 1063b)

§ 609.41 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraph (b) of this section, a grantee may expand grant funds for activities that are reasonably related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility.

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062 and 1063b)

§ 609.42 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part by a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, 1981 revision, established by the Comptroller General of the United States.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Education Department Inspector General three copies of the audit required in paragraph (a) of this section within 6 months after completion of the audit.

(c) Any individual or firm conducting an audit described in § 626.42(a) shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

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Federal Register

Friday
August 14, 1987

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 363

The State Supported Employment Services Program; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 363

The State Supported Employment Services Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adds a new part to provide for the new formula grant program for State supported employment services. The regulations in this new part would implement amendments to the Rehabilitation Act of 1973 made by Pub. L. 99–506, the Rehabilitation Act Amendments of 1986.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective data of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Delores Watkins, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3322, Washington, DC 20202, (202) 732–1349.

SUPPLEMENTARY INFORMATION:

Supported Employment Formula Grant Program.

The Rehabilitation Act Amendments of 1986 authorize a new formula grant State Supported Employment Services Program. This program provides grants to assist States in developing and implementing collaborative programs with appropriate public agencies and private nonprofit organizations for training and traditionally time-limited post-employment services leading to supported employment for individuals with severe handicaps. The Supported Employment Services Program is intended to provide services to individuals who, because of the severity of their handicaps, would not traditionally be eligible for vocational rehabilitation services. Individuals who are eligible for services under the program must not be able to function independently in employment without intensive on-going support services and must require these on-going support services for the duration of their employment.

The statute defines "supported employment" to mean competitive work in an integrated work setting for individuals who, because of their handicaps, need on-going support services to perform that work. Supported employment is limited to individuals with severe handicaps for whom competitive employment has not traditionally occurred, or individuals for whom competitive employment has been interrupted or intermittent as the result of a severe disability. It includes transitional employment for individuals with chronic mental illness. Although the term "supported employment" is defined in the statute, the Secretary considers it essential to define and clarify certain undefined terms used within the statutory definition, as well as the concept of traditionally time-limited post-employment services, in order to ensure a consistent programmatic interpretation. The regulations in § 363.7, therefore, define the following terms: (1) Competitive work; (2) integrated work setting; (3) on-going support services; (4) transitional employment for individuals with chronic mental illness; and (5) traditionally time-limited post-employment services. The regulations also establish requirements for planning grants and for collaborative agreements to provide extended services.

On May 27, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (52 FR 19816). A summary of the major provisions was included in the NPRM. The explanatory statements in the preamble to the NPRM are fully applicable to these final regulations, with one significant exception: States that have planning grants are required, rather than authorized, to seek public participation in developing a State plan for supported employment services. For the sake of brevity, these explanatory statements are not repeated here. Readers are referred to 52 FR 19816, 19817.

Other major differences between the NPRM and these final regulations are:

1. The final regulations clarify the population of individuals with severe handicaps who are eligible for supported employment services by adding language to § 363.3(a) that provides that States may serve individuals with severe handicaps who have not tranditionally been employed competitively or for whom competitive employment has been interrupted or intermittent.

2. The proposed eligibility standard in § 363.3(c) that individuals served under this program be eligible for or be receiving on-going support services from other State, Federal, or private programs has been removed. The Secretary's concern that the funding sources for extended services be identified early in the rehabilitation process is now reflected in language added to § 363.11(e)(2) that requires each individualized written rehabilitation program to specify the State, Federal, or private programs that will provide extended services and the State's basis for determining that continuing support is available.

3. The final regulations clarify in § 363.4(a) congressional intent that Title VI, C supported employment funds be spent only for individual evaluations that are supplementary to those provided under the Title I basic vocational rehabilitation program. This change is reflected also in amendatory language in § 363.11(e)(1).

4. The securing of a supported employment job placement for each individual served under this program has been added to the list of authorized program activities in § 363.4.

5. The definition of "transitional employment for individuals with chronic mental illness" has been revised to clarify that individuals with chronic mental illness served under this program are not required to receive job skill training at least twice monthly if they do not need these services and may receive other needed services at or away from the job site.

6. A new State plan assurance has been added to § 363.11(e)(7) that requires States that are providing services to comply with the provisions of section 101(a)(23) of the Act, which requires public participation in the development of the State plan.

7. Language has been added to the definition of "competitive work" in § 363.7 to clarify that the average 20-hours-per-week work requirement is averaged over the course of each individual's normal pay period. For example, individuals who are paid monthly need only work an average of 20 hours per week during the month rather than 20 hours each week of the month.

8. To track the statute more accurately, specific reference to the information collection and reporting requirements of section 13 of the Act has been added to § 363.52(a).

9. For purposes of consistency, the final regulations use only the term "extended services" in referring to services provided by State, Federal, or private programs after the 18-month period of State vocational rehabilitation agency support has elapsed. Clarifying changes have been made to §§ 363.11(c), 363.11(e)(2), and 363.50(b)(2).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed rulemaking, 377 parties submitted letters

of comments on the proposed regulations. The letters include comments from the Congress, public and private agencies and organizations, universities, and parents of individuals with handicaps. An analysis of the comments and of the changes in the regulations since publication of the notice of proposed rulemaking follows.

Eligibility, Section 363.3

Comments: The Secretary received many letters of comment about § 363.3(a) that requested that the regulations more specifically identify the population of individuals with severe handicaps who are eligible for services under this program. The commenters suggested that the eligibility provision be modified to include specific language from the statutory definition of "supported employment" that relates eligibility for services under this program to a history of non-competitive employment or interrupted or intermittent competitive employment. The commenters believed that the inclusion of this statutory language would ensure that the eligibility provision conforms more closely to congressional intent.

Some commenters asked that § 363.3(b)(3) be revised to permit individuals to be eligible for supported employment services if they have the potential to work in a supported employment setting.

Other commenters expressed concern about the § 363.3(c) provision that requires individuals to be eligible for or receiving on-going support services from other State, Federal, or private programs in order to be eligible for services under this program. The commenters suggested that this provision would establish an overly restrictive and unnecessary standard that has no statutory basis. Because the commenters believed that § 363.3(c) has the potential to exclude many otherwise qualified individuals from supported employment, they suggested that the provision be eliminated.

Another commenter suggested that the term "social services" in § 363.3(c) be revised because it is confusing. The commenter suggested that the term "social services" has a different meaning in each State. The commenter recommended that the words "public assistance" be substituted for the words "social services."

Discussion: The Secretary agrees that § 363.3(a) does not adequately clarify the population of individuals with severe handicaps for whom the program is intended. The Secretary believes that the eligibility provision would be strengthened by including specific language from the statutory definition of "supported employment" that relates to a history of non-competitive employment or interrupted or intermittent competitive employment. The Secretary further believes that each State must be responsible for ascertaining this history by relying on available employment data and other information.

The Secretary does not believe that there is legal support to add specific language to § 363.3(b)(3) referencing potential to work in a supported employment setting. The proposed regulatory language, which tracks the statute in section 632, would require that an individual have the ability to work in a supported employment setting.

The Secretary recognizes that § 363.3(c) may establish a barrier which could result in the exclusion of some individuals with severe handicaps from participation in this program. However, because State agencies can only use funds to provide time-limited services to individuals under this program, the Secretary believes that it is essential for State vocational rehabilitation agencies to assure that extended on-going support services are available for each individual it determines to be eligible. The Secretary further believes that the funding sources for extended on-going support services must be identified early in the rehabilitation process. Although this identification need not be done as part of the eligibility determination process, the Secretary considers it necessary to require, at minimum, that each individualized written rehabilitation program specify the State, Federal, or private programs that will provide needed extended services and the State's basis for determining that continuing support is available.

The Secretary agrees that the use of the term "social services" in § 363.3(c) is not clear and could potentially result in confusion.

Changes: The Secretary has modified § 363.3(a) by adding specific language from the statutory definition of "supported employment" that provides that States may serve individuals with severe handicaps under this program who have traditionally not been employed in competitive employment or for whom competitive employment has been interrupted or intermittent.

This section has been further modified by removing the proposed eligibility standard in § 363.3(c) that requires that individuals be eligible for or be receiving on-going support services. The Secretary has added language in the State plan supplement assurances section, § 363.11(e), however, that requires each individualized written rehabilitation program to specify the State, Federal, or private programs that will provide extended services and the State's basis for determining that continuing support is available.

The removal of § 363.3(c) obviates the need to clarify the confusing reference to "social services."

Permissible Activities under a Services Grant, Section 363.4

Comments: Some commenters noted that § 363.4(a) does not make it clear that the individual evaluation of rehabilitation potential funded under the Title VI State Supported Employment Services program must be supplementary to the individual evaluation of rehabilitation potential funded under the Title I State Vocational Rehabiliation Services Program.The commenters suggested that §§ 363.4(4) and 363.11(e)(1) should be revised to comply with statutory language in section 635(a)(2) that requires that any evaluation funded under this program be supplementary to the evaluation that must be performed under the Title I program.

Some commenters suggested that the job placement should be specifically identified in § 363.4 as an authorized program activity. The commenters noted that supported employment is not based on a continuum moving from training to employment. Rather the training occurs at the work site based on a functional approach to skills development. The commenters suggested that placement should be specifically designated as an authorized service in accordance with the "place-train" supported employment approach.

Discussion: The Secretary agrees with the comments.

Changes: The Secretary has clarified in §363.4(a) statutory intent that Title VI, C supported employment funds be spent only for individual evaluations that are supplementary to those provided under the Title I basic vocational rehabilitation services program. This change is also reflected in amendatory language in § 363.4(b).

Required Planning Grant Activities, Section 363.5

Comments: Some commenters noted that the statute permits States, at their option, to request fiscal year 1987 Supported Employment Program funds for planning activities rather than to provide direct services. These commenters suggested that the regulations clarify when and how the States that elect to receive planning grants of up to 18 months in fiscal year 1987 can qualify for the receipt of

services grant funds in fiscal year 1988 since these States may still be in the process of planning.

Some commenters noted that section 101(a)(23) of the Rehabilitation Act requires State vocational rehabilitation agencies to conduct public meetings throughout the State to allow the public an opportunity to comment on the State vocational rehabilitation plan and to include a summary of comments and responses as an attachment to the State plan. Since the supported employment State plan is a supplement to the Title I State plan, the commenters further noted that the regulations do not require public participation under §§ 363.5 and 363.11 but instead only identify public participation as an authorized activity under a planning grant.

Discussion: The Secretary agrees that Section 101(a)(23) of the statute requires that the State agency conduct public meetings to allow the public an opportunity to comment on the State vocational rehabilitation plan, including the supported employment plan supplement. The Secretary further agrees that public participation in the development of a plan should be a required rather than an authorized activity under a planning grant.

The Secretary does not believe the issue of how or whether fiscal year 1987 planning States can qualify for a services allotment in fiscal year 1988 is a regulatory issue. The Department intends that all planning States will receive a services allotment in 1988, even if they are still using some of their 1987 planning funds. Of course, planning funds can only be used for planning activities and services funds only for providing supported employment services. This issue will be clarified as a program information matter in the fiscal year 1988 grant award process.

Changes: The regulations have been revised to add a new § 363.5(b)(4) that requires States that have a planning grant to seek public participation in the development of a supported employment plan supplement.

Definitions, Section 363.7

"Competitive Work"

Comments: Many diverse comments were received concerning the proposed definition of "competitive work." Some commenters considered the proposed standard requiring an average of at least 20 hours of work per week to be reasonable and recommended the retention of this standard.

Other commenters stated that the average 20-hours-per-week work requirement is overly restrictive and not statutorily based. These commenters suggested that the standard be eliminated and that no specific minimum number of hours be required. The precise hours worked would be based in each case on the needs and abilities of the individual.

Some commenters suggested that "competitive work" be defined in a manner that does not require that individuals with chronic mental illness work any minimum number of hours per week.

Other commenters suggested that if a minimum work requirement is retained, the standard should be reduced. Specific standards recommended included 10 and 15 hours per week.

Some commenters recommended that if a numerical standard is retained, whether it be 20 hours or some lower figure, that a waiver be permitted to enable States to be responsive to individual circumstances.

Other commenters requested clarification concerning the time period on which the average 20-hours-per-week requirement is based.

Discussion: The Secretary continues to believe that the 20-hours-per-week standard is reasonable and consistent with congressional intent. In its bill report, the House Committee on Education and Labor encouraged the use of an average of 20-hours-per-week work standard.

The Secretary agrees that there is a need to clarify the time period on which the 20-hours-per-week average is based.

Changes: The Secretary has added language to the definition of "competitive work" to clarify that the average 20-hours-per-week work requirement is averaged over the course of each individual's normal pay period.

"Integrated Work Setting"

Comments: The proposed regulations specifically invited comments on the proposed restriction of an all-handicapped work group to no more than eight individuals. Many diverse comments were received on this issue.

Some commenters supported this particular numerical limitation. Other commenters suggested that a small work group of eight was to large to achieve meaningful integration in a work setting and proposed that the size be "not more than three" or "not more than six."

Some commenters believed the proposed standard would restrict the ability of States to be creative in the development of supported employment opportunities for individuals with severe handicaps in business and industry.

Other commenters recommended that the third type of 'integrated work setting" that allows an individual to work alone or as a part of a small work grou of not more than eight individuals, all of whom are handicapped, be eliminated. The commenters suggested that under these circumstances there is no meaningful integration of individuals with handicaps with non-handicapped individuals.

One commenter suggested that an integrated work setting be defined in terms of a percentage limitation of an employer's total work force rather than by a particular numerical limitation. This commenter suggested that a percentage approach would have the potential to provide greater program flexibility and increase integration opportunities.

Some commenters recommended that the regulations permit a waiver at the State level to allow for work groups of more than eight individuals with handicaps and for the lack of contact with non-handicapped individuals.

Some commenters stated that the proposed definition of "integrated work setting" precludes the use of the mobile work crew approach in supported employment services delivery because this approach does not conform to the requirement for "regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting."

Other commenters suggested that the term "regular contact" be defined and that it include social interaction and integration activities that take place away from the immediate work setting, such as recreational and leisure activities.

Discussion: The Secretary believes strongly that a limit must be placed on the grouping of individuals with handicaps in a work setting in order to assure that the "integrated work setting" requirement in the statute is meaningful. While it is recognized that an ideal situation would be one in which all immediate co-workers are non-handicapped, the Secretary considers some flexibility to be necessary as supported employment models are developed. The Secretary, therefore, agrees with the comments that flexibility is important to allow States creativity in the development of supported employment opportunities. The standard of "not more than eight" is reasonable to achieve this objective.

Although the Secretary believes some flexibility in the number of individuals with handicaps placed together at a work site is necessary, the Secretary recognizes that some models, such as work crews in janitorial night work, have a potential for eliminating meaningful integration. The Secretary believes that the proposed requirement

for regular contact in the immediate work setting with non-handicapped individuals imposes a reasonable standard to assure some degree of meaningful integration. Work crews that do not have this regular contact would not meet this definition. It is imperative that job site developers assure the availability of regular contact. The Secretary believes there are work crew models available that demonstrate this regular contact.

The Secretary further believes that regular contact in outside social settings does not provide appropriate reinforcement of the on-the-job skills necessary for an individual with severe handicaps to succeed in supported employment. This reinforcement of job skill training is essential to the success of any supported employment placement.

Changes: None.

"Traditionally Time-Limited Post-Employment Services"

Comments: Many comments were received about the proposed definition of "traditionally time-limited post-employment services."

Some commenters recommended that the regulations permit a waiver of the 18-month limitation on State vocational rehabilitation agency responsibility to provide post-employment services to allow for special circumstances reflected in a client's individualized written rehabilitation program.

Other commenters suggested that there should not be any time limitation on post-employment services delivery by the State vocational rehabilitation agency and recommended that the 18-month limitation be eliminated.

Some commenters suggested that there is a need for clarification of post-employment services under this program in terms of their similarity or dissimilarity to post-employment services provided under Title I.

Other commenters asked when the 18-month period begins.

Some commenters asked whether the 18-month limitation precluded an individual from receiving services under this program when that period had elapsed.

Discussion: The Secretary believes that the intent of Congress in limiting State vocational rehabilitation agency responsibility to training and traditionally time-limited post-employment services was to preclude the indefinite continuation of Federally-funded vocational rehabilitation support under this program. The Secretary supports this intent and believes it is necessary to establish in the regulations a specific time limitation for that support. Data from current supported employment demonstration projects indicate that most individuals have made the transition from State agency support to extended services funded from other sources within six to twelve months—well within the 18-month time limit. The Secretary believes, therefore, that this limitation is a reasonable one.

The Secretary has defined in § 363.7 "traditionally time-limited post-employment services" under this program. It includes any services needed to maintain an individual in supported employment. The intent is to encompass all post-employment services that normally are available under the Title I program. Section 363.4(c) gives examples of certain authorized time-limited post-employment services. This is not an exclusive list of all authorized services. The Secretary considers the 18-month period to begin at the time of placement when on-the-job training is first provided. By the end of the 18-month period an individual must transition to extended services financed by funds other than Title VI, C monies.

Changes: None.

"On-going Support Services"

Comments: A significant number of comments was received on the proposed definition of "on-going support services." Some commenters indicated that the proposed establishment of a requirement that job skill training services be provided at least twice monthly does not have a statutory basis. These commenters suggested that the frequency and type of "on-going support services" should be related only to the specific needs and abilities of each individual with severe handicaps.

Other commenters suggested that the proposed requirement for the provision of job-skill training be eliminated because many individuals may not specifically need job skill training and would, therefore, be ineligible for the receipt of services under this program.

Some commenters agreed with the twice-monthly standard for the provision of job skill training services and recommended its retention.

Other commenters suggested that the definition of "on-going support services" should be expanded to list specifically other types of services that may be provided.

Some commenters requested that the definition of "ongoing support services" be revised to permit "on-going support services" for individuals with chronic mental illness to be provided either at or away from the work site, whichever is appropriate for the individual. These commenters suggested that the proposed definition would result in many individuals with chronic mental illness being ineligible because the services they might need could consist only of off-site services.

Other commenters also requested that the definition of "on-going support services" be revised to recognize that individuals with severe physical handicaps may also not need job skill training provided at least twice monthly at the work site.

Discussion: The intent of supported employment is to provide assistance to individuals with severe handicaps who are not able to function in competitive employment without on-going reinforcement of job skills. The need for job skills reinforcement under this program distinguishes supported employment from other rehabilitation programs where job accommodations or independent living services such as readers, transportation or housing may be the only needed post-employment services. The regulations, therefore, authorize support services that are not related specifically to job skill training as long as job skill training services, including both cognitive and physical skill training, are needed and provided at least twice monthly. The regulation does not restrict in any way where off-site services can be provided, including any appropriate rehabilitation facility. The proposed regulation provides only examples of permissible off-site services.

The Secretary believes that individuals with severe handicaps, with the exception of the chronically mentally ill, would be inappropriate candidates for supported employment if they did not need job skill training at least twice monthly.

The definition of "transitional employment for individuals with chronic mental illness" specifically considers the fact that some individuals with chronic mental illness may not need job skill training. The proposed definition does not require the provision of job skill training at least twice monthly at the job site for individuals with chronic mental illness as distinguished from individuals served under this program who have other types of disabilities. The statutory definition of "supported employment" draws this distinction between the chronically mentally ill and individuals with other kinds of severe disabilities who are appropriate candidates for supported employment.

Changes: None.

State Plan Assurances, Section 363.11

Comments: Some commenters noted that the statute requires State vocational

rehabilitation agencies to conduct public meetings throughout the State to allow the public an opportunity to comment on the Title I State vocational rehabilitation plan. Commenters noted that the supported employment State plan is a supplement to the Title I State plan and that, therefore, the regulations should require public participation in the development of the supported employment plan supplement.

Discussion: The Secretary agrees that the public participation requirements of section 101(a)(23) of the Act apply also to the supported employment supplement to the Title I plan.

Changes: The Secretary has modified § 363.11 to add a new § 363.11(e)(7) State plan assurance that requires the State vocational rehabilitation agency to comply with the provisions of section 101(a)(23) of the Act in developing its supported employment plan.

Collection and Reporting Requirements. Section 363.52

Comments. Some commenters indicated that § 363.52(a) does not comply with section 636 of the Act because it does not specifically cite the information collection and reporting requirements contained in section 13 of the Act.

Discussion: The Secretary agrees that § 363.52(a) should track more closely the statute by referencing the requirements of section 13.

Changes: The Secretary has revised the language in § 363.52(a) to remove the reference to 34 CFR 361.23 (general reporting requirements) and substitute a more specific reference to the collection and reporting requirements of section 13.

Note: Because this is a new kind of rehabilitation program with which neither the Department nor States have much experience, the Department will consider in the next two years whether to solicit additional public comment on the need for further regulatory revision.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 363

Education, Grant Programs—education, Grant Programs—social programs, Reporting and recordkeeping requirements, Supported employment, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number: 84.187 State Supported Employment Services Program)

Dated: July 23, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Chapter III of Title 34 of the Code of Federal Regulations by adding a new Part 363 to read as follows:

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Apply for a Grant?

Subpart C—How Does the Secretary Make a Grant?

Subparts D–E [Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

Authority: 29 U.S.C. 795j–q, unless otherwise noted.

Subpart A—General

§ 363.1 What is the State Supported Employment Services Program?

(a) Under the State Supported Employment Services Program, the Secretary provides grants to assist States in developing and implementing programs of supported employment for individuals with severe handicaps.

(b) Grants under this program are intended to provide training and traditionally time-limited post-employment services to individuals with severe handicaps.

(Authority: 29 U.S.C. 795j)

§ 363.2 Who is eligible for an award?

Any State is eligible for an award under this program.

(Authority: 29 U.S.C. 795m(a))

§ 363.3 Who is eligible for services?

A State may provide services under this program to any individual who—

(a) Has severe handicaps, and for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of those handicaps; and

(b) Has been determined by an evaluation of rehabilitation potential, as defined in section 7(5) of the Act, to have—

(1) The ability or potential to engage in a training program leading to supported employment;

(2) A need for on-going support services in order to perform competitive work; and

(3) The ability to work in a supported employment setting.

(Authority: 29 U.S.C. 795k)

§ 363.4 What are the authorized activities under a State Supported Employment Service grant?

Under this program, the following activities are authorized:

(a) Evaluation of the rehabilitation potential for supported employment of individuals with severe handicaps. Any evaluation must be supplementary to an evaluation of rehabilitation potential done under 34 CFR Part 361.

(b) Development of and placement in jobs for individuals with severe handicaps.

(c) Provisions of traditionally time-limited post-employment services that are needed to support the trainees in employment, such as—

(1) Intensive on-the-job training and other training provided by skilled job trainers for workers with severe handicaps;

(2) Provision of follow-up services, including regular contact with employers, trainees with severe handicaps, parents, guardians or other representatives of trainees, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; and

(3) Regular observations or supervision of individuals with severe handicaps at the work site.

(Authority: 29 U.S.C. 795n)

§ 363.5 What kinds of activities may the Secretary support under a planning grant?

(a) For fiscal year 1987 only a State may request a planning grant in place of its allotment under this program.

(b) The State shall conduct activities under a planning grant that include the following, unless those activities have already been completed:

(1) Developing the Statewide needs assessment for supported employment services, as specified in § 363.11.

(2) Developing and evaluating collaborative agreements with State agencies and private nonprofit organizations.

(3) Developing goals, priorities, policies, and procedures for the provision of supported employment services to individuals with severe handicaps.

(4) Seeking participation in the development of a State plan supplement for supported employment services by individuals with severe handicaps, their parents or guardians, and providers of supported employment services.

(c) The State may also conduct the following activities under a planning grant:

(1) Developing sites to test and evaluate the provision of supported employment services.

(2) Other activities necessary to prepare for the implementation of a system of supported employment services.

(d) The requirements of §§ 363.11, 363.20, 363.21, and 363.50–363.53 do not apply to planning grants.

(e) The Secretary awards a planning grant of no more than $250,000 for up to 18 months.

(Authority: 29 U.S.C. 7961(c))

§ 363.6 What regulations apply?

The following regulations apply to the State Supported Employment Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeals Board) except for hearings under Subpart G of Part 361, and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 363.

(c) The following regulations in 34 CFR Part 361 (The State Vocational Rehabilitation Services Program):

§ 361.32; § 361.33; § 361.34; § 361.40; § 361.41; § 361.48; and § 361.49.

(Authority: 29 U.S.C. 795j and 711(c))

§ 363.7 What definitions apply to the State Supported Employment Services Program?

(a) As used in this part—

(1) "Supported employment" means—

(i) Competitive work in an integrated work setting with on-going support services for individuals with severe handicaps for whom competitive employment—

(A) Has not traditionally occurred; or

(B) Has been interrupted or intermittent as a result of severe handicaps; or

(ii) Transitional employment for individuals with chronic mental illness; and

(2) As used in the definition of "supported employment"—

(i) "Competitive work" means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period, and for which an individual is compensated in accordance with the Fair Labor Standards Act;

(ii) "Integrated work setting" means job sites where—

(A)(*1*) Most co-workers are not handicapped; and

(*2*) Individuals with handicaps are not part of a work group of other individuals with handicaps; or

(B)(*1*) Most co-workers are not handicapped; and

(*2*) If a job site described in paragraph (A)(*2*) of this definition is not possible, individuals with handicaps are part of a small work group of not more than eight individuals with handicaps; or

(C) If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting;

(iii) "On-going support services" means continuous or periodic job skill training services provided at least twice monthly at the work site throughout the term of employment to enable the individual to perform the work. The term also includes other support services provided at or away from the work site, such as transportation, personal care services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site;

(iv) "Transitional employment for individuals with chronic mental illness" means competitive work in an integrated work setting for individuals with chronic mental illness who may need support services (but not necessarily job skill training services) provided either at the work site or away from the work site to perform the work. The job placement may not necessarily be a permanent employment outcome for the individual; and

(v) "Traditionally time-limited post-employment services" means services that are—

(A) Needed to support and maintain an individual with severe handicaps in employment;

(B) Based on an assessment by the State of the individual's needs as specified in an individualized written rehabilitation program; and

(C) Provided for a period not to exceed 18 months before transition is made to extended services provided under a cooperative agreement pursuant to § 363.50.

(b) The following terms used in this part are defined in 34 CFR 77.1:

Fiscal Year; Nonprofit; Private; Secretary; and State.

(c) The following terms used in this part are defined in 34 CFR Part 361:

Act; Designated state unit; Individual with handicaps; Individual with severe handicaps; and State plan.

(Authority: 29 U.S.C. 706(18), 711(c), and 795j)

Subpart B—How Does a State Apply for a Grant?

§ 363.10 What documents must a State submit to receive a grant?

To receive a grant under this part, a State must—

(a) Submit to the Secretary, as part of the State plan under 34 CFR Part 361, a State plan supplement that meets the requirements of § 363.11; or

(b) For fiscal year 1987 only, submit an application for a planning grant in place of its allotment under this program.

(Authority: 29 U.S.C. 7951(c) and 795m(a))

(Approved by the Office of Management and Budget under control number 1820–0551)

§ 363.11 What information and assurances must be included in the State plan supplement?

Each State plan supplement must—

(a) *Designated State agency.* Designate the State unit or units for vocational rehabilitation services identified in the State plan submitted under 34 CFR Part 361 as the State agency or agencies to administer this program;

(b) *Results of needs assessment.* Summarize the results of the needs assessment of individuals with severe handicaps conducted under Title I of the Act when that assessment identifies the need for supported employment services. The results of the needs assessment must address the coordination and use of information within the State relating to section

618(b)(3) of the Education of the Handicapped Act;

(c) *Quality, scope, and extent of services.* Describe the quality, scope, and extent of supported employment services to be provided to individuals with severe handicaps under this program. The description must address the timing of the transition to extended services referred to in § 363.50(b)(2);

(d) *Distribution of funds.* Describe the State's goals and plans with respect to the distribution of funds received under § 363.20;

(e) *Assurances.* Provide assurances that—

(1) An evaluation of rehabilitation potential, as defined in section 7(5) of the Act, is provided under 34 CFR Part 361, and if necessary a supplementary evaluation under this part, for each individual with severe handicaps who receives services under this program;

(2) An individualized written rehabilitation program as specified in 34 CFR 361.40 and 361.41 will be developed—either under this part or under 34 CFR Part 361—outlining the services to be provided to each individual served under this program, including a description of the extended services needed, the identification of the State, Federal, or private programs that will provide the continuing support, and a description of the basis for determining that continuing support is available;

(3) Services provided to individuals under this program will be coordinated with the individualized written rehabilitation program or education plan as required under section 102 of the Act, section 123 of the Developmental Disabilities Act of 1984, and sections 612(4) and 614(5) of the Education of the Handicapped Act;

(4) The State will conduct periodic reviews of the progress of individuals assisted under this program to determine whether services provided to those individuals should be continued, modified, or discontinued;

(5) The designated State agency or agencies will expend no more than five percent of the State's allotment for administrative costs of carrying out this program;

(6) The State will make maximum use of services from public agencies, private nonprofit organizations, and other appropriate resources in the community to carry out this program;

(7) The public participation requirements of section 101(a)(23) of the Act are met;

(f) *Collaboration.* Demonstrate evidence of collaboration by and funding from relevant State agencies and private nonprofit organizations to assist in the provision of on-going supported employment services following the termination of time-limited services under this part; and

(g) *Other information.* Contain such other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

(Authority: 29 U.S.C. 795m)

(Approved by the Office of Management and Budget under control number 1820-0551)

Subpart C—How Does the Secretary Make a Grant?

§ 363.20 How does the Secretary allocate funds?

The Secretary allocates funds under this program in accordance with section 633(a) of the Act.

(Authority: 29 U.S.C. 7951(c))

§ 363.21 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 633(b) of the Act.

(Authority: 29 U.S.C. 7951(b))

Subpart D-E [Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

§ 363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written cooperative agreements or memoranda of understanding with other appropriate State agencies and private nonprofit organizations to ensure collaboration in a plan to provide supported employment services to individuals with severe handicaps.

(b) A cooperative agreement or memorandum of understanding must, at a minimum, specify the following:

(1) The training and traditionally time-limited post-employment services to be provided by the designated State unit with funds received under this part.

(2) The extended services to be provided by the other State agencies and private nonprofit organizations, following the termination of time-limited services under this part.

(3) The estimated funds to be expended by the participating party or parties in implementing the agreement or memorandum.

(4) The projected number of individuals with severe handicaps who will receive supported employment services under the agreement or memorandum:

(Authority: 29 U.S.C. 795m(b)(4) and 795n(b))

§ 363.51 What are the allowable administrative costs?

(a) *Administrative costs-general.* Expenditures are allowable for the following administrative costs:

(1) Administration of the State plan supplement for this program.

(2) Planning, program development, and personnel development to implement a system of supported employment services.

(3) Monitoring, supervision, and evaluation of this program.

(4) Technical assistance to other State agencies, private nonprofit organizations, and businesses and industries.

(b) *Limitation on administrative costs.* Except for planning grants which the Secretary may award in fiscal year 1987, not more than five percent of a State's allotment may be expended for administrative costs for carrying out this program.

(Authority: 29 U.S.C. 7951(c) and 795m(b)(5))

§ 363.52 What are the information collection and reporting requirements?

(a) A State shall collect and report information as required under section 13 of the Act for each individual with severe handicaps served under this program.

(b) The State shall collect and report separately information for—

(1) Supported employment clients served under this program; and

(2) Supported employment clients served under 34 CFR Part 361.

(Authority: 29 U.S.C. 712 and 795o)

(Approved by the Office of Management and Budget under control number 1820-0551)

§ 363.53 What special conditions apply to services and activities under this program?

Each grantee shall coordinate the services provided to an individual under this part and under 34 CFR Part 361 to ensure that the services are complementary and not duplicative.

(Authority: 29 U.S.C. 795 n and q)

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Friday
August 14, 1987

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 371 and 386

Handicapped American Indian Vocational Rehabilitation Service Projects; Rehabilitation Training: Rehabilitation Long-Term Training; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 371 and 386

Handicapped American Indian Vocational Rehabilitation Service Projects; Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing grants to provide services to American Indians with handicaps and grants for long-term training to implement amendments to the Rehabilitation Act of 1973 made by Pub. L. 99–506, the Rehabilitation Act Amendments of 1986.

The regulations implement the new statutory provisions for these two programs. One new provision permits a consortium of governing bodies of Indian tribes to apply for a grant as a single applicant under the American Indians with handicaps program. Another new provision requires the recipient of a scholarship under the long-term training program to work for a State rehabilitation agency or a nonprofit rehabilitation or related agency for two years for each year of assistance received or repay the scholarship plus interest.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Toby Lawrence, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3326, Washington, DC 20202, (202) 732–1351.

SUPPLEMENTARY INFORMATION: On May 27, 1987 the Secretary published a notice of proposed rulemaking for these programs in the **Federal Register** (52 FR 19822). A summary of the major provisions was included in the notice of proposed rulemaking. The explanatory statements in the preamble to the proposed regulations are fully applicable to these regulations. For the sake of brevity, those statements are not being repeated here. Readers are referred to the notice of proposed rulemaking. There were no major substantive changes made in the final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed rulemaking, 39 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the proposed regulations follows.

American Indians with Handicaps program: There were three comments received regarding these proposed regulations. No changes have been made in the final regulations. Issues and concerns raised were:

If the project is small, consisting only of a project director and several counselors, how can the project provide an impartial hearing officer in the case of an appeal as provided in § 371.21? The commenter suggested the possibility of obtaining the services of an individual from the State agency. This is one solution. Other possibilities can be explored. The Rehabilitation Services Administration Regional Offices and the State rehabilitation agencies can provide technical assistance to the Indian projects to assist in establishing procedures that will ensure due process to Indians with handicaps.

Grants for 36 months; priority for continuations; and consultation with State agencies. Commenters requested specific regulations in these areas. As stated in the preamble to the proposed regulations, no changes are considered necessary to implement the statutory requirements because these areas are covered by the existing regulations.

Long-term training program. Issues and concerns were:

Nonprofit or related agency. A number of commenters, notably from the allied health professions, expressed concern regarding how the work requirement could be satisfied if a scholar becomes trained in an area for which State or nonprofit rehabilitation agencies generally do not need full-time employees.

Several commenters asked whether employment with a Federal agency, a State or local agency other than the State rehabilitation agency, or a State or local education agency administering a program for or providing services to individuals with handicaps, would satisfy the work requirement.

A change has been made in the final regulations in § 386.4 to address these concerns. The term "related agency" has been defined to make it clear that employment by most organizations and agencies referred to by the commenters will satisfy the requirement that a scholar work for an organization providing services to individuals with handicaps in the area of specialty for which training is provided. The definition also makes it clear that a for-profit sole practitioner, providing services to individuals with handicaps through an agreement with a State agency, is considered a related agency. Employment in a related agency will meet the requirements of § 386.44(c)(1).

Uncertainty was also expressed about whether employment in a project funded through the governing body of an Indian tribe to provide services to American Indians with handicaps would satisfy the requirement. A change has been made in the long-term training regulations to make it clear that an Indian project is a "related agency" and employment in such agency will satisfy the work requirement.

Why must a nonprofit rehabilitation or related agency have an agreement with a State agency in order for a scholar to satisfy the employment obligations under the Act? A number of commenters objected that the requirement that the organization providing services to individuals with handicaps have an agreement with a State or nonprofit rehabilitation agency is not in the Act. The Secretary understands the intent of Congress in requiring that scholars maintain employment in a nonprofit rehabilitation or related agency or in a State rehabilitation agency was to ensure that training funds are used to increase the numbers of qualified professionals providing services to eligible individuals with handicaps served under the Rehabilitation Act. Section 386.44(c)(1) of the regulations is considered a reasonable method to verify that the intent is met.

Lack of provision for appeal. Concern was expressed by students, that, in contrast to appeals provided to students from decisions by universities, there is no appeal from determinations by the Secretary of noncompliance under § 386.44 of the regulations.

The Department can provide for appeals of determinations of noncompliance under § 386.44 of the regulations through administrative action without the necessity of regulations. An agreement to be used by grantees in this program is presently being developed within the Department and may contain a provision permitting the scholar to request an informal review by the Department of a finding of noncompliance with the terms of the agreement.

The ten-year follow-up of students following graduation is burdensome and unrealistic. It was stated by a number of commenters that universities have no mechanism in place to determine compliance of the scholar with the terms of the agreement in accordance with § 386.44(f), and are not likely to establish the required policies and

procedures in view of Federal and State "Right to Privacy" acts. In addition, project directors may not be available to perform these functions after the expiration of the grant. One commenter stated that the 8 percent permitted for indirect costs was already insufficient to cover expenses. Funds would therefore not be available to pay for the costs of tracking graduates.

In view of the comments, the Department wishes to clarify what it means to establish policies and procedures to determine compliance of the scholar with the terms of the agreement. An example of an appropriate policy and procedure that would comply with this provision would be for grantees to conduct a mailing once a year with a follow-up mailing to nonrespondents. The Department does not consider this type of effort to be burdensome or unrealistic.

"Right to Privacy" acts would not prevent schools from collecting this information since students would have accepted the requirement to provide information as a condition of assistance. In addition, the responsibility for tracking is accepted by the grantee institution, not individual employees of the institution, and would not cease upon completion of the project period. The Department does not find it unreasonable to expect a university to absorb the administrative cost of tracking in return for the ability to offer federally funded scholarships.

Repayment and deferral. A number of commenters expressed the need for additional flexibility to permit deferral or repayment exceptions. Many of the situations described in the comments, such as an individual with a severe handicap who can only work as a volunteer or part-time, are covered by the regulations in § 386.45. All others, such as inability to work because of age, are unlikely to occur. If unforeseen problems come to the Department's attention, they will be addressed by interpretations of the regulations or changes in the regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 371

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 386

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance 84.129, Rehabilitation Training; 84.132, American Indians with handicaps)

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 371 and 386 of Title 34 of the Code of Federal Regulations as follows:

PART 371—[AMENDED]

1. The authority citation for Part 371 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

2. The title of Part 371 is revised to read as follows:

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH HANDICAPS

§ 371.41 [Amended]

3. In § 371.41(a)(2), remove the words "the handicapped individual" and add, in their place, the words "an individual with handicaps".

§§ 371.21 and 371.41 [Amended]

4. In Part 371, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) § 371.21 (d) and (g); and

(b) § 371.41(b).

§§ 371.10, 371.21, 371.30, 371.42, 371.43 [Amended]

5. In Part 371, remove the words "handicapped American Indians" and add, in their place, the words "American Indians with handicaps" in the following places:

(a) § 371.10;

(b) § 371.21 (c), (d), (f), and (h);

(c) § 371.30(f)(2) (i) and (ii);

(d) § 371.42; and

(e) § 371.43(b).

§§ 371.21 and 371.43 [Amended]

6. In Part 371, remove the words "handicapped American Indian" and add, in their place, the words "American Indian with handicaps" in the following places:

(a) § 371.21(e); and

(b) § 371.43(a).

7. Section 371.1 is revised to read as follows:

§ 371.1 What is the Vocational Rehabilitation Service Program for American Indians with Handicaps?

This program is designed to provide vocational rehabilitation services to American Indians with handicaps who reside on Federal or State reservations in order to prepare them for suitable employment.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.2 [Amended]

8. In § 371.2, add the words "and consortia of those governing bodies" after "Indian tribes".

9. Section 371.4 is amended by removing the paragraph designations under (b), and adding the following definition in alphabetical order to read as follows:

§ 371.4 What definitions apply to this program?

* * * * *

(b) * * *

"Consortium" means two or more eligible governing bodies of Indian tribes that make application as a single applicant under an agreement whereby each governing body is legally responsible for carrying out all of the activities in the application.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.20 [Amended]

10. In § 371.20, add after "governing body" the words "or consortium".

11. In § 371.21, paragraph (i) is revised to read as follows:

§ 371.21 What are the special application requirements related to the State plan program?

* * * * *

(i) Any American Indian with handicaps who is an applicant or recipient of services, and who is dissatisfied with a determination made by a counselor or coordinator under this program and files a request for a review, will be afforded a review under procedures developed by the grantee

comparable to those under the provisions of section 102(d) (1)–(3) of the Act.

(Authority: Secs. 12(c) and 102(d) of the Act; 29 U.S.C. 711(c) and 722(d))

* * * * *

12. Section 371.40 is revised to read as follows:

§ 371.40 What are the matching requirements?

(a) *Federal share.* Except as provided in paragraph (c) of this section, the Federal share may not be more than 90 percent of the total cost of the project.

(b) *Non-Federal share.* The non-Federal share of the cost of the project may be in cash or in kind, fairly valued.

(c) *Waiver of non-Federal share.* In order to carry out the purposes of the program, the Secretary may waive the non-Federal share requirement, in part or in whole, only if the applicant demonstrates that it does not have sufficient resources to contribute the non-Federal share of the cost of the project.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(c))

13. Section 371.42 is revised to read as follows:

§ 371.42 How are services to be administered under this program?

(a) *Directly or by contract.* A grantee under this Part may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a rehabilitation facility, or another agency to assist in the implementation of the vocational rehabilitation service program for American Indians with handicaps.

(b) *Inter-tribal agreement.* A grantee under this Part may enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project that serves more than one Indian tribe.

(c) *Comparable service program.* To the maximum extent feasible, services provided by a grantee under this Part must be comparable to rehabilitation service provided under this title to other individuals with handicaps residing in the State.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

PART 386–REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

14. The authority citation for Part 386 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

15. Section 386.1 is revised to read as follows:

§ 386.1 What is the Rehabilitation Long-Term Training Program?

This program is designed to provide academic and non-academic training in areas of personnel shortages identified by the Secretary and published as a notice in the **Federal Register.** These areas may include—

(a) Rehabilitation engineering;
(b) Rehabilitation medicine;
(c) Rehabilitation nursing;
(d) Rehabilitation counseling;
(e) Rehabilitation social work;
(f) Rehabilitation psychiatry;
(g) Rehabilitation psychology;
(h) Rehabilitation dentistry;
(i) Physical therapy;
(j) Occupational therapy;
(k) Speech-language pathology and audiology;
(l) Physical education;
(m) Therapeutic recreation;
(n) Rehabilitation facility administration;
(o) Vocational evaluation and work adjustment;
(p) Rehabilitation workshop and facility personnel;
(q) Prosthetics and orthotics;
(r) Rehabilitation of the blind;
(s) Rehabilitation of the deaf;
(t) Rehabilitation of the mentally ill;
(u) Rehabilitation job development and job placement;
(v) Specialized personnel for supported employment;
(w) Undergraduate education in the rehabilitation services;
(x) Rehabilitation administration;
(y) Independent living;
(z) Client assistance; and
(aa) Other fields contributing to the rehabilitation of individuals with handicaps, especially individuals with severe handicaps, including homebound or institutionalized individuals.

(Authority: Secs. 304 (a) and (b) of the Act; 29 U.S.C. 774 (a) and (b))

16. Section 386.4 is revised to read as follows:

§ 386.4 What definitions apply to this program?

The following definitions apply to this program:

(a) The definitions in 34 CFR Part 385.

(b) The following definitions:

"Academic year" means a full-time course of study—

(1) Taken for a period totaling at least 9 months; or

(2) Taken for the equivalent of at least 2 semesters, 2 trimesters, or 3 quarters.

"Certificate" means a recognized educational credential awarded by a grantee under this Part which attests to the completion of a specified series of courses or program of study.

"Related agency" means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with handicaps under an agreement with a State agency in the area of specialty for which training is provided:

(i) A Federal, State or substate agency.

(ii) A nonprofit organization.

(iii) A for-profit sole professional practice.

"Scholar" means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1 and who receives assistance under this part.

"Scholarship" means a training award to a scholar.

"Training award" means an award of financial assistance to an individual for training in one or more of the areas designated in § 386.1.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 386.30 [Amended]

17. In § 386.30(c), "baisis" is corrected to read "basis."

18. In § 386.30(h)(2)(iii), remove the words "physically and mentally handicapped persons, especially those who are severely handicapped" and add, in their place, the words "persons with handicaps, especially persons with severe handicaps".

19. Section 386.42 is revised to read as follows:

§ 386.42 What are the requirements affecting applicants for and recipients of training awards?

(a) An individual applying for a training award—

(1)(i) Shall produce documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall produce documentation from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Must not be an employee of the Federal government;

(3) Shall express interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation or independent living rehabilitation of persons with handicaps, especially persons with severe handicaps; and

(4) Shall provide assurances that the individual expects to maintain or seek employment in a State vocational rehabilitation agency or in a nonprofit rehabilitation or related agency providing services to individuals with handicaps or individuals with severe handicaps under an agreement with a State agency.

(b) An individual who receives a training award—

(1) Shall receive the training at the educational institution or agency designated in the training award; and

(2) Must not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance is conditioned on an employment obligation that conflicts with the individual's obligation under § 386.42(a)(4) or § 386.44(c)(1).

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

(Approved by the Office of Management and Budget under control number 1820–0028)

20. A new § 386.43 is added to read as follows:

§ 386.43 What are the additional requirements affecting scholars?

(a) *Requirements for a scholar.* A scholar shall—

(1) Enter into a written agreement with grantee that meets the terms and conditions required in § 386.44;

(2) Be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1; and

(3) Maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(b) *Limits on scholarships.* (1) Assistance is limited to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may allow one additional academic year if the grantee determines that an individual has a handicap that seriously affects the completion of the course of study.

(2) If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance, the grantee shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

21. A new § 386.44 is added to read as follows:

§ 386.44 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this Part that intends to grant scholarships shall provide the following assurances:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee will enter into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in such form and contain such terms as the Secretary requires, including at a minimum the following provisions:

(1) Within the ten-year period after cessation of enrollment in the course of study for which the scholarship is awarded, the scholar will obtain and maintain employment—in a State rehabilitation agency or in a nonprofit rehabilitation or related agency providing services to individuals with handicaps under an agreement with a State agency—on a full-time basis for a period of not less than two years for each academic year for which a scholarship is received. The work requirement for portions of an academic year are prorated.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar is based on the accumulated academic years of training for which scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.45 regarding a waiver or deferral, when the scholar enters repayment status under § 386.47(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.47; and

(ii) May be collected by the Secretary in accordance with 34 CFR Part 30, in the case of the scholar's failure to meet the obligation of § 386.47.

(d) *Executed agreement.* The grantee will provide an original executed agreement to the Secretary.

(e) *Standards for satisfactory progress.* The grantee establishes, publishes, and applies reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has such standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors which are measurable against a norm;

(ii) A maximum time frame in which the scholar must complete the scholar's educational objective, degree, or certificate. The time frame shall be—

(A) Determined by the institution;

(B) Based on the scholar's enrollment status; and

(C) Divided into increments, not to exceed one academic year. At the end of each increment, the institution shall determine whether the scholar has successfully completed a minimum percentage of work toward the scholar's educational objective, degree, or certificate for all increments completed. The minimum percentage of work shall be the percentage represented by the number of increments completed by the scholar compared to the maximum time frame set by the institution;

(iii) Consistent application of standards to all scholars within categories of students e.g., full-time, part-time, undergraduates, graduate students and programs established by the institution;

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress; and

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Tracking system.* The grantee has established policies and procedures to

determine compliance of the scholar with the terms of the agreement.

(g) *Reports.* The grantee makes reports to the Secretary that are necessary to carry out the Secretary's functions under this Part.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

(Approved by the Office of Management and Budget under control number 1820–0028)

22. A new § 386.45 is added to read as follows:

§ 386.45 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of § 386.44(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of an impairment that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed twelve months.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

23. A new § 386.46 is added to read as follows:

§ 386.46 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.45(a)(1) or a deferral under § 386.45(b)(5) must include a sworn affidavit from a qualified physician.

(3) Documentation to substantiate an exception under § 386.45(a)(2) must include a death certificate or other evidence conclusive under State law.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

(Approved by the Office of Management and Budget under control number 1820–0028)

24. A new § 386.47 is added to read as follows:

§ 386.47 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.45, the scholar shall repay all or part of the scholarship.

(a) *Amount.* The amount of scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.*

(1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.45.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the ten years after cessation of enrollment in the course of study.

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

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Friday
August 14, 1987

Part VI

Department of Education

34 CFR Part 614

College Facilities Loan Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 614

College Facilities Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to implement the College Facilities Loan program, authorized under Title VII, Part F of the Higher Education Act of 1965, as amended. These regulations establish eligibility conditions, selection criteria, and other terms and conditions for applicants and loan recipients under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Summer M. Bravman, Program Manager, College Facilities Loan Program, Division of Higher Education Incentive Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3022, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202–3327. Telephone (202) 732–4394.

SUPPLEMENTARY INFORMATION: Title VII, Part F of the Higher Education Act authorizes a program of low interest loans to assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing facilities, undergraduate academic facilities, and other educational facilities.

On May 12, 1987, the Secretary published a notice of proposed rulemaking for the College Facilities loan program. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the comments received and the Secretary's responses to those coments are included in this preamble.

Summary of Comments and Responses

General Comment

Comment: One commenter suggested that the Secretary include a provision in the regulations to reallocate loan funds to the next institution in rank order if an institution that receives a fund reservation is subsequently found to be ineligible.

Response: No change has been made. If such a situation occurred before the close of the fiscal year, the loan funds previously committed would be reallocated to the next insitution in rank order. However, since Congress directs the amount of new loan commitments that may be made in each fiscal year in the Department's appropriation act, the Department does not have the authority to make any additional commitments after the close of the fiscal year.

Section 614.5 What definitions apply?

Comment: One commenter suggested that the definition of "Undergraduate academic facilities" be revised to include facilities the primary purpose of which is the instruction of students pursuing at least a two-year program acceptable for full credit toward a baccalaureate degree.

Response: A change has been made. The Higher Education Technical Amendments Act of 1987 requires a revised definition identical to that proposed by the commenter.

Section 614.11 What conditions of eligibility apply?

Comment: One commenter believed that the provision in the regulations that the Secretary does not approve a loan to an institution that is in default under any Federal program applies to institutions with a high National Direct Student Loan (now called Perkins Loan) default rates. The commenter proposed suggestions based on this belief.

Response: No change has been made. An institution is not in default of an obligation under the Perkins Loan Program, if default rates for loan recipients at the institution exceed the levels established for an award of a Federal Capital Contribution to the institution. The commenter was mistaken in his belief that Perkins Loan Program recipient default rates would disqualify an institution from receiving a loan under the College Facilities Loan Program.

Section 614.20 How does the Secretary evaluate applications?

Comment: One commenter objected to the use of an increase in enrollment as a selection criterion, especially for housing, because of the expected decline in what the commenter categorized as traditional age students.

Response: No change has been made. An increase in enrollment is not used as selection criterion for housing facilities. It is only used as a selection criterion for new construction of undergraduate academic facilities and for other eductional facilities. Because section 763(b) of the Act mandates that the Secretary give priority to loans for the renovation and reconstruction of older undergraduate academic facilities, consideration of applications for new construction of undergraduate academic facilities and for other educational facilities should be given only under very limited circumstances, such as when significant increases in enrollment have occurred.

Comment: One commenter suggested that differences in regional costs be considered in evaluating cost-effectiveness and financial need.

Response: No change has been made. At the present time, the Secretary does not have data available to assess accurately the regional cost differences for college facilities construction. The Secretary believes a valid and useful assessment of cost effectiveness can still be made by comparing project costs in absolute terms. The Secretary will consider making future changes to the selection critria as reliable information on regional cost differences becomes available.

Other Changes

In § 614.11, "What conditions of eligibility apply?", the Secretary has deleted paragraph (a)(3) since it is redundant. A similar requirement regarding elaborate or extravagant construction or materials is contained in § 75.607 of the Education Department General Administrative Regulations (EDGAR).

Section 614.11(b) has been modified to clarify the provision that the Secretary does not approve a loan for any facility on the campus of an undergraduate educational institution until ten years after the date on which a previous loan for another facility on that campus was made under Title VII, Part F of the Higher Education Act of 1965, as added by the Higher Education Amendments of 1986. The change makes clear that the Secretary interprets the statutory limitation in section 762(i) of the Higher Education Act as applying only to institutions that receive loan commitments after the October, 1986 effective date of the Higher Education Amendments of 1986.

The final regulations include a Subpart E, which was omitted from the text of the proposed regulations that appeared in the notice of proposed rulemaking, for discounted prepayment of loans. The omission was unintentional, particularly in light of the fact that the Secretary recently revised, and currently administers, the provisions governing discounted prepayments of loans. Subpart E is necessary for inclusion in the final regulations because of statutory changes on discounting authority enacted by Congress in the Higher Education Amendments of 1986; the changes were

incorporated by the Secretary in revisions to the then existing program regulations on December 23, 1986.

Printing errors have been corrected throughout the regulations.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department 's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require the transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 614

Colleges and universities, Education, Grant programs–housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.142)

Dated: August 10, 1987.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 614 of Title 34 of the Code of Federal Regulations to read as follows:

PART 614—COLLEGE FACILITIES LOAN PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for a Loan?

Subpart C—How Does the Secretary Make a Loan?

Subpart D—What Conditions Must be Met After an Award?

Subpart E—What Conditions Must be Met for a Discounted Prepayment of a Loan?

Authority: 20 U.S.C. 1132g–1132g–3, unless otherwise noted.

Subpart A—General

§ 614.1 What is the College Facilities Loan Program?

The College Facilities Loan Program provides low interest loans to assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculties.

(Authority: 20 U.S.C. 1132g)

§ 614.2 Who is eligible to receive a loan?

Any of the following are eligible to receive a loan:

(a) Any public or private non-profit undergraduate postsecondary educational institution which offers, or provides satisfactory assurance to the Secretary that it will offer within a reasonable time after completion of the facility for which assistance is requested under this part, at least a two-year program acceptable for full credit toward a baccalaureate degree.

(b) Any public educational institution that—

(1) Is administered by a college or university which is accredited by a nationally recognized accrediting agency or association;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students receiving that instruction.

(c) Any public or non-profit private hospital that—

(1) Operates a school of nursing beyond the level of high school and is approved by an appropriate State authority; or

(2) Is approved for internships by an accrediting agency or association recognized by the Secretary.

(d) Any non-profit corporation established for the sole purpose of providing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affiliation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the non-profit corporation, all title to any property built or purchased with proceeds of the loan will go to the institutions or be used for some other non-profit educational purpose.

(e) Any agency, public authority, or other instrumentality of any State, established for the purpose of providing or financing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(f) Any non-profit student housing cooperative corporation established for the purpose of providing housing for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(Authority: 20 U.S.C. 1132g–3)

§ 614.3 What types of projects may the Secretary fund?

(a) The Secretary approves loans for projects that enable undergraduate postsecondary educational institutions to construct, reconstruct, or renovate—

(1) Housing facilities for students and faculties;

(2) Undergraduate academic facilities; or

(3) Other educational facilities.

(b) The Secretary may announce from among those categories listed in paragraph (a) of this section funding priorities under this program in any given fiscal year through a Notice published in the **Federal Register** in accordance with the procedures in 34 CFR 75.105.

(c) In addition to the priorities that may be established under paragraph (b) of this section, the Secretary gives priority to loans for renovation or reconstruction of—

(1) Older undergraduate academic facilities; and

(2) Undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period.

(Authority: 20 U.S.C. 1132g–2)

§ 614.4 What regulations apply?

The following regulations apply to the College Facilities Loan Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Subparts D and P, Part 75 (Direct Grant Programs) §§ 75.105, 75.600–75.616, Part 77, and Part 79.

(b) The regulations in this Part 614.

(Authority: 20 U.S.C. 1132g–1)

§ 614.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR 34 Part 77.1:

Applicant	Nonprofit
Application	Private
Award	Public
Budget	Recipient
Department	Secretary
EDGAR	State
Facilities	Supplies
Fiscal year	

(b) *Revised EDGAR definitions.* The following terms defined in EDGAR, 34 CFR 77.1, are redefined for this part as follows:

"Acquisition" means taking ownership of property through purchase at fair market value.

"Equipment" means non-expendable personal property having a useful life of more than ten years, including machinery, fixtures, and other items necessary for maintenance and operation of a facility, except books, computer software, instructional materials, and other items involving current operating expenses such as fuel, supplies, and serviceable parts. Equipment may consist of—

(1) "Built-in equipment," which is a permanent part of a facility; and

(2) "Initial equipment," which includes furniture and other necessary and appropriate items for the functioning of a facility taking into account the specific purposes of the facility.

"Project" means the construction activity that is proposed for funding by an applicant under this program.

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended. Unless otherwise indicated, references to titles in this part are to titles of the Act.

"Assignable area" means the square footage of floor space in facilities which is designated and available for assignment to specific functional purposes, but does not include—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures available for assignment to specific functional purposes.

"Construction" means—

(1) The erection of new or the expansion of existing structures, including acquisition of the land thereunder, and the acquisition and installation of initial equipment therefor; or

(2) The acquisition of existing structures, including the land thereunder, not owned by the institution involved.

"Design capacity", with respect to housing, means the number of occupants a building was originally designed to house, or if fewer, the maximum number of occupants permitted by State or local building codes.

"Development cost" means costs of the construction, reconstruction, or renovation of the housing, undergraduate academic facilities, or other educational facilities, including necessary site improvements to permit its use for housing, undergraduate academic facilities, or other educational facilities.

(20 U.S.C. 1132g–3(d))

"Faculties" means members of the faculty and their families.

"Full-time enrollment" means the number of full-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

"Gross area" means the total square footage of floor space within the outside faces of exterior walls in the facilities including common areas such as halls and stairways, public washrooms, and areas for building maintenance and utilities.

"Housing" means—

(1) New or existing structures suitable for dwelling use by students or students and faculty and their families, including—(i) Dormitories; and (ii) Apartments; and

(2) Dwelling facilities for students or faculty provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

(20 U.S.C. 1132g–3(a))

"Housing shortage" means an existing need for decent, safe, and sanitary housing for currently enrolled full-time undergraduate students and faculty.

"Other educational facilities" means—

(1) New or existing structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries or other inpatient or outpatient health facilities, or for use as other essential service facilities; and

(2) Structures suitable for those uses provided by rehabilitation, alteration,

conversion, or improvement of existing structures which are otherwise inadequate for those uses.

(20 U.S.C. 1132g–3(f))

"Part-time enrollment" means the number of part-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

"Reconstruction or renovation" means rehabilitation, alteration, conversion or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of that equipment) of existing structures. ("Major renovation" means reconstruction or renovation with a total development cost in excess of $100,000.)

(20 U.S.C. 1132i–1(1)(B))

"Substandard housing" means student housing, either on campus or off campus that—

(1) Is owned or leased by an institution eligible under § 614.2; and

(2) Fails to meet current applicable State or local building code requirements.

"Undergraduate academic facilities" means structures suitable for use as classrooms, laboratories, libraries, and related facilities, the primary purpose of which is the instruction of students pursuing at least a two-year program acceptable for full credit toward a baccalaureate degree, or for administration of the educational programs serving those students, and maintenance, storage, or utility facilities essential to operation of these facilities, as well as infirmaries or other facilities designed to provide primarily outpatient care for students and instructional personnel. The term does not include facilities such as—

(1) Dormitories, residence halls, or similar facilities designed for residence or habitation;

(2) Facilities primarily intended for events for which admission is to be charged the general public;

(3) Gymnasiums, stadiums, swimming pools, student centers, or other similar facilities specially designed for athletic or recreational activities; or

(4) Facilities used for religious worship or sectarian activities, or used in connection with a program conducted by a school or department of divinity.

(Authority: 20 U.S.C. 1132g–1(c), 1132g–3(c))

Subpart B—How Does One Apply for a Loan?

§ 614.10 How does one submit an application?

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information required by the Secretary.

(b)(1) An applicant may submit only one application for a reservation of funds in any fiscal year for each category of project described in § 614.3.

(2) For purposes of paragraph (b)(1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.11 What conditions of eligibility apply?

(a) The Secretary considers a project eligible to receive assistance only if—

(1) The applicant has not contracted for construction before filing its application; and

(2) The facility will not be used—

(i) For religious worship;

(ii) In connection with a school or department of divinity; or

(iii) For a school providing either training for religious purposes or principally sectarian instruction.

(b) The Secretary does not approve another college facilities loan authorized under Part F, Title VII, of the Higher Eduction Act for any facility on the campus of an undergraduate educational institution until ten years after the date on which a previous loan for a facility on that campus was made under Part F, Title VII, of the Higher Education Act.

(c) Except in cases where construction assistance is necessary to remove a threat to life or limb or to repair a facility affected by a natural disaster, the Secretary does not approve a loan for a project in a facility on which there is an outstanding loan made under this part or under Title IV of the Housing Act of 1950.

(d) The Secretary does not approve a loan to an institution that is—

(1) Delinquent on a loan previously made under the Act, or under Title IV of the Housing Act of 1950, whether or not the Secretary has agreed to any deferment; or

(2) In default of any other obligation made under any other Federal program.

(e) The Secretary does not approve a loan to an institution that is financially insolvent.

(Authority: 20 U.S.C. 1132g–(b), 1132g–1(c))

§ 614.12 What evidence, assurances, and opinions of counsel are required of the applicant institution?

An applicant shall submit to the Secretary, as part of its application, the following evidence, assurances, and opinions of counsel:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the project site, including the right of access, that is sufficient to ensure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, reconstruct or renovate or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of procedures listed in § 614.27.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretary, sell, mortgage, encumber, or lease to others during the life of the loan, the facility constructed, reconstructed, or renovated with the aid of the loan.

(f) Legal opinions by bond counsel or legal counsel with respect to—

(1) The legal sufficiency of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legal sufficiency of the debt instrument and collateral on delivery.

(g) As used in this paragraph, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction, reconstruction, or renovation projects through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(h) As used in this paragraph, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction, reconstruction, or renovation projects; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.13 What application procedures apply to non-profit student housing cooperatives?

A nonprofit student housing cooperative, as described in § 614.2(f), that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The institution the proposed project is intended to serve has agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution from cosigning the loan, the institution has approved the cooperative and the proposed project.

(Authority: 20 U.S.C. 1132g–3(b))

§ 614.14 What application procedures apply to non-profit corporations?

If a non-profit corporation described in § 614.2(d) that has not been established by the institution or institutions the proposed project is intended to serve applies for a reservation of funds for a loan, it shall assure the Secretary at the time of its application that—

(a) The educational institution or institutions the proposed project is intended to serve have agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(Authority: 20 U.S.C. 1132g–3(b))

Subpart C—How Does the Secretary Make a Loan?

§ 614.20 How does the Secretary evaluate applications?

The Secretary evaluates applications for loans to construct, reconstruct or renovate—

(a) Housing facilities according to the criteria in § 614.21;

(b) Undergraduate academic facilities according to the criteria in § 614.22; and

(c) Other educational facilities according to the criteria in § 614.23.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.21 What selection criteria are used to evaluate applications for loans for housing facilities?

The Secretary evaluates each application for a loan for housing facilities on the basis of the following criteria:

(a) *Use of existing housing.* (10 points)

(1) The Secretary considers the extent to which the institution makes effective use of the undergraduate student housing space that it owns or leases as measured by the number of assignable square feet per undergraduate student occupant.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of assignable square feet per undergraduate student occupant.

(b) *Housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a housing deficiency as measured by the number of accommodations required to—

(i) Eliminate overcrowding of undergraduate students, that is, occupancy in excess of design capacity;

(ii) Provide accommodations for undergraduate students living in substandard housing; and

(iii) Provide accommodations for undergraduate students denied housing but registered for classes for the opening fall semester preceding the date of application.

(2) The Secretary assigns the highest scores to institutions with the greatest housing deficiency.

(c) *Relative housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a relative housing deficiency as measured in terms of a percentage obtained by dividing the total housing deficiency in § 614.21(b) by the institution's full-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the highest relative housing deficiency.

(d) *Cost effectiveness of project.* (30 points)

(1) The Secretary considers the cost effectiveness of the project as measured by the total development cost per gross square foot of the project, and the total development cost per undergraduate student accommodation.

(2) The Secretary assigns up to 15 points to institutions with the lowest cost per gross square foot, and up to 15 points to institutions with the lowest cost per undergraduate student accommodation.

(e) *Financial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student, as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per student.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.22 What selection criteria are used to evaluate applications for loans for undergraduate academic facilities?

(a) The Secretary evaluates each application for a loan for the construction of new undergraduate academic facilities according to the following criteria:

(1) *Increase in enrollment.* (25 points)

(i) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(2) *Relative increase in enrollment.* (25 points)

(i) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the assignable square feet

by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

(b) The Secretary evaluates each application for a loan for the reconstruction or renovation of undergraduate academic facilities according to the following criteria:

(1) *Age of undergraduate academic facilities to be renovated or reconstructed.* (25 points)

(i) The Secretary considers the date of construction completion of the undergraduate academic facilities to be renovated or reconstructed.

(ii) The Secretary assigns the highest scores to the oldest facilities.

(2) *Deferred maintenance.* (25 points)

(i) The Secretary considers the extent to which the facilities have gone without major renovation or reconstruction.

(ii) The Secretary assigns the highest scores to the facilities that have gone the longest time without major renovation or reconstruction.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. The expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assign the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.23 What selection criteria are used to evaluate applications for loans for other educational facilities?

The Secretary evaluates each application for a loan for other educational facilities according to the following criteria:

(a) *Increase in enrollment.* (25 points)

(1) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(b) *Relative increase in enrollment.* (25 points)

(1) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(c) *Use of existing other educational facilities.* (30 points)

(1) The Secretary assesses the extent to which the institution makes use of its existing other educational facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(d) *Financial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.24 What apportionment requirements and other limitations apply?

(a) The Secretary awards not more than 12.5 percent of the amount of the funds provided under this part to educational institutions within any one State.

(b) Subject to paragraph (a) of this section, the Secretary may, as necessary, deviate from the rank order of applications in each category of loans to ensure that not less than ten percent of the number of loans made or not less than ten percent of the amount of total funds available are reserved for applications from historically black colleges and universities.

(c) The maximum loan that the Secretary makes to an eligible applicant is $3,000,000.

(d) The minimum loan that the Secretary makes to an eligible applicant is $250,000.

(Authority: 20 U.S.C. 1132g–1(c), 1132g–2)

§ 614.25 What determination must be made by the Secretary regarding non-availability of equally favorable terms and conditions?

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may require, including—if bonds are to be issued—public advertising for bids.

(Authority: 20 U.S.C. 1132g)

§ 614.26 What is required in a loan agreement?

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations in this part; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan including financial reporting requirements; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(Authority: 20 U.S.C. 1132–1(c))

§ 614.27 What kinds of security are required for the loan?

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, project revenues, other revenue sources, or any combination thereof.

(b) If the Secretary determines that additional security is needed to assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) A pledge of securities.

(3) A mortgage on other facilities or real property.

(4) A guarantee of the payment of principal and interest by a third party.

(Authority: 20 U.S.C. 1132g–1(c))
(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.28 What evidence of an approved debt instrument is required?

After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary evidence of indebtedness in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))
(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.29 When does loan closing take place?

Loan closing occurs at a time determined by the Secretary.

(Authority: 20 U.S.C. 1132–1g(c))

§ 614.30 What are the conditions for interim financing?

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) After the award of all prime construction contracts, if the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(Authority: 20 U.S.C. 1132g–1(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 614.40 What are the general rules for determining eligible development costs?

The Secretary determines eligible development costs by assessing the reasonableness and appropriateness of costs that would be incurred by the project taking into account—

(a) The timing of when certain costs would be incurred by the applicant; and

(b) The applicant's compliance with the regulations in this part.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.41 What are ineligible development costs?

(a) The Secretary excludes from eligible development costs any costs for construction, reconstruction, or renovation or for otherwise eligible equipment, if the construction, reconstruction, or renovation contract was entered into before the Secretary executed the loan agreement and before the Secretary concurred in the award of the contract, except in cases where there is a threat to life or limb or there is a natural disaster which is related to the construction project.

(b) In cases of threat to life or limb or a natural disaster, the Secretary, in determining the eligibility of costs incurred prior to execution of a loan agreement and the approval of a construction contract, requires that the applicant provide a certification from a licensed professional architect or engineer that construction is necessary and appropriate.

(c) The Secretary excludes from eligible development costs any costs for—

(1) Land incurred before the applicant files the application;

(2) The acquisition of a structure incurred before the applicant files the application;

(3) Equipment incurred before the date the applicant files the application; and

(4) Ineligible facilities included in the total development costs.

(Authority: 20 U.S.C. 1132g–3(d))

§ 614.42 What are the requirements with respect to a construction account?

(a) A borrower shall deposit in a separate account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loan; and

(3) All other money that the borrower will use in paying for the construction of the approved project.

(b) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(c) Accounting for this account must be in accordance with generally accepted accounting principles.

(d) If the borrower chooses to invest the funds in this account, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(e) An investment made in accordance with paragraph (d) of this section must be in obligations that will mature not later than 18 months from the date of the investment.

(f) Any interest earned on the investment of idle funds in the Construction Account during the construction period must be deposited in the Construction Account. The interest must be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess must be used to reduce the outstanding principal amount of the loan.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.43 What are the procedures for loan disbursement?

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.44 How shall the balance remaining in the construction fund be disposed of?

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.45 How is the determination of final approved development costs made?

(a) For the purpose of determining the final approved development costs, the Secretary may permit a borrower to

use—in place of an audit by the Government—a certificate of project development costs prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include, but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, and other items of expense approved by the Secretary.

(Authority: 20 U.S.C. 1132g–1)

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.46 How must pledged revenues be applied?

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues in a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.47 What are the length and maturity of loans?

(a)(1) The maximum repayment period for a loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, reconstructed, renovated, or purchased with the proceeds.

(b) Loans must bear interest at a rate not to exceed 5.5 percent per annum.

(c) Unless the Secretary authorizes otherwise—

(1) The borrower must repay the loan semi-annually in substantially level total annual installments of principal and interest.

(2) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with a borrower's total financial planning.

(3) For a reasonable period of time—normally not exceeding two years following the closing of the loan—the Secretary may permit a borrower to make payments of interest only.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.48 What are borrowers' non-financial obligations?

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution, including its accreditation;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities;

(d) Repair and maintain the project facilities; and

(e) Never use the project facilities for religious worship or a sectarian activity or for a school or department of divinity.

(Authority: 20 U.S.C. 1132g–1(c))

Subpart E—What Conditions Must be met for a Discounted Prepayment of a Loan?

§ 614.50 How does the Secretary provide for a discounted prepayment of a loan?

(a)(1) The Secretary may provide a discount for prepayment in full of a college housing loan in an amount determined to be in the best financial interests of the Government for institutions that meet the conditions established in paragraph (b) of this section.

(2) The discount is applicable both to loans in current payment status and to loans in default as long as an institution does not become delinquent or in default on its loans after October 1, 1986. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college housing loans.

(b) The Secretary may approve a proposal from an institution for discounted prepayment of a college housing loan if—

(1) The prepayment is made from non-Federal sources;

(2) The prepayment is made on a loan both issued before October 1, 1986 and outstanding for at least five years;

(3) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1954; and

(4) The prepayment is in an amount determined in accordance with paragraph (c) of this section;

(c) The Secretary determines the amount of a prepayment for a college housing loan based on—

(1) Current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid;

(2) Current fair market value of outstanding marketable obligations that are of comparable quality to that of the loan to be prepaid;

(3) Current and anticipated administrative costs incurred by the Secretary in servicing the loan to be prepaid; or

(4) Current net proceeds that the Secretary would receive from nongovernmental investors, if the loan to be prepaid were purchased by such investors on the open market.

Authority: Section 762 (c), (d), (e) of the Higher Education Act of 1965, as added by the Higher Education Amendments of 1986, Pub. L. No. 99–498.

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Part VII

Environmental Protection Agency

40 CFR Parts 265, 270, and 271

Changes to Interim Status and Permitted Facilities for Hazardous Waste Management; Procedures for Post-Closure Permitting; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 265, 270, 271

[FRL-3143-1]

Changes to Interim Status and Permitted Facilities for Hazardous Waste Management; Procedures for Post-Closure Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today proposes to amend its hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) governing changes at interim status and permitted hazardous waste management facilities. This proposed rule is intended to simplify changes that are necessary to comply with new regulatory requirements. EPA also proposes to amend its permitting regulations to clarify the Agency's authority to deny permits for the active life of a facility while a permit decision with respect to the post-closure period remains pending.

DATES: Comments must be received on or before October 13, 1987.

ADDRESSES: The public must submit an original and two copies of its comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street SW., Washington, DC 20460.

Place "Docket number F-87-RIPP-FFFFF" on your comments. The OSW docket for this proposed rulemaking is located in the sub-basement at the above address, and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment by calling (202) 475-9327 to review docket materials. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424-9346 (in Washington, DC, call 382-3000) or Barbara Foster, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-7729.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are proposed under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Purpose of Rulemaking

Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a "cradle-to-grave" management system intended to ensure that hazardous waste is identified and properly transported, stored, treated, and disposed of. Subtitle C requires EPA to identify hazardous waste and to promulgate standards for generators and transporters of such wastes. Under section 3004 of RCRA, owners and operators of treatment, storage, and disposal facilities are required to comply with standards "necessary to protect human health and the environment." These standards are generally implemented initially through interim status standards and later through permits that are issued under authorized State programs or by EPA.

Under section 3005(a) of RCRA, all treatment, storage, and disposal of hazardous waste are prohibited, except in accordance with a permit that implements the section 3004 standards. However, recognizing that the issuance of permits can be time-consuming, Congress created "interim status" for facilities in existence on the effective date of EPA's permitting regulations (November 19, 1980). Under section 3005(e), owners and operators of hazardous waste treatment, storage, and disposal facilities in existence on that date who submitted a Part A permit application and a section 3010 notification are treated as having been issued permits until an authorized State or EPA takes final administrative action on their permit applications.

A facility with a permit or interim status may change its waste management operations only under certain conditions, specified in EPA's regulations on permit modifications (40 CFR 270.41 and 270.42) and changes in interim status (40 CFR 270.72). On occasion, however, new regulations issued under RCRA may necessitate changes at permitted or interim status facilities that cannot readily be made under the regulations, resulting in unnecessary delay and in some cases increased risk to human health and the environment. For example, section 3015 of the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA imposed minimum technological requirements on certain interim status landfills, surface impoundments, and waste piles. On July 15, 1985, the Agency codified section 3015 (50 FR 28702). To comply with these new requirements and continue handling hazardous waste, many interim status facilities may have to make changes that are not allowed during interim status by the current regulations. The combined effect of these provisions may be to leave some facilities with no means of complying with the RCRA regulations, except to cease their operations while they apply for a RCRA permit.

To avoid this undesirable result, the Agency is today proposing regulatory changes to increase permitted and interim status facilities' flexibility to make changes necessary to comply with new requirements. Specifically, the proposal would allow a permitted facility to add a newly listed or identified waste to its permit as a "minor" permit modification, pending the review of a major modification request, provided that the facility was handling the waste prior to the time EPA defined it as hazardous. In addition, the proposed rule would allow owners and operators of interim status facilities to increase design capacity if necessary to comply with Federal, State, or local requirements. The rule would also amend § 270.72 to specify that owners and operators of interim status facilities may make changes in accordance with corrective action orders. It would also remove the "reconstruction" limit of the current § 270.72(e) for certain changes at interim status facilities necessary to comply with Federal, State, or local requirements, for changes made during closure of a facility or of a unit within a facility, and for changes necessary to continue handling newly listed or identified hazardous wastes. The proposed rule would further amend the current regulations to specify that the reconstruction limit does not apply to corrective action orders. However, the proposal conditions changes to an interim status facility that involve the addition of a land disposal unit on the

submission of certifications of compliance with all applicable groundwater monitoring and financial responsibility requirements within 12 months.

EPA is also proposing to amend its permitting regulations to clarify the Agency's authority to deny permits for the active life (including the closure period) of a facility while a permit decision with respect to the post-closure period remains pending. This practice allows EPA to close interim status facilities promptly through the permit denial process if they are unable to meet permitting standards, rather than to delay denial (and closure) until all post-closure conditions have been reviewed and approved.

The following sections of this preamble discuss the current regulations and proposed amendments in more detail.

III. Changes in Permitted Facilities—Newly Listed or Identified Wastes

Sections 270.41 and 270.42 of the RCRA regulations specify procedures for "major" and "minor" permit modifications. EPA or an authorized State may make minor permit modifications, which are enumerated in § 270.42, with the consent of the permit holder. Major modifications, which include any changes not specifically listed as minor, however, can be made only in accordance with the permit modification requirements of 40 CFR Part 124. The major modification procedures are essentially the same as those that apply to initial issuance of a permit. The only significant difference is that for a major modification, only those conditions of the permit to be modified are reopened. The major permit modification procedures include submission of an updated application, if requrested by the permitting agency; preparation and public notice of a draft permit; and opportunity for a public hearing. As a result, major modifications may involve a lengthy administrative process requiring the expenditure of substantial time and resources.

Under the current regulations, the handling of hazardous wastes not listed in a facility permit constitutes a major permit modification. This requirement applies not only to the handling of wastes currently defined as hazardous, but also to newly listed or identified wastes. Therefore, if a permitted facility is handling a solid waste that EPA lists as hazardous under section 3001(b) of RCRA or that possesses characteristics that EPA identifies as hazardous under sections 3001 (g) and (h), the facility's permit must undergo a major modification to allow it to continue to handle the waste.

As EPA identifies new hazardous wastes, either through new listings or by defining new hazardous characteristics, the burdens associated with the major permit modification procedures will increase substantially. For example, EPA's proposed organic toxicity characteristic, which is based on a Toxicity Characteristic Leaching Procedure (TCLP) (51 FR 21648, June 13, 1986), when final, may significantly expand the universe of hazardous wastes and may designate as hazardous many solid wastes now handled at permitted facilities—either in permitted storage, treatment, or disposal units or in units elsewhere on the facility that are unrelated to the permitted unit. These facilities will have to obtain approved permit modifications by the effective date of that rule in order to continue to store, treat, or dispose of the waste.

The Agency expects that as more permits are issued, the number of permit modifications will increase (e.g., many routine changes in the facility's operation require permit modifications). At the same time, the Agency will also be giving priority to the initial issuance of permits to new and interim status facilities. The Agency must establish priorities within the permit program, since its permitting resources are limited. These priorities should be set based on protection of human health and the environment. Without the amendment being proposed today, the Agency would be forced to process permit modifications for newly designated waste as a very high priority. Otherwise, after the effective date for the newly listed or identified waste, facilities would be forced to cease handling the wastes entirely, pending final action on a major permit modification request. In many cases, this could lead to serious disruption of the facility's operations with few, if any, benefits to the public or the environment.

EPA does not believe that Congress intended such a result, particularly in view of the language in the Hazardous and Solid Waste Amendments (HSWA) addressing interim status. In these amendments, Congress recognized that facilities without RCRA permits required some flexibility when new EPA regulations rendered them subject to permit requirements. Section 3005(e) of RCRA previously restricted interim status to owners or operators of "existing hazardous waste management facilities," defined by regulation as facilities in operation or for which construction commenced on or before November 19, 1980 (40 CFR 260.10). In HSWA, Congress added section 3005(e)(1)(A)(ii), providing that facilities in existence on the effective date of statutory or regulatory changes that rendered them subject to permitting requirements could obtain interim status if their owners or operators applied for a permit and complied with the section 3010 notification requirements. In the legislative history accompanying this provision, Congress indicated that the amendment to section 3005(e) would apply to facilities in existence that treat, store, or dispose of newly listed wastes.

Although section 3005(e)(1)(A)(ii) is oriented to facilities not already in the RCRA Subtitle C universe—that is, facilities without permits or interim status—EPA believes that permitted and interim status facilities should have comparable ability to handle newly listed wastes. There is no indication that Congress intended for regulatory changes such as new hazardous waste listings to fall more harshly on permitted facilities than unpermitted facilities, or that permitted facilities should be required to cease handling newly listed or identified hazardous wastes until they had been through a procedure essentially equivalent to permit issuance. Such a requirement, in fact, would create the anomalous situation of punishing facilities that had successfully undergone the RCRA permitting process, while unpermitted facilities and facilities still in interim status would generally be able to make changes to handle newly designated wastes. In fact, the end result could be to force facilities that had received permits—and therefore presumably facilities that operated under higher standards—to ship hazardous wastes off-site to interim status or unpermitted facilities, leading in many cases to a decrease in health and environmental protection.

EPA believes that it is sound policy and consistent with Congressional intent, as expressed in section 3005(e), to provide a mechanism for permitted facilities to continue to handle newly listed or identified wastes, while at the same time imposing certain operating standards. The Agency is therefore proposing to amend § 270.42 to allow newly listed or identified wastes, and units handling such wastes, to be added to permits as minor modifications, on the condition that the units comply with the applicable standards of Part 265. The facility owner or operator, however, would be required to request a major permit modification to handle the newly listed or identified wastes within 180 days of the effective date of the new

designation. Authorization to continue in operation under the minor modification would end upon final disposition of the permit modification request or termination of the facility's operating permit.

Section 3005(e) provides for termination of a land disposal facility's authorization to operate pending full permitting upon failure to certify compliance with groundwater monitoring and financial responsibility requirements by a date certain. (*See* section 3005(e)(2) and (e)(3)). EPA, therefore, is similarly conditioning the proposed minor modification on a submission of such certifications for land disposal units within 12 months of the effective date of the waste listing or identification triggering RCRA requirements for the unit. Failure to submit such certifications would terminate authorization to manage hazardous wastes in the affected unit pending final disposition of the major modification, and the owner or operator would then be required to initiate closure activities for the unit.

A minor modification would not be available under this proposal unless the facility had been managing a newly listed or identified waste prior to the date of the **Federal Register** notice announcing the new listing or identification. This limitation would prevent permitted facilities from treating, storing, or disposing of previously unregulated wastes for the first time upon receiving notification of the listing or identification. In developing today's proposal, the Agency was primarily concerned that owners and operators who have already been managing wastes that subsequently become subject to RCRA regulation be allowed to continue to do so pending EPA and public review.

In proposing this amendment to § 270.42, EPA recognizes that the Part 124 public participation requirements will be deferred until a permittee's major modification request is processed. However, the Agency believes that this approach represents a reasonable balance between its policy in favor of public participation and the need to accord fair treatment to facility owners and operators who have been managing wastes newly subject to RCRA regulation and to impose controls on those wastes as quickly and efficiently as possible.

EPA recently addressed the general question of permit modifications in a regulatory negotiation with representatives of industry, public interest groups, and States. The result of this negotiation will be a separate proposed rulemaking in the near future that will seek to make significant changes in the current permit modification system of §§ 270.41 and 270.42. However, the Agency believes that it should proceed with the amendments to § 270.42 in today's proposal because of the immediate need to provide permitted facilities an alternative to ceasing to handle newly listed waste. Therefore, it is not delaying this proposal in anticipation of the permit modification rule. Furthermore, today's proposed approach to new listing modifications is consistent with the negotiated agreement, which supports a regulation that would allow permitted facilities to continue to handle these new wastes.

IV. Changes in Interim Status Facilities

A. Background and Summary of EPA Proposal

Section 270.72 of the current RCRA regulations specifies three types of changes that owners and operators may make at interim status facilities without triggering permit requirements: (a) The handling of new hazardous wastes not previously identified in Part A of the permit application, (b) increases in the design capacity of processes, and (c) changes in or addition of storage, treatment, or disposal processes. The regulations also specify the procedures and criteria for each of these changes.

To handle hazardous wastes not listed in their Part A applications, owners or operators of interim status facilities must, under the current § 270.72(a), submit a revised Part A permit application to either EPA or an authorized State. Prior EPA or State approval is not required. Owners or operators seeking to increase the design capacity of processes at interim status facilities are subject to more stringent requirements. Under § 270.72(b) of the current regulations, owners or operators must submit a justification explaining the need for the change as well as a revised Part A permit application. Moreover, prior approval of the change must be obtained from the Regional Administrator (or the director of the State agency of an authorized State). Approval may only be given when there is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities.

Under the current § 270.72(c), owners or operators wishing to make any changes in or additions to the processes of treatment, storage, or disposal at an interim status facility are also required to submit a revised Part A and a justification for the change of the regulating agency for approval. EPA or an authorized State may approve these changes only when they are necessary to prevent a threat to human health and the environment due to an emergency situation, or when they were necessary to comply with Federal regulations (including the interim status standards of 40 CFR Part 265) or State or local laws.

The current § 270.72(e), however, limits the scope of any changes that take place at interim status facilities by prohibiting changes that require a capital expenditure equaling or exceeding 50% of the cost of constructing a new hazardous waste management facility. This provision, which is known as the "reconstruction" limit, applies equally to addition of new wastes, expansions in capacity, and process changes.

EPA generally believes that these regulations provide reasonable flexibility to interim status facilities without creating a loophole in the requirement that permits be obtained for new facilities. (*See* 45 FR 33324 (May 19, 1980)). In particular, these regulations provide important flexibility in allowing changes in or additions to processes necessary to comply with Federal or other requirements, such as the ban on liquids in landfills under section 3004(c) of RCRA, the imposition of minimum technological requirements under sections 3004(o) and 3005(j), and land disposal restrictions under section 3004(d)–(g).

Under some circumstances, however, an owner or operator of an interim status facility responding to new requirements may be unable to satisfy the substantive criteria of § 270.72 for making changes, or a specific change might exceed the reconstruction limit. If the owner or operator could not meet these standards but still wished to continue managing hazardous waste, he or she would have to discontinue at least some operations until the changes could be approved in connection with the issuance of a final Subtitle C permit. EPA believes that, in light of the growing nationwide shortage of hazardous waste management facilities, the time-consuming process necessary for final permitting, and the clear evidence of Congressional intent to require interim status facilities to make the specific changes necessary to achieve compliance with new requirements, this result would be unacceptable.

To address this problem, EPA is proposing to amend § 270.72 to allow owners or operators more flexibility to make certain changes to interim status facilities that are necessitated by new regulations. EPA proposes to allow owners and operators to increase design

capacity whenever necessary to comply with Federal, State, or local requirements. The proposed rule would also amend § 270.72 to specify that owners and operators of interim status facilities may make changes in accordance with corrective action orders. Further, the Agency is proposing to eliminate the reconstruction limit for changes in interim status that are determined to be necessary: (i) To comply with Federal, State, or local requirements, if the changes take place solely in existing units; in tanks or containers; or in replacement units that meet the minimum technology requirements of section 3004(o) or (ii) to allow the owner or operator to continue to handle newly listed or identified hazardous wastes. The proposal would also amend the reconstruction limit to specify that it does not apply to corrective actions required by EPA under RCRA or by States under similar laws. In addition, EPA is proposing to amend the reconstruction limit so that it would not apply during closure of a facility or of a unit within a facility. Finally, EPA is proposing a new condition on changes at interim status facilities involving the addition of land disposal units. EPA Is proposing to require owners or operators of such units to demonstrate compliance with groundwater monitoring and financial responsibility requirements within 12 months. Without such a demonstration, the change would not be allowed.

The Agency is proposing to restructure § 270.72 in order to incorporate today's proposed amendments. For the convenience of the reader, the revised section in its entirety is set forth in this proposed rule. The following chart cross-references the current paragraphs of § 270.72 and their counterparts under the proposed format. Note that today's proposal would have no substantive effect on current requirements in § 270.72(a) and(d): only the section numbers are changed.

Relationship of today's proposal to the current section 270.72

Current	Proposed
(a)	(a)(1)
(b)	(a)(2)
(c)	(a)(3)
(d)	(a)(4)
(e)	(b)
	(c)

B. Facility Changes

1. Federal, State, or Local Requirements

As described above, the current § 270.72(c) allows an interim status facility to make changes in or add processes if EPA or an authorized State approves the change as necessary to comply with Federal regulations or State, or local laws. Today's proposal would amend that provision to clarify that it encompasses all Federal, State, and local requirements including regulations, orders, and statutes. Today's proposal would also expand the current § 270.72(b) to allow for increases in design capacity when necessary to comply with Federal, State, or local requirements. EPA believes that this proposal will allow interim status facilities to comply more promptly with new requirements, including those imposed by HSWA, and, therefore, will provide increased public and environmental protection. The following examples illustrate this point.

First, EPA has codified the HSWA amendment to section 3004 of RCRA, which imposed an absolute ban on the placement of bulk or noncontainerized liquid hazardous wastes or hazardous wastes containing free liquids in any interim status landfill after May 8, 1985. (*See* 50 FR 28750 (July 15, 1985)). EPA is aware that owners or operators of landfills who previously disposed of liquid hazardous wastes may now be required to modify their facilities so that they may continue to receive such wastes. In some cases, these changes may involve increases in the design capacity at the facility, as well as changes in or additions to processes. Under the current § 270.72(b), such increases could be made only if other facilities were unavailable. Therefore, the current requirements would force such facilities to send their wastes off-site or discontinue their operation until they could receive RCRA permits. Such a result would be counterproductive because it would limit available disposal capacity, and would make the liquids in landfills restriction significantly more difficult to implement.

Second, section 3008(h) of RCRA authorizes EPA to issue administrative orders or bring civil suits to compel owners and operators of interim status facilities to take corrective action where EPA determines that there is, or has been, a release of hazardous waste into the environment from the facility. Correcting the release may require the owner or operator to treat, store, or dispose of wastes or contaminated soils and water. These activities could require the owner or operator to expand capacity at existing storage or treatment units. The current interim status regulations were not intended to prohibit increases in design capacity for corrective action. If owners and operators were required to obtain approval for these modifications under interim status, they might encounter delays or might have to obtain permits before corrective action could proceed. Such a requirement conflicts directly with the legislative history of section 3008(h) which explains that Congress created this new authority to "overcome the slowness of the permit process." (*See* the Conference Report to HSWA, H. Rep. No. 98–1133, 98th Cong., 2d Sess. at 111 (1984)).

Finally, interim status facilities may at times have to increase the design capacity specified in their Part A applications when EPA lists or identifies a new hazardous waste. For example, the design capacity in a facility's Part A may reflect only the capacity of units handling hazardous waste at the time interim status was granted. If a newly designated waste were handled in treatment, storage, or disposal units not previously accounted for in the Part A submission, the facility's hazardous waste design capacity would increase by virtue of the new waste designation.

The above examples illustrate how the current limitation to interim status facility capacity increases is not consistent with other substantive program requirements. The rationale for this limitation, to prevent existing facilities from evading permit requirements through capacity expansion during interim status, is less compelling when modifications to an interim status facility are necessitated by new statutory or regulatory requirements. Thus, EPA proposes to amend § 270.72 to allow increases in design capacity necessary to comply with new statutory or regulatory requirements, even if other facilities are available. (*See* proposed § 270.72(a)(2)).

2. Corrective Action Orders

Proposed § 270.72(a)(5) would specifically provide that interim status facilities may make changes in accordance with a RCRA section 3008(h) corrective action order or similar State order. An owner or operator making changes under the proposed § 270.72(a)(5) would not have to modify the Part A permit application. These changes would have to be specifically identified in the order, and the changes would have to be implemented in accordance with the order. If the changes were not specifically contemplated by the order, they could still be made under the provisions of § 270.72(a)(2)(ii) and (a)(3)(ii) for changes necessary to comply with a Federal requirement, and would be limited by the restrictions of those provisions. In those cases, the owner or operator would have to submit a

modified Part A permit application and obtain prior Director approval of the change as necessary to comply with the order.

The Agency believes that the proposed clarification for corrective action orders is necessary to respond to contamination at interim status facilities in a timely fashion. EPA emphasizes that all activities taken under the corrective action authority will comply with the substantive requirements of RCRA Subtitle C, including public participation requirements. EPA believes that public participation is important throughout the corrective action program, whether it affects interim status or permitted facilities. Therefore, the Agency intends to involve the public in decisions on remedies under section 3008(h) corrective action orders. Generally, this is expected to include soliciting public comment on the RCRA Facility Investigation (RFI) (which identifies the nature and extent of contamination at a facility), the corrective measures study (which specifies possible remedies), and the remedy that EPA proposes to require. As a result, any remedies introduced as part of a corrective action order will be developed with public participation comparable to that of permit issuance.

Under the proposed § 270.72(a)(5), facility changes introduced in accordance with corrective action orders would be restricted to activities involving wastes associated with the facility. This limitation would not prevent treatment, storage, or disposal of wastes released from within the facility that migrated beyond the facility's boundaries. Rather, the limitation would prevent the owner or operator from making changes under this authority to manage wastes and materials that have no relationship to the facility. The limitation for unrelated materials is necessary to prevent the owner and operator from evading the permit requirement for new facilities and change-in-interim status requirements for facility modifications.

C. Reconstruction Limit

The current § 270.72(e) limits changes sought by an owner or operator during the interim status period. Even if a facility were allowed to add new processes under the current § 270.72(c) or increase capacity in accordance with today's proposed amendments, there may be instances in which the capital expenditures involved in making these changes might come into conflict with the reconstruction limit. In such cases, the facility would be unable to make the changes until it had received a RCRA permit.

EPA believes that the rationale for the reconstruction limit is less compelling where modifications are made at interim status facilities for the purpose of responding to new program requirements. Such modifications are not a means of evading the permit requirement, but rather are made to bring the facility's newly regulated units into compliance with RCRA. Therefore, the Agency is proposing to amend § 270.72 to eliminate the reconstruction limit for certain changes necessary to comply with Federal, State, or local requirements, including new hazardous waste designations and closure plans. In addition, the Agency is proposing to amend current regulations to specify that the reconstruction limit does not apply to changes made in accordance with corrective action orders. These situations are described in more detail below.

1. Federal, State, or Local Requirements

The Agency recognized the need for exceptions to the reconstruction limit in the recently promulgated tank rule, which requires secondary containment for interim status tank facilities. (*See* 51 FR 25422 *et seq.* (July 14, 1986)). Many interim status facilities will need to retrofit their tank systems to enable owners or operators to comply with these new requirements. Recognizing that this retrofit during interim status might exceed the reconstruction limit, the Agency amended the current § 270.72(e) so that changes made solely for the purpose of complying with the secondary containment requirements of the tank rule are specifically excluded from the reconstruction ban prohibition. (*See* 51 FR 25486 (July 14, 1986)). This special provision for tank facilities remains unchanged in today's proposed § 270.72(b)(1).

The same arguments for removing the reconstruction limit for tank facilities apply to other new requirements affecting interim status facilities. For example, the costs of complying with the HSWA minimum technology requirements for land-based units may, in some instances, exceed the reconstruction limit, particularly when changes at small hazardous waste management facilities are involved, or where a facility has already made other changes in interim status. Similar concerns apply to facility changes made to comply with the liquids in landfills prohibition and the land disposal restrictions.

The Agency anticipates that in order to meet the minimum technology requirements of section 3004(o), it will be preferable for many interim status facilities to replace certain surface impoundments instead of retrofitting existing units. EPA will strive to review any such replacement surface impoundments through the RCRA permitting process. However, there will likely be situations where a permit cannot be issued prior to the statutory deadline for existing facilities to comply with the section 3004(o) standards. In such cases, EPA believes that the reconstruction limit should not prevent these facilities from establishing replacement surface impoundments that meet the more protective minimum technology standards.

To resolve these problems, EPA proposes to amend § 270.72 to eliminate the reconstruction limit in those cases where the changes in or additions to the processes employed at an interim status facility are made for the purpose of complying with a Federal, State, or local requirement. However, EPA is proposing to restrict this provision to changes in existing units; changes solely involving tanks or containers; or addition of minimum technology replacement surface impoundments. EPA believes that the introduction of new processes other than these—such as the introduction of incinerators—that exceed the reconstruction limit is likely to raise significant issues best addressed through the permitting process.

Under today's proposal, the owner or operator wishing to make a change still has a duty to comply with proposed § 270.72(a) and, where required by that section, must file an amended Part A permit application along with a justification for making the change. Section 270.72(a) may also require approval of the change from EPA or the authorized State before facility modification. Furthermore, EPA emphasizes that any process proposed to be added or changed must conform with the Part 265 interim status requirements.

Note that on December 11, 1986, the Agency proposed to lift the reconstruction limit for treatment or storage of restricted wastes in tanks or containers. (*See* 51 FR 44714). Today's proposed § 270.72(b)(2) is somewhat broader than the December proposal in that a facility change involving tanks or containers could occur without being subject to the reconstruction limit whether or not it involved a restricted waste. The Agency will proceed with the final rulemaking on the special interim status provision for restricted wastes along with the associated provisions of that rule since it is an integral part of the restricted wastes program. However, if today's proposal is

adopted, it will replace the restricted waste amendement to the extent that the two provisions would be redundant.

2. Newly Listed or Identified Wastes

The proposed § 270.72(b)(3) would eliminate the reconstruction limit for changes necessary to allow an owner or operator to continue handling newly listed or identified wastes. The Agency believes that interim status facilities should have the same opportunity to continue handling newly listed or identified wastes as newly regulated facilities now have, and as the Agency is proposing for permitted facilities.

3. Corrective Action Orders

Today's proposal would amend the current § 270.72(e) to specify that interim status facilities may make changes in accordance with interim status corrective action orders, even if they would otherwise constitute a reconstruction under the regulation. In general, EPA believes that corrective actions will occur within the reconstruction limit. However, in the case of smaller facilities or extensive corrective action, the limit might be exceeded. This is particularly likely to be the case where on-site treatment is introduced as part of the remedy. As explained in section IV.B of this preamble, EPA does not believe that such corrective actions should be delayed until a full permit to the facility can be issued.

Proposed § 270.72(b)(5) would not limit the kinds of changes that could be introduced without limit at a facility as a part of a corrective action order. In this respect, it differs from proposed § 270.72(b)(2), which restricts changes in compliance with other Federal, State, or local requirements to changes in existing units, changes solely involving tanks or containers, or addition of minimum technology replacement surface impoundments. EPA does not believe that this restriction is necessary for actions required by interim status corrective action orders because of the extensive Agency involvement in developing these orders and in specifying the appropriate process and design necessary to manage the waste releases at the facility. Since these corrective actions will be consistent with the Part 264 facility standards, we do not believe that it is necessary or desirable to restrict the types of corrective action remedies at interim status facilities.

4. Closure at Interim Status Facilities

Because a facility can remain in interim status during its closure period, changes made at such a facility to enhance closure would constitute changes in interim status. For example, if an owner or operator is required as part of an approved closure plan to treat wastes on-site, that treatment could be approved as a change in interim status under the current § 270.72(c). However, under current regulations, any changes introduced during closure that constituted a reconstruction might be prohibited by the current § 270.72(e). As a result, closure in this case might be delayed until a permit had been issued to the facility. EPA believes that permit issuance in this case could lead to delays that increase risks to public health and the environment and might discourage the use of treatment in connection with closure. At the same time, the closure plan review process, detailed in § 265.112, is comparable to the permitting process, including a specific requirement for public notice and opportunity for a hearing. For these reasons, the Agency is proposing to amend § 270.72 to specify that the reconstruction limit does not apply to changes made during the closure period of an interim status facility or of a unit within a facility. This change to the regulations should significantly expedite closure at interim status facilities and encourage treatment as an alternative to disposal, without jeopardizing public health or the environment or reducing the role of the public.

It should be emphasized that any treatment or other processes introduced at a closing facility will generally be of relatively short duration and only used to handle wastes associated with the closure, as specified in an approved closure plan. It should also be emphasized that when a treatment unit or other process is introduced during closure, the owner or operator of the facility must submit a revised Part A permit application to reflect that change. If the interim status facility is seeking a permit, the closure activities during the interim status do not have to be added to Part B of the permit application if completion of closure will be certified by the time the permit is issued.

D. Conditional Changes

As is discussed above, the current regulations on changes during interim status limit the extent of changes allowed pending full permitting of the facility. With certain refinements, those limitations are retained in today's proposal. In addition, EPA is also proposing to limit the duration of the authorization to make certain changes at interim status facilities where the owner or operator cannot demonstrate compliance with goundwater monitoring and financial responsibility requirements.

Today's proposal would add § 270.72(c), which has no counterpart in the existing regulations on changes during interim status. The proposed § 270.72(c) would provide that a change during interim status that involved the addition of a land disposal unit would only be allowed subject to the condition that the owner or operator certify compliance with all applicable goundwater monitoring and financial responsibility requirements within 12 months. Addition of any land disposal unit for which the certifications were not made would not be allowed as a change during interim status. The owner or operator of such a unit would have to discontinue receipt of hazardous waste in that unit until the facility was permitted. Pending final permitting, the owner or operator would have to begin closure activities.

The purpose of this provision is to place the burden on facility owners and operators to demonstrate compliance with groundwater monitoring and financial responsibility requirements within a specified period of time. This is analogous to the certification required of newly regulated land disposal facilities under section 3005(e)(3) of RCRA and of land disposal facilities operating under interim status on November 8, 1984 under section 3005(e)(2). EPA believes that the newly regulated land disposal units at interim status facilities should be subject to the same certification requirements as are newly regulated land disposal facilities under section 3005(e)(3). Although EPA does not have the authority to terminate interim status for failure to submit certifications, EPA may deny authorization to expand an interim status facility for failure to demonstrate compliance. As is discussed in section III of today's preamble, EPA is proposing an analogous condition for newly regulated land disposal units at permitted facilities under the proposed § 270.42(q).

V. Post-Closure Permits

Today the Agency is also proposing to amend its Part 270 permit regulations to clarify its authority to deny permits for the active life of a facility while a decision on post-closure permitting is pending.

The current permitting regulations specify that RCRA permits cover both the active life (including the closure period) of a facility and, where applicable, the post-closure care period. A permit applicant required to obtain a permit covering the post-closure care period must include all necessary post-

closure information in its Part B application for the application to be "complete" and thus initiate the review process. When the application is complete, the decision to issue or deny a RCRA permit applies to the whole permit for which an applicant is required to apply, including the portion of the permit concerning post-closure care.

The existing regulations do not specifically provide for a separation of the permit decision for the active life of the facility from the post-closure permit decision. However, the Agency does not believe that it must always make both the active life and post-closure determinations as one permit decision, and further, it believes that in some cases it makes good sense to separate these determinations. EPA needs to have this flexibility to deal expeditiously with facilities clearly unable to meet standards for continued operation. It is important for such facilities to cease operation and begin closure as soon as possible. The Agency can often accomplish this objective best through permit denial and initiation of the closure process. At the same time, such permit denial does not relieve the facility of its post-closure care responsibilities under the Part 264 standards.

The Agency believes that it currently has the authority to separate these two permit decisions, although the permitting regulations do not specifically outline this approach. If the Agency were limited to only one permit decision, then the Agency would have to issue the permit for the post-closure care period at the same time that it denied the portion of the permit concerning operational life. Development of the post-closure information necessary for a complete application and for issuance of the post-closure portion of the permit can be very time-consuming. Thus, the Agency's permitting decision to close a facility could be greatly delayed due to the need to develop post-closure information, even if it is clear that the facility will not be permitted for continued operation.

For instance, under § 124.3(d), failure to submit sufficient information for permitting is a basis for permit denial. However, if the Agency could not deny a permit without simultaneously issuing the post-closure portion of the permit, the permit decision for the facility would be delayed, allowing the facility to continue operation while the Agency gathers information necessary to develop a post-closure permit. In fact, the permit denial may be delayed longer for facilities that have greater deficiencies in their applications, thus rewarding facilities that are in greater noncompliance.

The Agency is therefore proposing to amend its permitting regulations to specifically provide for a bifurcation of the permit process allowing separation of operating permit denial and post-closure permit issuance. By this amendment, the Agency is clarifying its ability under the permitting regulations to deny a facility's operational permit, requiring its closure under Part 265, while also continuing to develop a separate post-closure permit. Today's proposal amends the Agency's hazardous waste permitting regulations at 40 CFR Part 270 to add a new § 270.29, which specifies that the permitting authority may deny a permit under 40 CFR Part 124 either in its entirety or as to the operating portion only. Amended § 270.1(c) clarifies that any such partial denial does not affect a facility's responsibility to obtain the post-closure permit. In addition, § 270.10 is amended to specify that the permitting authority may deny the operating portion of a permit without awaiting an application that is complete as to post-closure responsibilities. The Agency cannot under these amendments bifurcate the *issuance* of an operating permit and a post-closure permit. No permit may be issued without conditions covering the post-closure period applicable to the facility.

It should be noted that the Agency proposed amendments to § 270.1(c) on March 28, 1986 (51 FR 10706) in a rule that would codify certain HSWA provisions. The Agency is proposing to further amend that section in this rule. The full text of § 270.1(c), including all proposed amendments, is set forth in this proposed § 270.1(c) for the convenience of the reader.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (*See* 40 CFR Part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

However, it should be noted that section 3009 of RCRA and § 271.1(i) provide that States can impose requirements that are more stringent than the Federal requirements. Federal program changes that are less stringent or reduce the scope of the Federal program do not have to be adopted by authorized States. Furthermore, any State requirement that is more stringent than a new Federal provision remains in effect under State law. This is equally true for such Federal requirements that are imposed by HSWA or pre-HSWA authority.

For less stringent Federal program changes (or changes that reduce the scope of the program), the combined effect of RCRA sections 3006 and 3009 will result in one of the two following situations. In the first case, if the new Federal requirements are promulgated pursuant to pre-HSWA authority, such requirements will not take effect in an authorized State unless and until the State has adopted them as part of the State program. In contrast, less stringent Federal requirements that are imposed by HSWA authority become part of the Federal program that is in effect in all States, including authorized States; however, as discussed above, any more stringent State requirement remains in effect under State law. In this case, the more stringent provisions in both the State program and the Federal HSWA program define the applicable requirements in each State. Therefore, as a practical matter, the regulated community may not be able to benefit from the less stringent Federal HSWA

provisions until the State amends its more stringent regulations or enabling authority.

B. Effect on State Authorizations

The amendments proposed in today's rule are considered to be less stringent than, or reduce the scope of, the existing Federal requirements. Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent or substantially equivalent to these provisions.

Certain portions of today's proposal would be imposed pursuant to pre-HSWA authority, while other portions would be promulgated pursuant to HSWA. Specifically, the proposed § 270.72(a)(2)(ii), (a)(3)(ii), and (b)(2) would be added to EPA's regulations to allow changes during interim status that are necessary to comply with new HSWA requirements (e.g., minimum technology standards of section 3004(o)). In addition, the amendments in § 270.72(a)(5) and (b)(5) that address corrective action orders stem from section 3008(h) authority. Therefore, the Agency is proposing to add these requirements to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. As discussed in the section above, any State requirement that is more stringent than these HSWA provisions remains in effect. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1.

The remaining amendments in today's proposal would not be imposed pursuant to HSWA. Therefore, those standards would not be effective in authorized States, but would be applicable in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable unless the State revises its program to adopt equivalent requirements under State law.

VII. Effective Date

This rule, if promulgated, would be effective immediately. Section 3010(b) of RCRA provides that regulations respecting permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) provides for an immediate effective date if the Agency finds that the regulated community does not need six months to come into compliance with the new regulation.

This proposed rule would establish requirements that are less stringent than requirements currently in place. Since the rule would relax regulations with which the regulated community is already required to comply, the Agency has found that the regulated community does not need six months to come into compliance. These reasons also provide an adequate basis for making this rule immediately effective under section 553(d) of the Administrative Procedure Act.

VIII. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether EPA must compare and consider a Regulatory Impact Analysis in connection with the rule. Today's proposal is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Agency does not believe a Regulatory Impact Analysis is required for today's rule.The proposed rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., at the time an Agency publishes any proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. The amendments proposed today provide additional flexibility for hazardous waste treatment, storage, and disposal facilities to respond to new requirements and do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 265

Hazardous waste, Corrective action, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements.

Lee M. Thomas,

Administrator.

Date: August 3, 1987.

Therefore, it is proposed that Subchapter I of Title 40 be amended as follows:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended [42 U.S.C. 6905, 6912(a), 6924, and 6935].

2. In § 265.1, paragraph (b) is revised to read as follows. (The comment following paragraph (b) remains unchanged.)

§ 265.1 Purpose, scope, and applicability.

* * * * *

(b) The standards of this part apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status under section 3005(e) of RCRA and § 270.10 of this chapter until either a permit is issued under section 3005 of RCRA or until applicable Part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by section 3010(a) of RCRA and/or failed to file Part A of the permit application as required by 40 CFR 270.10 (e) and (g), and to owners and operators of RCRA permitted facilities for those units for which they have obtained a minor permit modification under § 270.42(q) until the permittee's major modification request under § 270.41 is granted or until Part 265 closure and post-closure responsibilities are fulfilled. These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this part or Part 261 of this chapter.

* * * * *

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

3. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3004, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974).

4. In § 270.1, the introductory text of paragraph (c) is revised to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) Scope of the RCRA Permit Requirement. RCRA requires a permit for the "treatment," "storage," or "disposal" of any "hazardous waste" as defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that close after January 26, 1983 or that received wastes after July 26, 1982, must have post-closure permits, as necessary to implement applicable Part 264—Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of this chapter. The denial of a permit for the active life of a hazardous waste management unit does not affect the requirement to obtain a post-closure permit under this section.

* * * * *

5. In § 270.10, paragraph (c) is amended by adding a sentence to the end to read as follows:

§ 270.10 General application requirements.

* * * * *

(c) * * * The Director may deny a permit for the active life of a hazardous waste management unit before receiving a complete application for a permit.

* * * * *

6. In Part 270, a new § 270.29 is added to read as follows:

§ 270.29 Permit denial.

The Director may deny the permit application under § 124.6(a) in its entirety or as to the active life of the facility only.

7. In § 270.42, a new paragraph (q) is added to read as follows:

§ 270.42 Minor modifications of permits.

* * * * *

(q) Allow units at a permitted facility that handle newly listed or identified hazardous wastes, to continue managing such wastes provided that (1) the permittee requests a major permit modification pursuant to §§ 124.5 and 270.41 within one hundred and eighty (180) days of the effective date of such new listing or identification, (2) the major permit modification request contains a demonstration that the newly listed or identified waste was treated, stored, or disposed of in such unit prior to the date of the **Federal Register** notice announcing the new listing or identification, (3) each affected unit complies with the applicable standards at 40 CFR Part 265 until the major permit modification request is granted or until Part 265 closure and post-closure responsibilities are fulfilled, and (4) where the permit modification involves the addition of a land disposal unit, the permittee certifies compliance with all applicable groundwater monitoring and financial responsibility requirements within 12 months of the effective date of the new listing or identification. The authorization to continue in operation conferred under this paragraph shall terminate upon final administrative disposition of the permittee's major modification request under § 270.41, termination of the permit under § 270.43, or upon failure of the owner or operator to certify compliance with groundwater or financial responsibility requirements.

8. Section § 270.72 is revised to read as follows:

§ 270.72 Changes during interim status.

(a) Except as provided in paragraphs (b) and (c), the owner or operator of an interim status facility may make the following changes at that facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application if the owner or operator submits a revised part A permit application prior to such treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or,

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such change (along with a justification explaining the need for the change) and the Director approves the change because:

(i) The change is necessary to prevent a threat to human health or the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no longer than 90 days prior the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that subpart. The new owner of operator must demonstrate compliance with Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued by EPA under section 3008(h), or other Federal authority, or by an authorized State under a comparable State authority. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate at the facility.

(b) Changes to an interim status HWM facility that amount to reconstruction of the facility may only be made as provided in this paragraph. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM facility. The following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purpose of complying with the

requirements of 40 CFR 265.193 for tanks and ancillary equipment,

(2) Changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of section 3004(o), to the extent necessary to comply with Federal, State, or local requirements,

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified wastes that had been treated, stored, or disposed of at the facility prior to the date of the **Federal Register** notice announcing the new listing or identification,

(4) Changes made during closure of a facility or of a unit within a facility, in accordance with an approved closure plan, or

(5) Changes necessary to comply with an interim status corrective action order issued by EPA under section 3008(h), or other Federal authority, or by an authorized State under a comparable State authority provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(c) Any land disposal unit that becomes subject to RCRA requirements due to a statutory or regulatory change shall, on the date 12 months after the effective date of such statutory or regulatory change, lose any authority to operate that is conferred under this section unless the owner or operator certifies that such unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

9. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

10. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	FR reference	Effective date
*	*	*	*
[Insert date of publication in FEDERAL REGISTER.	Interim Status and Permitted Facilities § 270.72(a)(2)(ii), (a)(3)(ii), (a)(5), (b)(2) and (b)(5) only.	[insert FR reference].	[insert date of publication of final rule in FEDERAL REGISTER].
*	*	*	*

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Friday
August 14, 1987

Part VIII

Commission on the Bicentennial of the United States Constitution

45 CFR Part 2010

Constitution Bicentennial Educational Grant Program and Grant Program Announcement and Application Instructions; Final Rule and Notice

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2010

Constitution Bicentennial Educational Grant Program

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Final rule.

SUMMARY: These regulations establish the basic policies and procedures that the Commission on the Bicentennial of the United States Constitution (Commission) will use to announce, solicit, award and manage the Constitution Bicentennial Educational Grant Program authorized by Title V of the Arts, Humanities, Museums Amendments of 1985 (Pub. L. 99–194). This final revised regulation reflects consideration of only one public comment. All other changes are technical in nature to comply with existing laws or other regulations. Additional public comments are not being requested.

EFFECTIVE DATE: August 14, 1987.

ADDRESS: 736 Jackson Place, NW., Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Anne A. Fickling, Assistant Director of Education, (202) 653–5110.

SUPPLEMENTARY INFORMATION:

Background

The Commission published an interim final rule for its newly authorized Bicentennial Educational Grant Program in the **Federal Register** on December 30, 1986 [51 FR 47164]. One public comment was received. The single commenter suggested that adult education programs should be eligible applicants because many such programs combat illiteracy by offering the equivalent of an elementary or secondary education. The revised final rule has been changed to allow adult education programs to apply for funding from the Commission.

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98–101, 97 Stat. 719 and signed into law by the President on September 29, 1983. The Commission is comprised of 23 members; the Honorable Warren Burger, Chief Justice of the United States, Retired, serves as Chairman of the Commission. Additional information on the Commission functions can be found in Title 45 of the Code of Federal Regulations Part 2000. The organization and functions rule covering Commission operations was published in the Federal Register as a final rule on February 28, 1986 (see 51 FR 7220).

Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194) authorizes the Commission to make grants for the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights which are designed for use by elementary or secondary students. In fiscal 1987, the Commission awarded close to $1 million in discretionary grant funding. In addition, the Commission is authorized under Title V of the Act to implement an annual National Bicentennial Competition on the Constitution and the Bill of Rights for use in elementary and secondary schools. A total of 2.7 million was awarded for this program. To implement the Commission's statutory authority, the Commission established its grant-making authority within the Commission's Division of Educational Programs. The Director and professional staff of the Division of Educational Programs, with the assistance of the Department of Justice, will administer the Constitution Bicentennial Educational Grant Program under the guidance of the seven-member Commission Advisory Committee on Educational Projects.

Classification

This is not a major rule under E.O. 12291 since it has no significant impact upon the economy, nor does it affect prices or economic competition. This final rule has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

Compliance With Executive Order 12372

The Commission has determined that the Bicentennial Educational Grant Program of this part is not subject to Executive Order 12372 on Intergovernmental Review of Federal Programs.

Statutory Authority

This regulation is issued under the general powers granted to the Commission by Pub. L. 98–101, as amended, and Title V of Pub. L. 99–194.

List of Subjects in 45 CFR Part 2010

U.S. Constitution Bicentennial, Educational Grant Program, Grants.

Issued in Washington, DC, on August 14, 1987.

Mark W. Cannon,

Staff Director.

For the reasons set out in the preamble and under the authorities cited above, Title 45 of the Code of Federal Regulations is amended by revising Part 2010 to read as follows:

PART 2010—CONSTITUTION BICENTENNIAL EDUCATIONAL GRANT PROGRAM

Subpart A—General

Subpart B—Projects Assisted by the Commission

Subpart C—How To Apply for a Grant

Subpart D—How Awards Are Made

Subpart E—Grantee Responsibilities

Authority: Pub. L. 98–101 as amended; Title V of Pub. L. 99–194.

Subpart A—General

§ 2010.1 Program purpose.

The purpose of the Commission's Constitution Bicentennial Educational Grant Program is to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights. Instructional materials and programs developed with Commission funding must be designed for use by elementary and secondary school teachers and students.

§ 2010.2 Eligible parties.

Local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local agencies in the United States are eligible to apply for grant funding from the Commission. Colleges, universities and adult education programs are also eligible to apply provided the proposed project or program is designed for use in elementary and secondary schools. Grants will not be made to profit making organizations.

§ 2010.3 Types of awards.

(a) The Commission expects to make two types of awards with its authorized grant funding. The expected awards for fiscal year 1988 are as follows:

(1) $2,850,000 of the grant funding is expected to be available from Congress to support the National Bicentennial Competition on the Constitution and the Bill of Rights.

(2) Approximately $2,150,000 of the grant funding is expected to be available to fund the development of instructional materials and programs on the Constitution and Bill of Rights. Awards in this category of funding will be competitive and discretionary to eligible applicants as specified in § 2010.2.

(b) A portion of the above amounts may be used for necessary Commission administrative expenses, including staff, required to operate this grant program.

§ 2010.4 Applicable laws and regulations.

The following laws, regulations, and procedures apply to applicants for and recipients of grants under this part:

(a) The Bicentennial Commission on the U.S. Constitution Act (Pub. L. 98–101), as amended.

(b) Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194), as amended.

(c) The regulations in this Part 2010.

(d) The applicable Office of Management and Budget Circulars (OMB) (A–87, A–21, A–122, A–102, A–110, A–128).

(e) Office of Justice Programs (OJP) Manual M 7100.1C Fiscal and Administrative Guide for Grants. (U.S. Department of Justice.)

Copies of the OMB circulars and the OJP manual may be obtained by writing to: The Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503, Attn: Educational Grant Program.

(f) The Grant Agreement accompanying every assistance award.

Subpart B—Projects Assisted by the Commission

§ 2010.10 What may be funded.

(a) The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools. The Commission will accept grant proposals from any eligible party as specified in § 2010.2.

(b) The Commission is also authorized to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This is an on-going educational program developed by the Center for Civic Education with prior federal assistance. Congress has directed the Commission to award a grant for program implementation to the Center. Consequently, no other grant proposals from any other party can be accepted for this program.

§ 2010.11 What may not be funded.

The following activities may not be assisted with Commission funding:

(a) Real property acquisition.

(b) Construction.

(c) Study and research in pursuit of an academic degree.

(d) Activities which espouse or attack partisan or religious beliefs.

(e) Activities that would involve the Commission in the policymaking processes of any government or government agency.

§ 2010.12 Funding priority.

(a) The Commission will give priority to proposals that focus on strengthening the ability of elementary and secondary teachers to teach successfully the principles of the Constitution and the Bill of Rights to students. This may be through the development of instructional materials, conferences, institutes, or other formats. Important ideas and texts about the Constitution and Bill of Rights should be emphasized. Projects must demonstrate how students will benefit.

(b) All proposed projects should focus on one or more of the following:

(1) The Constitution's provisions, antecedents, history, and the structure of the government it establishes.

(2) The relationship of the Constitution to American politics, society, and thought.

(3) The connection between self-government as outlined by the Constitution and the purposes of political life that are defined in the Declaration of Independence.

Subpart C—How To Apply for a Grant

§ 2010.20 Annual program announcement.

Once each year, the Commission makes available to the public a comprehensive grant program announcement explaining how to apply to the Commission for project assistance. Copies are available from the Commission upon written request. Although these regulations are controlling in any conflict with the grant program announcement, applicants are urged to study the program announcement carefully as proposals are developed.

§ 2010.21 Grant application kit.

Each year, the Commission develops a grant application kit which contains instructions and forms necessary to apply to the Commission for a grant. All applicants must use the forms and instructions provided by the Commission. Copies are available from the Commission upon written request.

§ 2010.22 Administrative rejection of applications.

An application may be administratively rejected without further consideration if any of the following are noted:

(a) The applicant is not an "eligible party" under 2010.2 of this Part.

(b) The applicant is a suspended or debarred grantee with any other federal agency pursuant to Executive Order 12549.

(c) The application does not have an original signature.

(d) The application does not contain a budget and budget narrative.

(e) The application does not contain the required one-page proposal abstract.

(f) The application lacks any other element required by these regulations.

Subpart D—How Awards Are Made

§ 2010.30 How applications are evaluated.

(a) On the basis of the selection criteria contained in the Grant Program Announcement, the Commission undertakes an administrative review and merit review of every application submitted for funding consideration.

(b) An administrative review is a review of an application for completeness and submission in conformity with the application requirements in the Grant Program Announcement.

(c) A merit review is a substantive review of the applicant's proposed activities in terms of appropriateness, feasibility, conformity with the Commission's priorities and the selection criteria, and the quality of the project staffing.

Subpart E—Grantee Responsibilities

§ 2010.40 The grant agreement.

(a) When the Commission awards a grant, the Commission's funding commitment to the recipient is formalized through a written bilateral grant agreement between the Commission and the grantee. The grant agreement will state the following:

(1) The names of the parties entering into the grant agreement.

(2) The amount of funding being provided by the Commission.

(3) The scope of activities authorized to be conducted by the grantee with Commission funding.

(4) The method of funding, the schedule of payments, and the dates interim financial and performance reports are due during the term of the grant agreement.

(5) Any special conditions that must be followed by the grantee during the term of the grant agreement.

(b) Grant agreements may incorporate by reference the grant proposal, the grant budget, and the provisions of the Office of Justice Programs Handbook M 7100.1C, which are applicable to all grant awards made by the Commission. Grant funds will be administered by the U.S. Department of Justice.

§ 2010.41 Post-award disputes and appeals.

(a) Should any post-award dispute arise between the Commission and a grantee, every attempt will be made to resolve the dispute informally between the Commission program officer, the grantee, and the Director of Educational Programs. The Commission will communicate its decision in writing to the grantee.

(b) If a dispute between the Commission and the grantee cannot be resolved informally, the grantee may appeal any adverse decision in writing to the General Counsel of the Commission. A written appeal must contain a discussion of the dispute, attempts to informally resolve any disagreements, and the practical and legal relief sought.

(c) The General Counsel may either hold a fact-finding conference with the disputing parties, or decide the dispute on the written appeal record provided by the grantee and the Commission staff. The General Counsel shall issue a written decision of findings and conclusions within 30 days after receiving an appeal.

(d) If the decision of the General Counsel is adverse, the grantee may make a final written appeal to the Chairman of the Commission within five days after receiving the decision of the General Counsel. The Staff Director of the Commission shall function as the Chairman's designee for receipt and processing of final administrative appeals to the Chairman. The decision of the Chairman is final.

[FR Doc. 87-18218 Filed 8-13-87; 8:45 am]
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COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Grant Program Announcement and Application Instructions

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Grant program announcement and application instructions.

SUMMARY: The Commission on the Bicentennial of the United States Constitution announces its instructions and application deadlines for FY–1988 funding from its Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for the development of instructional materials and programs on the Constitution and Bill of Rights which are designed for use by elementary or secondary school students. This grant program announcement and application instructions informs all interested individuals and organizations about the closing dates for the receipt of applications for funding and how applications must be prepared for funding consideration by the Commission. The application instructions are based on the law and regulation which contain the key requirements for all applicants to follow in seeking funding from the Commission.

DATES: Applications will be accepted from August 14, 1987 until October 15, 1987 at 5:30 pm.

ADDRESS: For further information contact: Anne A. Fickling, Assistant Director of Education, Commission on the Bicentennial of the U.S. Constitution, 736 Jackson Place, NW., Washington, DC 20503, (202) 653–5110.

Authority Citation

Title V of Pub. L. 99–194; 45 CFR Part 2010.

Herbert M. Atherton,

Director, Educational Programs.

(Catalog of Federal Domestic Assistance Number 90.001.)

Program Announcement for the Bicentennial of the U.S. Constitution Educational Grant Program

I. Introduction

The 200th Anniversaries of the signing and ratification of the United States Constitution present important opportunities to encourage renewed reflection about, and public interest in, the principles and foundations of constitutional government. In 1976, we celebrated the Bicentennial of the Declaration of Independence which sets forth the principles of representative government. Beginning in 1987, we commemorate a Constitution which was designed to put these principles into practice and which has provided a stable and workable plan of government for 200 years.

It is important to encourage renewed vigor in the teaching of the origins and fundamentals of the Constitution and American government in our elementary and secondary schools. The Commission's Educational Grant Program is designed to improve knowledge and understanding of the Constitution through funding the development of instructional materials and other programs for use by teachers in elementary and secondary schools. During its first year of funding authority (1987) the Commission received 222 applications requesting a total of $9.4 million in project funding. Congress authorized the Commission to award up to $1,000,000 in discretionary project assistance.

Last year, the Commission issued 30 grant awards for conferences, institutes, curricula development and other projects. The Commission has requested a Congressional appropriation of $2,150,000 to make discretionary grants for fiscal year 1988. This year, the Commission anticipates issuing 40–60 grant awards for special projects and 100–200 in-service training grants to elementary and high schools across the country. The 1987 grant competition was highly competitive even though less than 250 applications were received. With more preparation time this year, we anticipate that the 1988 grant program will generate many more project applications and much stiffer competition for awards.

Applicants are urged to read our program announcement carefully before submitting a proposal to the Commission. Only a small percentage of all applicants will actually receive a grant.

Applicants are reminded that funding approval is contingent upon the amount of funding actually provided by Congress. Since Congress has not yet approved funding for this program, there is a chance that no applications will be funded. Preparation of an application is at your own expense and risk; the Commission cannot pay for any proposal preparation expenses.

Duties of the Commission

The Commission on the Bicentennial of the United States Constitution (the Commission) was established by Pub. L. 98–101, 97 Stat. 719, and signed by the President on September 29, 1983. Commission activities are governed by a 23 member Commission assisted by a staff director and a staff of up to 130 persons. The Honorable Warren E. Burger, Chief Justice of the United States, retired, is Chairman.

The Commission was created to promote and coordinate activities commemorating the 200th Anniversary of the United States Constitution. Section 6 of Pub. L. 98–101 charges the Commission with the following duties:

1. To plan and develop activities appropriate to commemorate the bicentennial of the Constitution, including a limited number of projects to be undertaken by the Federal Government seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education.

2. To encourage private organizations, and State and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification and history of the Constitution and the specific features of the document.

3. To coordinate, generally, activities throughout all the States.

4. To serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans.

II. The Program Mandate

Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194) as amended and subsequent appropriations acts authorize the Commission to make grants (1) "to local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local public agencies in the United States for the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights which are designed for use by elementary or secondary school students."

To implement this authority, the Commission established its Constitution Bicentennial Educational Grants Program within the Commission's Division of Educational Programs. The Director and professional staff of the Division of Educational Programs administers the Constitution Bicentennial Educational Grants Program with guidance from the seven-member Commission Advisory Committee on Educational Projects. The Department of Justice is responsible for post-award management of grants awarded by the Commission.

In keeping with its Congressional mandate, the Commission invites proposals for programs designed to provide elementary and secondary school teachers with a strengthened understanding of the Constitution, its antecedents, provisions, structure and history. In the words of the Senate Judiciary Committee Report accompanying Pub. L. 98–101:

[F]ocus should be the men and events of 1787, not controversial interpretations of 1987; the Federalist Papers and the ratification debates in the States, not the textbooks of modern law schools; the substantive provisions of our Nation's foundational document, not the proposed legislative agenda of any single party or group.

Proposed programs should demonstrate how students will benefit and should result in instructional ideas, materials, and methods which teachers can share with others.

III. Who May Apply and What May be Funded

The Commission is authorized to accept applications from and award grants to:

1. Local Educational Agencies;
2. Private Elementary and Secondary Schools;
3. Private Organizations;
4. Individuals; and
5. State and Local Public Agencies in the United States.

Colleges, Universities, and Adult Education Programs within the above categories are eligible to apply provided the proposed project or program is designed for use in elementary and secondary schools. Grants will not be made to profit-making organizations.

What Activities May Be Funded

The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools.

The Commission is also authorized by Congress to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This is an on-going educational program that has been developed by the Center for Civic Education with prior federal assistance. No discretionary grants will be awarded for this program.

IV. Priority Subject Areas For Grants

Programs may examine the ratification and history of the Constitution and specific features of the document. The document itself, rather than any particular economic or social theories, should be the focal point. The program materials should be balanced in that all sides of Constitutional issues are presented in an unbiased manner. Emphasis should be placed on basic constitutional principles and perennial constitutional issues rather than on contemporary and controversial issues of public policy.

In its 1987 program announcement, the Commission emphasized the development of curricular materials and other programs providing a broad-based understanding of the Constitution, its history, and its Founding principles. For 1988, the Commission encourages proposals which focus on more specific constitutional themes paralleling those of the Commission's five-year plan and the development of the three branches of the federal government. Proposals may also address the role of Federalism in the development and history of the Constitution.

The Commission also strongly encourages proposals that direct teachers to existing resources and more effective ways of using them.

A significant objective of any proposal must be to strengthen the ability of elementary and secondary school teachers to teach effectively how the concepts of Constitutionalism and applied experience have affected the creation and evolution of American governmental institutions.

Research by the Commission and information gathered from constitutional experts and educators suggests a strong need to reacquaint teachers and students with the historical context and practical considerations in the evolution of constitutional government. This Constitution Bicentennial era provides a unique opportunity to recapture the lessons learned through Constitutional experiences which are as important today as they were 200 years ago. The Commission believes that it is through an understanding of the principles and historical development of the Constitution that present constitutional conflicts can be better understood.

Constitutional Themes: A Study Agenda

The Commission encourages proposals which correspond to themes highlighted by the Commission during its five-year commemorative program. One effective approach to these themes is to compare their operation in recent times with what was contemplated by those who drafted and ratified the Constitution and its amendments.

The Commission has outlined a program for the Constitution's Bicentennial, identifying a specific anniversary and providing a specific focus for each year. In 1987, the emphasis was on the writing and signing of the Constitution. The focus for the ensuing four years is as follows:

1. *1988:* The bicentennial of the first Congressional elections is an appropriate opportunity to focus on activities which emphasize the creation and development of the Legislative Branch.

Since it is also the bicentennial year of the ratification struggle, special focus should be given to the debates and the writings from both the Federalist and Anti-Federalist forces which were critical to the ratification campaign.

2. *1989:* The study of Congress will continue since 1989 marks the 200th anniversary of the first Congressional sessions. However, the emphasis will shift to the first Presidential inauguration and the first administration as we focus on the development of the Executive Branch.

3. *1990:* The Bicentennial of the first session of the Supreme Court marks an appropriate year to focus on the Judicial Branch and its historical development.

4. *1991:* This final year of the bicentennial commemoration is designated for a study of the Bill of Rights, adopted in 1791, and subsequent amendments adopted throughout our history.

During the 1987–88 school year, the Commission especially invites proposals that emphasize the ratification of the Constitution and the Legislative and Executive Branches of the Federal Government. The doctrine of separation of powers should be included in any proposal dealing with the branches of government. Although all three branches may be involved in the treatment of a conflict, the major focus should be consistent with the celebratory themes outlined above.

Exemplary Projects

A number of exemplary Constitution education programs are currently conducted in elementary and secondary schools across the country. Leaders of these programs include educators, representatives of key community groups, bar associations, law enforcement agencies, and public service agencies. Education on the Constitution in our nation's schools would be significantly enhanced through effective use of such existing programs.

The Commission encourages school districts that have established highly successful educational programs on the Constitution to apply for limited funding to expand or replicate them. Providing assistance to outstanding projects will enhance the network of available teaching materials and methods on the Constitution.

In order to be eligible for funding as an exemplary project, applicants must

provide written evidence of past program accomplishments, evidence of project recognition by others, and documentation of continued commitment to the project. Applicants for exemplary project funding will be required to disseminate their teaching program to other school districts, educational associations, and the Commission.

Resource Inventory Effective Use of Available Resources

The revitalized interest in studying the Constitution encouraged by the bicentennial celebration, other agencies, and this grant program has led to the development and dissemination of new curricula for all learning levels. Educational materials on the Constitution are not catalogued in any single listing, volume, or repository. As a result, many educators are unaware of the variety of materials available.

In response to this need, the Commission encourages a limited number of proposals to connect teachers with existing instructional materials, resources, lesson plans, and methods, including those made available through Commission sponsorship and the 1987 Educational Grants Program. Since the Commission anticipates funding only a few proposals for resource guide development, applicants should not seek support for such projects unless they are highly qualified by specific expertise and experience.

A listing of Commission sponsored activities and grant recipients under the 1987 Educational Grants Program are found elsewhere in this application package. If more complete information is desired, please write to the contact listed.

In-Service Instruction Mini-Grant Program

To help ensure a minimum level of basic teacher instruction on how to teach the Constitution to a maximum number of teachers, the Commission invites proposals from consortia of school districts within a particular region which will develop and implement concentrated in-service training to all schools within the member districts. The Commission believes that through a cooperative effort, regional school districts can develop a network whereby resources can be combined to greater effectiveness. Scholars, materials, and opportunities can be shared so that small and large districts alike will have the optimum training available. Through single-day training or through ongoing supplemental training during the school year, teachers can be provided with information and tools for teaching the concepts inherent in the Constitution.

Proposals from individual school districts are also encouraged provided the applicant demonstrates that the proposed project will be cost-effective and reach a large segment of the teachers within its school district.

Because grant support for in-service training is relatively modest, applicants who provide documented in-kind or cash match resources will be given priority consideration over applicants who do not contribute resources. Applicants seeking funding for in-service training are urged to pay particular attention to the five-page limit for proposals.

Diverse Activities Many Formats Possible

We are often asked to provide examples of fundable projects as guidance. The Commission encourages a wide range of project activities employing a variety of formats using the funding emphasis and themes mentioned above. We look to the applicant to use its own imagination in designing a project.

The examples listed below are illustrations of in-service training, conferences, institutes, resource guides, and instructional materials which might be developed. These examples are designed to serve as points of departure in proposal development.

1. A school district will develop and conduct an in-service day for elementary school teachers, opening with a lecture by a constitutional scholar providing a basic understanding of constitutional principles and their development. Following this lecture, a series of workshops run by master teachers will provide teachers with the resources and methods for translating this understanding into the classroom. Teachers will be made aware of the variety of materials available at the appropriate level, and of resource people to assist with this process. A series of follow-up, enrichment activities, including primary source study, will be provided for participating teachers throughout the semester.

2. A four-week institute for secondary school teachers which focuses on the legislative branch of the government, and its function in a system of separated powers. The principles of the Founding era, in addition to the arguments supporting the separation of powers, will be studied in order to better understand the constitutional basis of current conflicts over which branch of government maintains control over foreign affairs. The original debates and other founding documents, with study of historic Supreme Court cases, will provide the basis for better understanding the natures of the legislative and executive powers.

3. An institute for elementary school teachers where biographies are used as the starting point for adapting the concepts implicit in the Constitution, the Bill of Rights, and our constitutional democracy into terms that can be understood by young children. Teachers will be required to read a specified number of books from a reading list provided prior to the beginning of the institute; they will then work with constitutional scholars and master teachers to strengthen their basic understanding of the Constitution, its antecedents, and its implications so that they can better interpret concepts for young students. Additionally, the lectures and workshops include an exploration of ways to use music, art, or role-playing to bring the Founding period to life.

4. A resource guide will be developed to provide a single source of existing instructional materials on the Constitution and related topics. Organized by topic and by grade level, this guide will provide a comprehensive listing of curricula and related instructional materials currently available, including lesson plans and examples of proven methods for incorporating these resources into successful classroom activities.

5. Teachers and students from througout the state will participate in a semester-long series of research activities, including the study of the records of the debate over ratification of the Constitution, which will culminate in a reenactment of the state's ratification convention and the publication of a reenactment guide, a tabloid newspaper, and a research booklet. Students will adopt the role of an actual delegate-participant. With the guidance of teachers, students will use local history research techniques to uncover the ideas and positions actually held by their delegate through primary sources such as sermons, newspaper articles, speeches, and records of the original debate.

6. A two-week summer institute on national and state constitutional history will provide 30 social science and history teachers from grades 5–12 with academic training in American constitutional history. Project faculty will include the state archivist, scholars in history and political science, and master teachers. Discussion groups and assigned readings will address the origins of the Constitution, the convention and ratification debates, the

Federalist and Anti-Federalist writings, and the creation of the Bill of Rights as well as a study of the development of the state constitution. Participants will do research work and develop instructional materials and methods appropriate for their grade level and will receive training in the use of primary sources for classroom instruction. As a result of the institute, a teacher's resource book will be published and distributed statewide.

7. A year-long program on teaching the Constitution and constitutionalism will be held for 20 elementary and secondary school teachers in a collaborative effort with five local university faculty. The project will begin with a two-week summer institute followed by monthly seminars throughout the year. The summer institute will be devoted to reading, discussion, and briefing of important court cases as participants study the evolution of constitutionalism from the early ideals of Magna Carta to the present. Teachers will become familiar with historical documents and other primary materials as well as current scholarship on the Constitution as they develop detailed teaching strategies.

8. A weekly program throughout the semester for junior and senior high school teachers provides a mix of lectures and hands-on experience for ways to bring the Constitution to 14–18 year olds. Alternate-week lectures will focus on the philosophical origins of the Constitution, each branch of the government, the Bill of Rights, and the rights and responsibilities of citizenship; appropriate reading lists will be provided at each lecture. Non-lecture week workshops led by master teachers, will demonstrate proven methods of converting this knowledge into a comprehensive learning experience as classroom teachers become familiar with existing curricula and resources.

Regardless of the specific project proposed, important outcomes of any proposal are enhancing the skill of teachers to teach the principles and the history of the Constitution and Bill of Rights to young students and providing the resources and methods to implement those skills.

V. What Activities May Not Be Funded

Real property acquisition, construction, and research undertaken in the pursuit of an academic degree may not be assisted with Commission funding. The Commission will not fund proposals which espouse or attack others, legislative proposals or proposals to intervene in ongoing disputes, or proposals that would bring the Commission into the policy-making processes of any government or government agency. Grant money may not be used as honoraria for individuals who simply speak at the conferences or institutes. (This restriction does not prohibit funds from being used to support individuals whose broader participation in a conference or institute includes a speech.)

VI. Budget information

All costs must be reasonable, necessary to accomplish project objectives, allowable in terms of the applicable federal cost principles, auditable, and incurred during the grant period. Charges to the project of items such as salaries, fringe benefits, travel, and contractual services must conform to the written policies and established practices of the applicant organization.

The Commission encourages applications that include in-kind services or other sources of funding. Preference may be given to applicants who propose in-kind services in the project budget.

Allowable Costs

Allowable project costs include:

1. Salaries and wages for key personnel, administrative assistants and secretaries;
2. Fringe benefits;
3. Consultant fees;
4. Necessary and reasonable travel expenses (including subsistence costs when traveling) for key personnel and participants;
5. Stipends for participants;
6. Supplies and materials used in the project;
7. Project-related services such as cost of duplication and printing, long-distance telephone, equipment rental or purchase, postage, and other services not included in the other categories or in the indirect cost pool and related to the project objectives.

Anticipated Grant Range:

Instructional Materials	$5,000–50,000
Institutes	$25,000–75,000
Conferences	$5,000–25,000
Exemplary Projects	$5,000–25,000
In-Service Programs	$1,000–10,000
Other Projects	$5,000–50,000

VII. Review Process: Introduction

Although applicants must follow the format prescribed under "PROPOSAL CONTENT," the proposal should not simply mirror the content of this announcement. It is also particularly important that proposals be free of *jargon and technical language.* We anticipate that the discussion in this section will help the applicant to prepare a stronger proposal if the judging process is understood.

Applicants will submit a narrative of their proposal which is strictly limited to fifteen double-spaced pages *excluding* the project budget narrative and appendix items. Proposals for inservice training must be limited to no more than five (5) doublespaced pages *excluding* the project budget narrative and appendix items. Applicants may submit more than one proposal; each will be assessed independently.

Administrative and Merit Reviews of Applications

The examination of grant applications begins with an "Administrative Review" for completeness and conformity with application requirements. The application then will be given a "Merit Review," first by external reviewers and then by members of the Commission staff. The readers of the application may be faculty, educational administrators, government administrators or journalists chosen for their ability to assess the significance of a broad range of important issues on the Constitution and Bill of Rights. The external reviewers may include both generalists and specialists. They often have practical experience in educational programs. But they almost certainly will know little about a particular need, approach, or loction. The application must therefore address a general audience and avoid jargon and technical language. Readers are asked to review a large number of applications so that they can gain perspective on relative significance. It is, therefore, imperative that the application be limited to fifteen double-spaced pages.

The "Merit Review" will focus on the relative significance and importance of proposals. Applicants should be sure to discuss—(1) The constitutional issue or educational need being addressed; (2) the proposed activities in some detail; and (3) the desired results or outcomes of the project. The final stage of review by the Commission will include consideration of the feasibility of proposals as well as full range of issues raised in this section. Proposals may also be reviewed by other specialists later in the process when technical questions arise.

After thorough review of the applications, Commission staff may telephone applicants in order to verify or clarify information. The Commission may also contact others who are in a position to know the applicant's work and plans, or who would be affected by the project.

Commissioners, Commission staff, and external reviewers will remove themselves from consideration of any

application for a grant which might reasonably present the appearance of a conflict of interest. Individuals who believe they may have a potential conflict of interest arising from present or prior association with the applicant or for any other reason, shall bring the situation to the attention of the Commission's General Counsel for guidance.

Throughout the review process, external reviewers and Commission staff will make judgments about the extent to which a project will contribute to providing elementary and secondary teachers and students with a strengthened understanding of the Constitution and Bill of Rights.

VIII. Selection Criteria

The Commission has developed the following criteria as general guidelines for judging all project proposals:

1. The project is designed to strengthen teachers' capacity to understand and teach the Constitution, its antecedents, provisions, structure, and history while benefitting students in an academically sound way appropriate for the age group toward which it is directed. (20 points)

2. Potential of the project to achieve stronger and wider impact through utilizing existing materials, including those made available through Commission sponsorship and the 1987 Educational Grants Program. (5 points)

3. The project is cost-effective in that expenditures are reasonable and appropriate to the scope of the project. (5 points)

4. The project must demonstrate the potential for affecting a much wider audience than the immediate project participants. (5 points)

5. The project represents an improvement upon existing teaching methods. (5 points)

6. Applicants have the capacity to carry out the project as evidenced by:

a. Academic and administrative qualifications of the project personnel;

b. Quality of project design;

c. Soundness of project management plan. (10 points)

The decision to award grant funding is solely within the discretion of the Commission based upon its judgment of how best to fulfill the statutory purposes of the grant program.

Funding decisions cannot be appealed.

IX. Submission Procedures and Closing Dates for Receipt of Proposals

Every application for a grant from the Commission must be made on application forms prescribed by the Commission. A complete application package consists of the following items:

1. Standard Form 424 with attachments;

2. Proposal abstract (one page);

3. Proposal narrative (5–15 *double-spaced* typed pages); In-service narrative (5 *double-spaced* typed pages);

4. Proposal budget and a budget explanation.

The closing date for receipt of grant applications is October 15, 1987.

The announced closing date and procedures for guaranteeing timely submission will be strictly observed. However, the Commission reserves the option to invite additional applications if program funding is available. If new applicants are invited, notification will be placed in the **Federal Register**.

Applicants should also note that the closing date applies to both the date the application is mailed and the hand delivery date. A mailed application meets the requirement if it is mailed on or before the pertinent closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following: (a) A legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice or receipt from commercial carrier; or, (d) any other tangible proof of mailing acceptable to the Commission.

If an application is sent through the U.S. Postal Service, the Commission will not accept either of the following as proof of mailing: (1) A private metered postmark; or, (2) a mail receipt that is not dated by the U.S. Postal Service. Please use first class mail. All applicants will receive acknowledgment notices upon receipt of proposals.

Mailing Address

Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW, Washington, DC 20503, Attn: Anne A. Fickling, Assistant Director, Educational Grants Program, Telephone (202) 653–5110.

Final Proposals Sent by Mail

October 15, 1987.

Hand Delivered Final Proposals

Hand delivered final proposals will be accepted daily between the hours of 8:00 a.m. and 5:30 p.m., Eastern Standard Time except Saturdays, Sundays and Federal Holidays. Proposals will not be accepted after 5:30 p.m. on any closing date.

Number of Copies of Final Proposal

All applicants must submit one (1) application with an original signature and four (4) copies. Each copy must be covered with Standard Form 424.

Proposal Content

All applicants are urged to develop proposals that are concise and clearly written. The proposal must contain the components listed below:

Title Page: Use Standard Form 424 (SF 424). Additional instructions are printed on the reverse side of SF 424.

Abstract: Attach a one-page, double-spaced abstract following SF 424. This is a key element in all applications, and should include: (1) A brief description of the project; (2) the proposed activities; and, (3) the project's intended outcome.

Budget: Applicants will prepare a complete budget including details of expenditures for salary, travel, etc. Indirect costs may be assessed at a rate previously approved by another agency of the federal government. Applicants who need to establish an indirect cost rate should contact the Commission.

Budget Explanation: Applicants will include a budget statement explaining (1) the basis used to estimate major costs (professional personnel, consultants, travel and indirect costs and any other costs that may appear unusual; and (2) how the major costs relate to the proposed budget activities.

Project Narrative: Applicants must provide a narrative statement limited to fifteen double-spaced typed pages for project proposals and five double-spaced typed pages for in-service projects. Include the following information:

(I) Project Description: A description of the project activities and how they relate to the selection criteria;

(II) Outcome and Plans for Wider Impact: A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the program participants (provide an estimate of number of teachers/students who will benefit);

(III) Other Aspects of the Project: A description of any other especially significant aspects of the proposed project;

(IV) Personnel and Institutional Information: For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten additional pages of background information on their staff, institutions or agencies which is relevant to a full understanding of the

significance and feasibility of the proposed project.)

Equal Opportunity

The Commission on the Bicentennial of the United States Constitution is responsible for ensuring compliance with and enforcement of public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving federal assistance under this grant program. Any person who believes he or she has been discriminated against in any program, activity, or facility receiving a Commission grant should write immediately to Director of Educational Programs, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503

BILLING CODE 6340-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
☐ NOTICE OF INTENT (OPTIONAL)
☐ PREAPPLICATION
☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
a. NUMBER
b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER
NOTE: TO BE ASSIGNED BY STATE
a. NUMBER
b. DATE ASSIGNED Year month day 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
a. NUMBER
MULTIPLE ☐
b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State
B—Interstate
C—Substate Organization
D—County
E—City
F—School District
G—Special Purpose District
H—Community Action Agency
I—Higher Educational Institution
J—Indian Tribe
K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant
B—Supplemental Grant
C—Loan
D—Insurance
E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ .00

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

15. PROJECT START DATE Year month day 19
16. PROJECT DURATION Months
18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

14. TYPE OF APPLICATION
A—New
B—Renewal
C—Revision
D—Continuation
E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars
B—Decrease Dollars
C—Increase Duration
D—Decrease Duration
E—Cancellation
F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED
☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT►
To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19
25. FEDERAL APPLICATION IDENTIFICATION NUMBER
26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► Year month day 19
30. STARTING DATE Year month date 19
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)
32. ENDING DATE Year month date 19
33. REMARKS ADDED
☐ Yes ☐ No

GENERAL INSTRUCTIONS FOR THE SF-424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A-102. It will be used by Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process have been given an opportunity to review the applicant's submission.

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I with the exception of Box 3, "State Application Identifier." If an item is not applicable, write "NA." If additional space is needed, insert an asterisk "*," and use Section IV. An explanation follows for each item:

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A-102 and Federal agency program instructions. Use of this form as a Notice of Intent is at State option. Federal agencies do not require Notices of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared (at applicant's option).

3a. Number assigned by State.

3b. Date assigned by State.

4a–4h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance (CFDA) number assigned to program under which assistance is requested. If more than one program (e.g., joint funding), check "multiple" and explain in Section IV. If unknown, cite Public Law or U.S. Code.

6b. Program title from CFDA. Abbreviate if necessary.

7. Use Section IV to provide a summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

10. Estimated number of persons directly benefiting from project.

11. Check the type(s) of assistance requested.

A. Basic Grant—an original request for Federal funds.

B. Supplemental Grant—a request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

E. Other. Explain in Section IV.

12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing grant

Item

(a revision or augmentation under item 14), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 12a—amount requested from Federal Government. 12b—amount applicant will contribute. 12c—amount from State, if applicant is not a State. 12d—amount from local government, if applicant is not a local government. 12e—amount from any other sources, explain in Section IV.

13b. The district(s) where most of action work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."

14. A. New. A submittal for project not previously funded.

B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project with a projected completion date.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

16. Estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augmentations (item 14e).

18. Date preapplication/application must be submitted to Federal agency in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise, write "NA."

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

FEDERAL AGENCY PROCEDURES FOR SECTION III

Applicant completes only Sections I and II. Section III is completed by Federal agencies.

26. Use to identify award actions.

27. Use Section IV to amplify where appropriate.

28. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 28a—amount awarded by Federal Government. 28b—amount applicant will contribute. 28c—amount from State, if applicant is not a State. 28d—amount from local government, if applicant is not a local government. 28e—amount from any other sources, explain in Section IV.

29. Date action was taken on this request.

30. Date funds will become available.

31. Name and telephone number of agency person who can provide more information regarding this assistance.

32. Date after which funds will no longer be available for obligation.

33. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

☆ GPO : 1984 O - 421-526 (140)

DETACH AND, AS NECESSARY, STAPLE TO ABOVE SHEET.

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

CATEGORY OF FUNDING (*Check only one*)

This application is being filed for:

___ 1. Conference/Institute

___ 2. Exemplary Project Funding

___ 3. Resource Guide Development

___ 4. In-Service Training

___ 5. Instructional Materials

___ 6. Other Project

Each project will be judged independently on its merits.

OMB APPROVAL NO. 3312-0015
EXPIRES 12/89

APPLICATION FOR FEDERAL ASSISTANCE (Short Form)

PART I — Budget Data

Object Class Categories	Current Approved Budget (a)	Change Requested (b)	New or Revised Budget (c)
1. Personnel			
2. Fringe Benefits			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Stipend Expenses			
8. Other			
9. Total Direct Charges			
10. Indirect Charges			
11. TOTAL			
12. Federal Share			
13. Non-Federal Share			
14. Project Income			

15. Detail on Indirect Costs:

Type of Rate (Mark one box) ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed

Rate_____% Base $ _____ Total Amount $_____

16. ATTACH BUDGET EXPLANATION ON MAJOR COST ITEMS FOLLOWING THIS PAGE.

PART II — Program Narrative Statement

Project Narrative: APPLICANTS MUST PROVIDE A NARRATIVE STATEMENT LIMITED TO FIFTEEN DOUBLE-SPACED TYPED PAGES. Include the following information:

I) ***Project Description***: A description of the project activities and how they relate to the selection criteria;

II) ***Outcome and Plans for Wider Impact***: A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the project participants;

III) ***Other Aspects of the Project***: A description of any other especially significant aspects of the proposed project; and

IV) ***Personnel and Institutional Information***: For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten additional pages of background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project.)

INSTRUCTIONS

PART I

Items 1-11 – Enter on Lines 1-11 in Column (c) the total amounts needed for the project. If this is an application for *new grants*, leave Columns (a) and (b) blank. If this is an application for amendments, changes or supplements, show the current approved budget in Column (a); enter in Column (b) on the appropriate line(s) the amount of the change, amendment or supplement; add each line entry in Column (a) to the line entries in Column (b) and enter the total for each line in Column (c). The amounts shown in Column (c) represent the amount of the new or revised grant budget.

Item 12 — Enter the Federal share of the amount on Line 11.

Item 13 — Enter the non-Federal share of the amount on Line 11.

Item 14 — Enter the amount of estimated income, if any, to be generated by the project. Do not add or subtract this amount from the total project amount. The estimated amount of project income may be considered by the Federal grantor agency in determining the total amount of the grant award.

Item 15 — Enter the type of indirect cost rate (provisional, predetermined, final or fixed), the rate that will be in effect during the funding period, and the amount of the base to which the rate is applied.

PART II

The Project Narrative statement should show the need, objectives, approach, the geographical location of the project and the benefits expected to be obtained from the assistance. Attach any data that may be needed to establish the applicant's eligibility for receiving assistance under the Federal program. Refer to the Annual Program Announcement for more details.

PART III — ASSURANCES

The applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements including the applicable OMB Circulars Nos. (A-21. A-110, A-122, A-87, A-102, and A-128) as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. The Applicant also assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964(P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

5. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to educational institution employees of State and local governments.

6. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

7. It will give the grantor agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

8. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with applicable Office of Management and Budget Circulars.

9. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

10. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 42 USC 4012a. Section 102(a) requires the purchase of flood insurance as a condition for the receipt of any Federal financial assistance for machinery, equipment, fixtures, and furnishings to be used in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

11. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.0) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

[FR Doc. 87-18509 Filed 8-13-87; 8:45 am]
BILLING CODE 6340-01-C

Federal Register

Friday
August 14, 1987

Part IX

Environmental Protection Agency

40 CFR Part 12

Enforcement of Nondiscrimination on the Basis of Handicap in the Environmental Protection Agency's Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 12

[FRL-3057-3]

Enforcement of Nondiscrimination on the Basis of Handicap in the Environmental Protection Agency's Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Environmental Protection Agency (EPA).

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Nereid Maxey, Office of Civil Rights (A–105), Environmental Protection Agency, Room 211 West Tower, 401 M Street, SW., Washington, DC 20460, (202) 382–4567, TDD (202) 382–4565.

Copies of this regulation are available on tape for those with impaired vision. The tape may be listened to at or ordered from the Office of Civil Rights, EPA, at the above address. For information, please call 202/382–4575 or TDD # 202/382–4565.

SUPPLEMENTARY INFORMATION: On May 6, 1985, EPA published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap as it applies to programs and activities conducted by EPA 50 FR 19136.

By the close of the comment period, July 5, 1985, EPA had received five written comments and several telephone calls requesting information about the regulation. Three of the written comments were submitted by organizations representing the interests of individuals with handicaps, one comment from a union representing EPA employees, and one comment from an EPA Laboratory Office Director. The telephone comments and questions were received from EPA employees.

The Agency read and analyzed each comment. Most comments addressed more than one issue and expressed similar opinions.

The decisions the Agency made in response to these comments, however, were not made on the basis of the number of commenters addressing the issue, but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments will be made available for public inspection in Room 206 West Tower of the EPA Headquarters Office, 401 M Street, SW., Washington, DC from 9:00 am to 4:00 pm, Monday through Friday, except for legal holidays, until October 13, 1987.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Agency has today submitted this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on September 14, 1987.

This rule applies to all programs and activities conducted by EPA.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Environmental Protection Agency. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat 1810), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified individual with handicaps in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794 (1978 amendment italicized).)

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are indentical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (*See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks or Rep. Brademas); *id.* at 38, 552 (remarks of Rep. Sarasin).

There are, however, some language differences between this final rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decisions in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 712 (1985), where the Court held that the regulations to federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for individuals with handicaps. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*id.* at n.21) (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs, as they have been as interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, lower court cases interpreting *Davis*, and by the Supreme Court in

Alexander; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence, EPA relying on advice from the Civil Rights Division, U.S. Department of Justice, believes that there are no significant differences between this final rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive Agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

One commenter believed that small entities should comply with this rule because there is a substantial number of such entities which affect a considerable number of people. The Agency believes that the commenter is confusing federally assisted regulation governs only the activities and programs conducted by EPA. For example, the regulation applies to EPA's offices and laboratories, public meetings held by EPA, and accommodations for its employees and members of the public who are handicapped entering its properties. It applies to all EPA components regardless of their size.

Section-by-Section Analysis and Response to Comments

Section 12.101 Purpose.

Section 12.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

We received one written comment and several telephone inquiries regarding this section. Some commenters were concerned that this regulation did not also apply to EPA's grantees and contractors. EPA grantees are covered by its federally assisted nondiscrimination regulation. Employment activities of certain EPA contractors are covered by section 503 of the Rehabilitation Act of 1973, which is administered by the U.S. Department of Labor. In order to avoid future confusion, we have added a reference to the Agency's federally assisted non-discrimination regulations found at 40 CFR Part 7 (1986).

Section 12.102 Application.

The regulation applies to all programs or activities conducted by the agency. It should be noted that EPA's programs are designed to promote a cleaner and healthier environment. Thus, at this time we anticipate, in a nonemployment context, that this regulation will have its greatest impact on ensuring that the various meetings, symposia, and hearings conducted by EPA are accessible. This regulation does, not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 12.103 Definitions.

"Agency." For purposes of this regulation "agency" means Environmental Protection Agency.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 12.160(a)(1), they may also be necessary to meet other requirements of the regulation.

Two commenters suggested that this definition be expanded to include a "laundry list" of aids such as attendant services. The Agency believes, however, that such a list could be interpreted too literally thereby limiting the use of certain aids not mentioned. We believe it is necessary for the Agency to have flexibility to expand the use of auxiliary aids as individual needs, techniques and technology change. The decision to provide attendant services, as well as all other auxiliary aids, will be made on an individual basis.

One commenter believed "that a specific statement that auxiliary aids are required in all aspects of EPA's federally conducted programs should be included in the regulation itself." The Agency believes that program accessibility does not necessarily require the use of auxiliary aids in every instance. For example, holding a public hearing in a place which is accessible to a person who uses a wheelchair and who plans to attend would make the program available to that person. However, providing a sign language interpreter at the hearing when no hearing-impaired person plans to attend would be a needless expense.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180-day period for the agency's investigation (*see* § 12.170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in the regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in § 12.149, § 12.150 and § 12.170(f).

One commenter objected to the deletion of the phrase "or interest in such property" as contained in the section 504 coordination regulation for federally assisted programs. As explained in the preamble to the NPRM, the term "facility" as used in this regulation refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned,

leased, or used on some other basis by the agency.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from most existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 422 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified to enable to respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered—not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Several commenters objected to this revised definition for a variety of reasons. Several commenters stated that the Agency incorrectly used *Davis* as the justification for explaining the differences between the federally assisted and the federally-conducted regulations because the Supreme Court upheld the validity of the existing regulations in *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984). This view misunderstands the Court's actions in *Darrone*. In that case the Court ruled on a series of issues, the most important of which was under what circumstances section 504 applies to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified individual with handicaps" or whether section 504 included limitations based on "undue financial and administrative burdens".

These commenters stated that the proposal would change the definition of "qualified individual with handicaps" for employment. "Qualified individual with handicaps" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 12.140. Nothing in this part changes existing regulations applicable to employment.

Some commenters assumed that the definition would have the effect of placing on the individual with handicaps the burden of proving that he or she is qualified. The definition has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Further, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § 12.150(a)(2) and § 12.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

Some commenters said that the definition of "qualified individual with handicaps" places individuals with handicaps in a "Catch-22" situation: because only qualified individuals with handicaps are protected by the statute, a determination that a person is not qualified would make enforcement remedies unavailable to that person. This concern is misplaced. If the Agency determined that a individual with handicaps was not "qualified", the person could use the procedures established by § 12.170 to challenge that determination, just as he or she could challenge any other decision that he or she believed to be discriminatory.

Some commenters argued that the definition of "qualified individual with handicaps" confused what should be two separate inquiries: Whether a person meets essential eligibility requirements and, if so, whether accommodation is required. They argued that the reference to "fundamental alteration" in the definition focuses attention on accomodations rather than on an individual with handicaps's abilities. As another commenter noted, however, the Supreme court in *Davis* developed the "fundamental alteration" language in a decision that was determining the nature and scope of what constitutes a qualified individual with handicaps. The Agency continues to believe that the concept of "qualified individual with handicaps" properly encompasses both the notion of "essential eligibility requirements" and the notion of program modifications that might fundamentally alter a program.

Some commenters argued that our analysis of *Davis* was inappropriate

because *Davis* was decided on the basis of individual facts unique to that case or because *Davis* involved federally assisted and not federally conducted programs. While cases are decided on the basis of specific factual situations, courts, especially the Supreme Court, develop general principles of law for use in analyzing facts. The *Davis* decision was the Supreme Court's first comprehensive view of section 504, a major new civil rights statute. The *Davis* holding, that a person who cannot achieve the purpose of a program without fundamental changes in its nature is not a "qualified individual with handicaps," is a general principle, a statement by the Court on how it views section 504. It is therefore necessary to reflect this principle in the Agency's regulation.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified individual with handicaps" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this part of the definition, a "qualified individual with handicaps" is an individual with handicaps who meets the essential eligibility requirements for participation in the program of activity.

Paragraph (3) explains that "qualified individual with handicaps" is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 12.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 12.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The agency shall provide an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, and unions representing employees to participate in the self-evaluation process by submitting comments (both oral and written).

The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

The self-evaluation will be concluded with a report to the Administrator of findings and recommendations. Within 60 days of the receipt of the report, the Administrator will direct that certain actions be taken as he/she deems appropriate.

We received one comment with respect to the self-evaluation section, while generally approving the section, the commenter suggested the section contain (1) an assurance that the effects of discrimination will be eliminated; (2) a transition plan for compliance; and, (3) a laundry list of specific modification requirements.

A requirement for a transition plan to ensure compliance with § 12.150 is contained in § 12.150 (d) and further reference would be redundant. When this final regulation becomes effective, the agency plans to appoint transition and self-evaluation teams to work in tandem toward achieving their respective goals. Under § 12.110(c), the Administrator will direct appropriate actions based on the findings of the self-evaluation. Including a laundry list of requirements in the rule would negate the purpose of the self-evaluation process. The purpose of self-evaluation is to formulate recommendations in light of particular circumstances being evaluated. Including specific modification requirements in the regulation would preclude the self-evaluation from taking into account specific circumstances which might make the regulatory requirements inappropriate.

Section 12.111 Notice.

Section 12.111 requires the agency to disseminate sufficient information to employees, unions representing employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Two comments were received about this section. One argued that notice of agency policy should be distributed in recruitment materials. Inasmuch as this comment basically involves employment, it would be addressed not by this rule but by section 501 requirements. The other commenter argued that the agency should "effectively" apprise persons of their rights and protection against discrimination and suggested that we use the section promulgated by the Federal Election Commission (FEC) (11 CFR 6.111). We feel that § 12.111 adequately addresses this point by requiring the provision of "necessary" information.

Section 12.130 General prohibitions against discrimination.

Section 12.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 12.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 12.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the individual is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

One commenter argued that the use of an "irrebuttable presumption" is never justified, asked what expertise people had to make these decisions, and asked who would make such decisions. We agree to a point, referring the readers to the earlier discussion of the blind commercial vehicle operator. Agency officials making a decision based on irrebuttable presumptions would be required to research the presumption prior to making the decision.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 12.149–151) and communications (§ 12.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 12.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

One commenter suggested that the prohibition concerning selection of sites should also apply to construction of additional buildings at an existing site. The suggested prohibition could possibly prevent EPA from fully utilizing existing sites. It could be extremely disruptive of EPA site utilization to retroactively apply this section, so we have not. However, new construction on those existing sites must be accessible.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 12.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program of activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

One commenter objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the agency would provide significant support to an organization, the organization, as a recipient, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d) provides that the agency must administer programs or activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 12.140 Employment

Section 12.140 prohibits discrimination on the basis of handicap in employment by the Agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly,

§ 12.140 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 12.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

We received one comment which argued that the "whole section is too brief and weak, and does not give enough attention . . . to employment of disabled persons." The Agency disagrees. Section 501 and its implementing regulations are solely devoted to employment discrimination against individuals with handicaps. No purpose is served by duplicating them in this regulation once the public is put on notice that the employment standards under section 501 and section 504 are identical. However, to ensure that there is no misunderstanding, we have added to the definiton of "qualified individual with handicaps" (§ 12.103), subparagraph (3), which incorporates the definition in 29 CFR 1613 (EEOC's section 501 regulation), for employment purposes.

Section 12.149 Program accessibility: Discrimination prohibited

Section 12.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 12.150 and 12.151. The Environmental Protection Agency (EPA) is committed to making its programs accessible to individuals with handicaps; however, as noted earlier, its programs are designed to promote a cleaner and healthier environment. Thus, as previously mentioned, we anticipate, in a nonemployment context, that this regulation will have its greatest impact on insuring that the various meetings, symposia, and hearings conducted by EPA are accessible. Please note that, as discussed above with respect to § 12.101, EPA-assisted programs and activities are not covered by this regulation but are covered by the regulation found at 40 CFR Part 7. It is that regulation which applies to EPA assistance such as building wastewater treatment plants.

Section 12.150 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 12.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 12.150(a)(1)). However, § 12.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 12.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility.

The "undue financial and administrative burdens" language found at § 12.150(a)(2) (and paragraph (d) of § 12.160, discussed below) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See also, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association* v. *Lewis* (*APTA*), *supra.*

Paragraphs (a)(2) and 12.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed without deciding that section 504 reaches at least some conduct that has a unjustifiable disparate impact on individuals with handicaps but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified individuals with handicaps "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' . . . or that would constitute 'fundamental alteration[s] in the nature of a program.' " *Id.* at n.20 (citations omitted).

Alexander supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for an individual with handicaps may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Some commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified individual with handicaps and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. This view overlooks the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982). In addition, the Court in *Alexander* held that the "administrative costs" of subjecting any action affecting Medicaid recipients to a detailed analysis of its effects on individuals with handicaps "would be well beyond the accommodations that are required under *Davis*." 469 U.S. at 308.

One comment included a lengthy analysis opposing the undue burdens defense. This comment was premised on the assumption that the proposed regulation was substantively inconsistent with the regulations for federally assisted programs. This assumption is incorrect. Judicial interpretations have established that neither section 504 nor the regulations for federally assisted programs establish an unlimited obligation to modify programs or activities to accommodate individuals with handicaps. In fact, this comment acknowledged that the Department of Health, Education, and Welfare's regulation for its own federally assisted programs "took

'factors of burden and cost . . . into account.' "

This comment also argued that *APTA* is no longer good law, in view of the Supreme Court's decision in *Consolidated Rail Corp.* v. *Darrone,* 465 U.S. 624 (1984) (*Conrail*), in which it said that Congress intended, through the 1978 amendments to the statute, to codify the HEW regulation. Other commenters also argued that *Conrail* prohibits departures from the language of the federally assisted regulation. As previously noted, however, *Conrail* addressed only the question of employment coverage under the statute and cannot be read to mean that Congress "codified" other parts of the regulation. Furthermore, the undue burdens defense is not inconsistent with the HEW regulation; in fact, the employment provisions of the HEW regulation—those addressed in *Conrail*—do include an "undue hardship" defense. That view is confirmed by the Supreme Court's decision in *Alexander.* There the Court referred to its previous recognition in *Conrail* of the regulation as "an important source of guidance on the meaning of Section 504," *Alexander,* at n.24, and at the same time, as discussed above, emphasized that section 504 does not mandate extensive costs and administrative burdens.

The agency is adopting the proposed rule's procedural requirements for application of the "fundamental alterations" and "undue financial and administrative burdens" language. The agency believes that, in most cases, making an agency program accessible will not result in undue burdens. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 21.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedure established in § 12.170.

Paragraph (a)(2) does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

Three of the four commenters sought the deletion of "undue financial and administrative burdens" and asked that "undue hardship" be reinstated in its place. "Undue hardship" is a term of art used in the employment context. In order to be consistent with regulations issued by other executive agencies, we have retained the term "undue financial and administrative burdens" in this rule.

Two of the commenters argued that compliance decisions should be made after considering "all agency resources". As noted above and in the NPRM we agree. It should be pointed out, however, that certain of the funds which are appropriated to EPA are legislatively restricted to certain programs for which they can be used. Reprogramming of those funds may not be available to the Agency.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 12.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 12.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet accessibility standards merely by virtue of being leased. They are subject, however, to the program accessibility standards of § 12.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 12.151.

A commenter has recommended that the regulation should require that buildings leased after the effective date of the regulation should meet the new construction standards of § 12.151, rather than the program accessibility standard for existing facilities in § 12.150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service,* 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a

condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 12.160 Communications.

Section 12.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 12.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 12.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 12.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 12.150(a)(2)). Unless not required by § 12.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

It is our view that compliance with § 12.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 12.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency as set forth in § 12.160(d). The decision that compliance would result in such alteration or burdens must be made by the agency head or designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 12.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 12.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Three comments provided suggestions to include a "laundry list" of the types of auxiliary aids which could be used by individuals with handicaps. The agency believes the examples provided in the preamble and body of the regulation although not all-inclusive, are sufficient. We believe that other types of auxiliary aids described by the commenters can best be considered by the transition and self-evaluation teams.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 12.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 12.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 12.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 12.170(g)).

Paragraph (h) requires appeals to be filed within 90 days of the receipt of the written notification required at the end of the investigation. The agency may extend this time for good cause. This time limit was increased from 30 days in the proposed rule.

Paragraph (i) provides for the Administrator or a designee to hear any appeal. In the proposed rule, the Judicial Officer was to decide appeals of agency determinations after investigation. In the interim, it was decided to preserve the Administrator's flexibility. Thus, in the final rule, all appeals are filed with the Administrator or designee.

Paragraph (j) requires that the Administrator or a designee notify the complainant of the results of the appeal within 60 days of the appeal request. If additional information is needed from the complainant, the Administrator has 60 days from receipt of this information to make an appeal determination.

Paragraph (k) allows the time limit for complaint investigation and appeal decisions to be extended with the permission of the Assistant Attorney General.

Paragraph (l) permits the agency to delegate its authority for investigating

complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

Two commenters provided several recommendations concerning this section. It was suggested that the addresses of all EPA offices and laboratories be included in the final regulation. Such an address list would be impractical for the reader as well as the agency. The agency expects these regulations to remain in effect for some time. Regional offices and laboratories are moved from time to time and we found that once an address list is published it is usually out-of-date due to moves taking place while the list was awaiting publication. To publish such an address list would mean a continuous revision of the regulation.

The commenter also asked that the regulation provide an opportunity for a complainant to provide additional information and/or amend a complaint in the event a complete complaint is not submitted. The section allows for additional time if good cause exists which permits the Office of Civil Rights to provide additional time for a complainant to make the complaint complete.

The commenter further suggested that EPA has an absolute responsibility to refer complaints over which it has no jurisdiction to other agencies. However, complaints may be received over which no agency has jurisdiction. In other instances EPA may have no way of knowing that a particular agency has jurisdiction. In these situations, EPA cannot be held responsible for failure to refer a complaint. EPA will continue its practice of referring complaints to agencies with probable jurisdiction to the extent it can do so.

Finally, the commenter requested that EPA state that its rules and procedures do not curtail the right of a complainant to obtain direct judicial relief. Our regulation pertains to administrative processing. It in no way, in and of itself, affects a complainant's access to judicial relief.

The commenter further suggested that provisions be added addressing attorneys' fees in administrative proceedings and the availability of compensation to the prevailing party. Nothing contained in Title V of the Rehabilitation Act provides for attorneys' fees in administrative proceedings other than those involving Federal employment. We have, therefore, not included an attorneys' fee provision in the current regulation.

List of Subjects in 40 CFR Part 12

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

For the reasons set forth in the preamble, 40 CFR Part 12 of the Code of Federal Regulations is amended as follows:

July 24, 1987.

Lee M. Thomas,

Administrator.

Part 12 is added to read as follows:

PART 12—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ENVIRONMENTAL PROTECTION AGENCY

Sec.

Authority: 29 U.S.C. 794.

§ 12.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service. Section 504 regulations applicable to recipients of financial assistance from the Environmental Protection Agency (EPA) may be found at 40 CFR Part 7 (1986).

§ 12.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 12.103 Definitions.

For purposes of this part, the term—

"Agency" means Environmental Protection Agency.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin, and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning

disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity, without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 12.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ 12.104–109 [Reserved]

§ 12.110 Self-evaluation.

(a) The agency shall, by November 13, 1987, begin a nationwide evaluation, of its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to, participate in the self-evaluation process by submitting comments (both oral and written).

(b) The evaluation shall be concluded by September 14, 1988, with a written report submitted to the Administrator that states the findings of the self-evaluation, any remedial action taken, and recommendations, if any, for further remedial action.

(c) The Administrator shall, within 60 days of the receipt of the report of the evaluation and recommendations, direct that certain remedial actions be taken as he/she deems appropriate.

(d) The agency shall, for at least three years following completion of the evaluation required under paragraph (b) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of the areas examined and any problems identified; and

(3) A description of any modifications made.

§ 12.111 Notice.

The agency shall make available to employees, unions representing employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 12.112–12.129 [Reserved]

§ 12.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the program or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 12.131–12.139 [Reserved]

§ 12.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 12.141–12.148 [Reserved]

§ 12.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 12.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 12.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 13, 1987, except that where structural changes in facilities are undertaken, such changes shall be made by September 14, 1990, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 14, 1988, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 12.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to

and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 12.152–12.159 [Reserved]

§ 12.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individuals with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 12.161–12.169 [Reserved]

§ 12.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for coordinating implementation of this section shall be vested in the Director of the Office of Civil Rights, EPA or his/her designate.

(d) The complainant may file a complete complaint at any EPA office. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause. The agency shall accept and investigate all complete complaints for which it has jurisdiction.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building of facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 12.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Administrator or a designee.

(j) The Administrator or a designee shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Administrator or designee determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in (g) and (j) of this section above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 12.171–12.999 [Reserved]

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Part X

Department of Education

34 CFR Parts 785, 786, 787, 789, and 796
National Diffusion Network; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 785, 786, 787, 788, 789 and 796

National Diffusion Network

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the National Diffusion Network. These changes implement amendments to the Education Consolidation and Improvement Act (ECIA) contained in the Higher Education Amendments of 1986, and improve the operation of the National Diffusion Network.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Lois N. Weinberg, Recognition Division, OERI, 555 New Jersey Avenue NW., Washington, DC, 20208; (202) 357-6134.

SUPPLEMENTARY INFORMATION: The National Diffusion Network (NDN) supports efforts to recognize and further excellence in education, including the nationwide dissemination of exemplary education programs. These programs have been developed at the local level by classroom teachers and other practitioners with funds provided by a variety of sources including school districts, private businesses and foundations, colleges and universities, State Educational Agencies and Federal programs. After field testing and evaluation, again at the local level, these programs have been validated by the Department's Joint Dissemination Review Panel (JDRP) after review of the evidence of effectiveness presented by the programs' developers. Programs that have JDRP approval may compete for funding by the NDN to operate as Developer Demonstrator projects which disseminate exemplary education programs nationwide. The NDN also supports Dissemination Process projects which provide information, instructional materials and services nationwide that will be of use to education service providers.

The NDN also supports a State Facilitator project in each state. State Facilitators provide information to local school districts and other education service providers about the programs in the NDN, help them select programs that are appropriate to meet local needs, and assist in the process of installing selected programs in new sites.

On June 10, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (52 FR 22062).

A discussion of the major issues was included in the NPRM on pages 22062–22063. Major proposed changes included the addition of a Program Significance Panel to determine whether the content of program materials is appropriate for dissemination by the Federal Government; changing the name of the Joint Dissemination Review Panel to the Program Effectiveness Panel and adding a scoring system; and combining the reviews of the two panels for Dissemination Review Approval. Other changes included: (1) The addition of two new categories of grant programs—Dissemination Process Projects and a Private School Facilitator Project; (2) additions to the list of funding priorities; (3) a six-year limitation on funding by the NDN for Developer Demonstrator projects; and (4) the inclusion of the Secretary's School Recognition Program as part of the National Diffusion Network.

Several substantive changes have been made since the publication of the NPRM. A change has been made in the Dissemination Review Approval process. Review by the Program Significance Panel will occur after satisfactory review by the Program Effectiveness Panel, and the criteria for review by the Program Significance Panel have been revised. The Program Significance Panel is intended to ensure a meaningful level of review with respect to a program's need, content, and design. This second level of review will be initiated on a pilot basis, and it will be reassessed in the future on the basis of how well it operates. The Secretary's School Recognition Program will not be included in these regulations. The limitation of funding for Developer Demonstrator projects to six years has been removed. Instead, a preference for new applicants over those that have been funded for six or more years has been added, which will be applied according to 34 CFR 75.105, and will be described in the Application Notice for each grant competition. The definitions of the Program Effectiveness Panel and the Program Significance Panel have been revised to more clearly describe the membership. Other technical changes have also been made.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, three hundred parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations is published as an appendix to these final regulations.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 785, 786, 787, 788, 789, and 796

Dissemination, Education, Educational Research, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance number 84.073—National Diffusion Network)

Dated: August 3, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations (CFR) by redesignating Part 796 as Part 785, revising redesignated Part 785 and

adding new Parts 786, 787, 788 and 789, to read as follows:

PART 785—NATIONAL DIFFUSION NETWORK: GENERAL PROVISIONS

Subpart A—General

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 785.1 What is the National Diffusion Network?

Under the National Diffusion Network (NDN), the Secretary supports activities designed to recognize and further excellence in education throughout the Nation.

(Authority: 20 U.S.C. 3851)

§ 785.2 Who is eligible for an award?

A public or nonprofit agency, organization, or institution that meets the appropriate qualifications in § 786.2, 787.2, 788.2 or 789.2 is eligible for an award under the National Network.

(Authority: 20 U.S.C. 3851)

§ 785.3 What types of projects does the Secretary support?

The Secretary supports the following through grants and contracts:

(a) Developer Demonstrator projects, as described in 34 CFR Part 786.

(b) Dissemination Process projects, as described in 34 CFR Part 787.

(c) State Facilitator projects, as described in 34 CFR Part 788.

(d) A Private School Facilitator project, as described in 34 CFR Part 789.

(Authority: 20 U.S.C. 3851)

§ 785.4 What regulations apply?

(a) *Grants.* The following regulations apply to grants under the National Diffusion Network:

(1) The Education Department General Administrative Regulations (EDGAR) In 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs—except § 75.650 (Participation of Students Enrolled in Private Schools)), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(2) The regulations in Parts 785 through 789.

(b) *Contracts.* The following regulations apply to contracts under the National Diffusion Network:

(1) The Federal Acquisition Regulation and the Education Department Acquisition Regulation in Title 48 of the Code of Federal Regulations.

(2) The regulations in Parts 785 through 789.

(Authority: 20 U.S.C. 3851)

§ 785.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in Parts 785, 786, 787, 788 and 789 are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget Period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
State educational agency (SEA)

(Authority: 20 U.S.C. 3851)

(b) *Other definitions.* The following definitions also apply to Parts 785, 786, 787, 788 and 789:

"Adoption" means the use of an exemplary education program by an education service provider in a new setting.

"Adoption agreement" means an understanding among a Developer Demonstrator grantee, a State Facilitator grantee or the Private School Facilitator grantee and the officials of an education service provider concerning the responsibilities of each for the adoption of an exemplary education program.

"Certified demonstration site" means an adoption site that utilizes all key elements of an exemplary education program and is authorized by the exemplary education program sponsor to receive visitors and demonstrate the program.

"Certified trainer" means an individual authorized by an exemplary education program sponsor to perform certain functions such as awareness presentations, training and assistance in the adoption of an exemplary education program.

"Dissemination Review Approval" means that—

(1) A program has been reviewed and assigned a score by the Program Effectiveness Panel according to the criteria in § 786.11 or 787.11 and has received a score of at least 70 points; and

(2) The program has been reviewed and assigned a score by the Program Significance Panel according to the criteria in § 786.12 or 787.12.

"Education service provider" means any public or nonprofit agency or organization responsible for the provision of education services, including State educational agencies (SEAs), local educational agencies (LEAs), nonprofit private educational agencies, public or nonprofit private institutions of higher education and other education-related agencies.

"ERIC" means the Educational Resources Information Center sponsored and supported by the Department of Education to disseminate education research results, practitioner-related materials and other resource information.

"Exemplary education program" means a program, product, practice or Dissemination Process which has Dissemination Review Approval.

"Local facilitator" means a member of the central administrative or supervisory staff of an education service provider or a designee who is committed to installing an NDN program and who will provide needed administrative and logistical support for installing the program.

"Program Effectiveness Panel" or "PEP" means a panel of experts in the evaluation of education programs, and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in § 786.11 or 787.11.

"Program Significance Panel" or "PSP" means a panel of people knowledgeable about education, including persons such as parents, teachers, principals, curriculum and subject experts, other education practitioners and members of the general public, who are not employees of the Department, and who are appointed by the Secretary to review and rate the instructional and classroom materials used by programs in accordance with § 786.12 or 787.12.

"Regional Educational Laboratories" means regional laboratories funded by

the Department to carry out applied educational research, development and related activities.

"Research and Development Centers" means centers funded by the Department to conduct educational research and development, and related activities.

(Authority: 20 U.S.C. 3851)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 785.20 How does the Secretary evaluate an application?

The Secretary evaluates an application—

(a) For a Developer Demonstrator grant on the basis of the criteria in Part 786;

(b) For a Dissemination Process grant on the basis of the criteria in Part 787;

(c) For a State Facilitator grant on the basis of the criteria in Part 788; and

(d) For a Private School Facilitator grant on the basis of the criteria in Part 789.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must Be Met After an Award?

§ 785.30 What costs are not allowed?

In addition to costs not allowed under 34 CFR Parts 74 and 75, funds may not be used for stipends for educational personnel to participate in training activities, or for construction, repair, remodeling, or alteration of facilities or sites. See EDGAR Part 74, Subpart 1—Cost Principles.

(Authority: 20 U.S.C. 3851)

PART 786—NATIONAL DIFFUSION NETWORK: DEVELOPER DEMONSTRATOR PROJECTS

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met by the Recipient of an Award?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 786.1 What is a Developer Demonstrator Project?

A Developer Demonstrator project must disseminate a specific exemplary education program nationwide.

(Authority: 10 U.S.C. 3851)

§ 786.2 Who is eligible for an award?

(a) *New awards.* (1) Any public or nonprofit private agency, organization or institution that has developed a program, product or practice that has Dissemination Review Approval and that is available to be visited may apply for a new Developer Demonstrator award.

(2) Exemplary education programs developed with either Federal or non-Federal funds are eligible for NDN funding.

(b) *Continuation awards.* Any Developer Demonstrator grantee, otherwise eligible to apply for a continuation award, may apply for the continuation award even if either the Dissemination Review Approval period or the JDRP approval period has expired.

(Authority: 20 U.S.C. 3851)

§ 786.3 What priorities may the Secretary establish?

(a)(1) Each year the Secretary may announce in a notice published in the Federal Register the program priorities for which applicants may apply for assistance.

(2) The Secretary selects priorities under this section taking into account any unmet national needs.

(b) The Secretary may select priorities from the following subject areas or special needs:

(1) English, including literature.

(2) Science.

(3) History, geography, and civics, including special history programs in conjunction with the bicentennial of the Constitution of the United States.

(4) Mathematics or higher mathematics.

(5) Reading.

(6) Written or oral communications.

(7) Health, including drug abuse prevention programs.

(8) Ethics.

(9) The humanities.

(10) Programs that assist in improving school discipline and foster an atmosphere conducive to learning.

(11) Foreign languages.

(12) Computer science.

(13) Programs that advance students' educational and occupational goals, such as courses in the fine and performing arts, vocational education, and industrial arts.

(14) Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.

(15) Programs that improve teaching and the quality of instruction.

(16) Educational leadership.

(17) School-wide and district-wide school improvement efforts.

(18) Drop-out prevention programs and programs for at risk students.

(19) Programs that foster parental involvement in schools.

(20) Physical education.

(c) In addition to the priorities listed in paragraph (b) of this section, the Secretary may establish priorities as specified in one or both of the following paragraphs:

(1) The Secretary may establish priorities at specified instructional levels, such as preschool, elementary, secondary, postsecondary, or adult education.

(2) The Secretary may establish as a priority one or more of the following special populations:

(i) Gifted and talented students.

(ii) Socioeconomically disadvantaged students.

(iii) Limited English proficient students.

(iv) Handicapped students.

(v) Migrant students.

(vi) Functionally illiterate adults or adolescents.

(d) The Secretary may also limit a priority established under paragraph (b) of this section to—

(1) An instructional level;

(2) One or more of the special populations listed in paragraph (c)(2) of this section; or

(3) Both an instructional level and one or more of the special populations listed in paragraph (c)(2) of this section.

(e) Each fiscal year the Secretary establishes, in accordance with 34 CFR 75.105(c)(2), a competitive preference for projects that have had fewer than six years total funding from the NDN.

(Authority: 20 U.S.C. 3851)

§ 786.4 What regulations apply?

The following regulations apply to Developer Demonstrator projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 786.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 786.10 What must an applicant submit for Dissemination Review Approval?

For Dissemination Review Approval of a program, product or practice—

(a) An applicant shall submit to the Secretary qualitative and quantitative evidence of the effectiveness of the program, product or practice for review by the Program Effectiveness Panel; and

(b) If, in accordance with § 786.13(a), a score of at least 70 points is given by the Program Effectiveness Panel, of which at least 40 points are for the criterion in § 786.11(d)(2) (Results), an applicant shall submit to the Secretary copies of all instructional, classroom and curriculum materials that are part of the program, product, or practice for review by the Program Significance Panel.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.11 How does the Program Effectiveness Panel review a program, product or practice?

(a) The PEP reviews each program, product or practice for educational effectiveness on the basis of the criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses.

(d) In reviewing each program, product or practice the PEP determines the following:

(1) *Evaluation design.* (40 points) The PEP determines the extent to which the evaluation design—

(i) Is appropriate for the program, product or practice;

(ii) Is based on a correct interpretation of relevant research and literature;

(iii) Demonstrates that a clear and attributable connection exists between the evidence of an educational effect and the program treatment; and

(iv) Addresses rival hypotheses.

(2) *Results.* (50 points) The PEP determines the extent to which the results indicate—

(i) That the program, product or practice's effect is convincing relative to similar programs; and

(ii) The outcome claims of the program, product or practice are valid.

(3) *Replication.* (10 points) The PEP determines the extent to which the program, product or practice can be used at other sites with the likelihood of achieving similar results.

(Authority: 20 U.S.C. 3851)

§ 786.12 How does the Program Significance Panel review a program, product or practice?

(a) For each program, product or practice, the Secretary selects a panel of at least five reviewers from the members of the PSP, of whom a majority must be experts in the subject of the program, product or practice.

(b) The PSP panel determines the extent to which the following criteria are met:

(1) Need. (25 points)

(i) There is an otherwise unmet need for the program, product or practice.

(ii) The need the program, product or practice is designed to meet is important.

(2) *Content.* (50 points)

(i) The content of the program, product or practice is accurate and up-to-date;

(ii) The content of the program, product or practice is appropriate to the grade level or target audience.

(iii) The content of the program, product or practice is educationally sound.

(iv) The information is clearly presented in a manner that will be readily understood by teachers, students and parents.

(v) The intended outcomes of the program, product or practice are desired by education service providers.

(3) *Program design.* (25 points)

(i) The program design is an improvement over the design of other programs with similar intended outcomes.

(ii) The program design incorporates up-to-date standards for the field, subject area and population served.

(Authority: 20 U.S.C. 3851)

§ 786.13 How is Dissemination Review Approval granted?

Dissemination Review Approval is granted if—

(a) The PEP has given the program, product or practice a score of at least 40 points for the criterion in § 786.11(d)(2) (*Results*) and a total score of at least 70 points; and

(b) The PSP finds that the program, product or practice is appropriate for dissemination by the NDN under the criterion in § 786.12.

(Authority: 20 U.S.C. 3851)

§ 786.14 How long does Dissemination Review Approval last?

(a) Dissemination Review Approval remains in effect for six years after the date of approval.

(b) Approval granted by the joint Dissemination Review Panel remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 3851)

§ 786.15 What activities must an applicant propose to carry out if it receives an award?

A Develop Demonstrator project must—

(a) Develop and provide materials for information about the exemplary education program and for training to install the program;

(b) Negotiate adoption agreements with State Facilitator grantees, the Private School Facilitator grantee and education service providers;

(c) Assist those seeking to adopt the exemplary education program in new settings by providing training and technical assistance if requested by education service providers;

(d) Monitor and evaluate the quality, effectiveness and educational results of the adoptions;

(e) Maintain records during the grant period concerning the use of the exemplary education program, including demographic and evaluation data;

(f) Develop and implement a system to identify and prepare Certified Trainers and Demonstration Sites;

(g) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(h) Cooperate with State Facilitator grantees and the Private School Facilitator grantee to carry out the activities in this section.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

Subpart C—How Does the Secretary Make an Award?

§ 786.20 How does the Secretary evaluate an application?

The Secretary evaluation an application according to the criteria in §§ 786.21 through 786.28.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.21 Selection criterion—plan of operation. (25 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 786.16 for a description of the activities that a Developer Demonstrator project must propose.);

(b) A description of training required to install the exemplary education program in new settings;

(c) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(d) How well the objectives of the project relate to the purpose of the program;

(e) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(f) If the applicant is an LEA or SEA, the quality of the applicant's plan to provide an opportunity for adoption of the exemplary education program by private schools in accordance with § 786.31.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.22 Selection criterion—quality of key personnel. (25 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualification of the project director;

(2) The qualifications of each of the other key personnel to be used on the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section will commit to the project; and

(4) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to in paragraphs (a) (1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.23 Selection criterion—budget and cost effectiveness. (5 points)

(a) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(b) The Secretary considers the extent to which—

(1) The costs to an adopter for installing the program in a new setting would be reasonable; and

(2) The projected number of educational service providers that would adopt the program each year is appropriate for the budget requested.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.24 Selection criterion—evaluation plan. (20 points)

(a) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objectives and produce data that are quantifiable.

(b) The Secretary reviews each applicant's plans for evaluating—

(1) The quality and effectiveness of informational materials, of training and follow-up, and of internal management plans; and

(2) The effectiveness of adoptions of the program, including impact on the students or the changes in teacher or administrator behavior.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.25 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.26 Selection criterion—monitoring plan. (15 points)

The Secretary reviews each application to determine the extent to which the applicant clearly details plans for post-adoption monitoring of the implementation of the program and resulting benefits at the adoption sites.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.27 Selection criterion—special dissemination strategies. (5 points)

The Secretary reviews each application to determine the extent to which the applicant proposes special dissemination strategies to meet specific characteristics of its program.

(Authority: 20 U.S.C. 3851)

§ 786.28 What additional criteria exist for new awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new Developer Demonstrator awards, the Secretary—

(1) Seeks diversity of projects funded under a particular competition or under this program;

(2) Gives equal weight to—

(i) The total rating under § 786.20;

(ii) The rating of the Program Significance Panel; and

(iii) The rating of the Program Effectiveness Panel; and

(3) For programs approved by the JDRP before the establishment of a scoring system, gives equal weight to—

(i) The total rating under § 786.20; and

(ii) The rating of the Program Significance Panel.

(b) Programs approved by the Joint Dissemination Review Panel whose approval period is still in effect must be reviewed by the Program Significance Panel according to the criteria in § 786.12 by July 1, 1988 in order to receive a new award.

(Authority: 20 U.S.C. 3851)

§ 786.29 What additional criteria exist for continuation awards?

In addition to the criteria for making a continuation award under 34 CFR 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 786.30 What disclaimers are required on printed material?

Developer Demonstrator projects must include disclaimers as follows on all instructional and curriculum materials reproduced or distributed with funds under this part—

(a) "The contents of this (insert type of publication; e.g., book, teacher's guide) were reproduced or are being distributed under a grant from the U.S. Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government," and

(b) "If an education service provider uses funds under a program subject to Section 439 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232h) to adopt this project, the education service provider must comply with Part 98 of Title 34 of the Code of Federal Regulations (Student Rights in Research, Experimental Programs and Testing) which contains the regulations implementing that section of GEPA."

(Authority: 20 U.S.C. 3851)

§ 786.31 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in Section 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and 34 CFR 76.652.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA.

(ii) The applicant applies for a Developer Demonstrator award.

(iii) The project proposed under the application is designed for adoption at elementary or secondary schools.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(c) *Participation.* An LEA or SEA that receives a Developer Demonstrator award designed for adoption at elementary and secondary schools shall, based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit private elementary and secondary schools have an opportunity to adopt the program.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

PART 787—NATIONAL DIFFUSION NETWORK: DISSEMINATION PROCESS PROJECTS

Subpart A—General

Sec.

Subpart B—How does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must be Met by the Recipient of an Award?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 787.1 What is a Dissemination Process project?

A Dissemination Process project must provide information, instructional materials and services nationwide concerning specific content areas, bodies of research or fields of professional development, that will be of use to education service providers.

(Authority: 20 U.S.C. 3851)

§ 787.2 Who is eligible for an award?

Any public or nonprofit private agency, organization or institution that has in operation a dissemination process that has current Dissemination Review Approval may apply for a new Dissemination Process grant.

(Authority: 20 U.S.C. 3851)

§ 787.3 What priorities may the Secretary establish?

Each year the Secretary may announce in a notice published in the **Federal Register** the program priorities for which applicants may apply for assistance. The Secretary selects priorities in accordance with 34 CFR Part 786.3

(Authority: 20 U.S.C. 3851)

§ 787.4 What regulations apply?

The following regulations apply to Dissemination Process projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in 34 CFR 786.3.

(c) The regulations in this Part 787.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 787.10 What must an applicant submit for Dissemination Review Approval?

(a) For Dissemination Review Approval of a dissemination process, an applicant shall submit to the Secretary—

(1) A description of its dissemination process;

(2) A description of the procedures and criteria for selecting information, materials and services to be disseminated and for judging that they are educationally significant; and

(3) A description of the procedures and criteria for evaluating qualitative and quantitative evidence of the effectiveness of information, instructional materials and services to be disseminated.

(b) If, in accordance with § 787.13(a), a score of at least 70 points is given by the Program Effectiveness Panel, of which at least 20 points are for the criterion in § 787.11(d)(2) (*Results*), the applicant shall also submit—

(1) Samples of the information and instructional materials to be disseminated; and

(2) Descriptions of the services to be provided through the dissemination process and the methods for assuring broad dissemination.

(Authority: 20 U.S.C. 3851)

§ 787.11 How does the Program Effectiveness Panel review a Dissemination Process?

(a) The PEP reviews each dissemination process for educational effectiveness by examining the procedures and criteria for selecting information and instructional materials to be disseminated and for providing services according to the criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses.

(d) In reviewing each dissemination process the PEP determines the following:

(1) *Evaluation design.* (50 points) The PEP determines the extent to which the evaluation design—

(i) Is appropriate for the program;

(ii) Is based on correct interpretation of relevant research and literature;

(iii) Demonstrates that a clear and attributable connection exists between the evidence of an educational effect and the program treatment; and

(iv) Addresses rival hypotheses.

(2) *Results.* (25 points) The PEP determines the extent to which the results indicate that the process is particularly effective relative to similar processes.

(3) *Replication.* (25 points) The PEP determines the extent to which the information, instructional materials and services can be used at other sites with the likelihood of achieving similar results.

(Authority: 20 U.S.C. 3851)

§ 787.12 How does the Program Significance Panel review a Dissemination Process?

(a) For each dissemination process, the Secretary selects a panel of at least five reviewers from the members of the PSP, of whom a majority must be experts in the subject of the dissemination process.

(b) The PSP panel determines the extent to which the dissemination process meets the following criteria:

(1)*Need* (25 points)

(i) There is an otherwise unmet need for the information, instructional materials, and services

(ii) The need, the information instructional materials and services are designed to meet is important.

(2) *Content.* (50 points)

(i) The content of the information, instructional materials and services is accurate and up-to-date.

(ii) The content of the information, instructional materials and services is appropriate to the grade level of target audience.

(iii) The content of the information and instructional materials is educationally sound.

(iv) The information, instructional materials, and services are clearly presented in a manner that will be readily understood by teachers, students and parents.

(v) The intended outcomes of the information, instructional materials and services are desirable.

(3) *Program design.* (25 points)

(i) The program design is an improvement over the design of other programs with similar intended outcomes.

(ii) The program design incorporates up-to-date standards for the field, subject area and population served.

(Authority: 20 U.S.C. 3851)

§ 787.13 How is Dissemination Review Approval granted?

Dissemination Review Approval is granted if—

(a) The PEP has given the procedures and criteria a score of at least 20 points for the criterion in § 787.11(d)(2) (*Results*) and a total score of a least 70 points; and

(b) The PSP finds that the procedures and criteria for selecting information and instructional materials to be disseminated and for providing services will ensure that they are appropriate for dissemination by the NDN under the criteria in § 787.12.

(Authority: 20 U.S.C. 3851)

§ 787.14 How long does Dissemination Review Approval last?

(a) Dissemination Review Approval remains in effect for six years after the date of approval.

(b) Approval granted by the Joint Dissemination Review Panel remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 3851)

§ 787.15 What activities must an applicant propose to carry out if it receives an award?

A Dissemination Process Project must—

(a) Develop and provide upon request of an education service provider, descriptions of the information, material and services concerning the content areas, fields of professional development or bodies of research that are available through the dissemination process, for education service providers throughout the Nation to use in becoming familiar with the grantee's project;

(b) Provide upon request the information, material and services described in paragraph (a) of this section;

(c) Provide, if appropriate, training in support of the use of the information, materials and services provided;

(d) Evaluate the quality and effectiveness of the dissemination process as specified in the evaluation design for the project;

(e) Maintain records during the grant period concerning the dissemination of information and materials, and the provision of services;

(f) Monitor and evaluate the extent of use by teachers and students and the educational results obtained through use of the information, materials and services selected by education service providers;

(g) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(h) Cooperate with State Facilitator grantees and the Private School Facilitator project to carry out the activities in this section.

(Authority: 20 U.S.C. 3851)

(Approved by Office of Management and Budget under control number 1850–0086)

Subpart C—How Does the Secretary Make an Award?

§ 787.20 How does the Secretary evaluate an application?

The Secretary evaluates an application according to the criteria in § 787.21 through 787.28.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 787.21 Selection criterion—plan of operation. (30 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 737.16 for a description of the activities that a Dissemination Process project must propose.);

(b) A clear description of the information and instructional materials to be disseminated, and the services to be provided;

(c) A description of any training to education service providers the program

might offer, if appropriate, in support of the use of the materials or information described above;

(d) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(e) How well the objectives of the project relate to the purpose of the program;

(f) The quality of the applicant's plans to use its resources and personnel to achieve each objective;

(g) If the applicant is an LEA and SEA, the quality of the applicant's plans to provide an opportunity for private schools to use the information, instructional materials and services.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 787.22 Selection criterion—quality of key personnel. (10 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) the qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section plans to commit to the project; and

(4) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to under paragraphs (a) (1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 787.23 Selection criterion—budget and cost effectiveness. (10 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project; and

(b) Cost are reasonable in relation to the objectives of the project;

(c) The estimated cost to the adopter for purchasing or using the materials, information or services that are available through the Dissemination Process is reasonable.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 787.24 Selection criterion—evaluation plan. (15 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(a) Are appropriate for the project;

(b) To the extent possible, are objective and produce data that are quantifiable; and

(c) Are appropriate to evaluate—

(1) The quality and effectiveness of informational materials, of any training provided and follow-up, and of internal management plans; and

(2) The use and effectiveness of the materials and information provided to education service providers.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 787.25 Selection criterion—adequacy of resources. (10 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 787.26 Selection criterion—monitoring plan. (5 points).

The Secretary reviews each application to detemine the extent to which the applicant clearly details plans that show promise of effective management of the project, including monitoring the use of materials and information provided through the Dissemination Process, and resulting benefits to educational service providers.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 787.27 Selection criterion—special dissemination strategies. (20 points)

The Secretary determines the extent to which the applicant proposes special dissemination strategies to meet specific characteristics of its program.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 787.28 What additional criteria exist for new awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new Dissemination Process awards, the Secretary—

(1) Seeks diversity of projects funded under a particular competition or under this program; and

(2) Gives equal weight to—

(i) The total rating under § 787.20;

(ii) The rating of the Program Significance Panel; and

(iii) The rating of the Program Effectiveness Panel.

(b) Programs approved by the Joint Dissemination Review Panel whose approval period is still in effect must be reviewed by the Program Significance Panel according to the criteria in § 787.12 by July 1, 1988 in order to receive a new award.

(Authority: 20 U.S.C. 3851)

§ 787.29 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 787.30 What disclaimers are required on printer materials?

Dissemination Process projects must include disclaimers as follows on all instructional and curriculum materials reproduced or distributed with funds under this part:

(a) "The contents of this (insert type of publication; e.g., book, teacher's guide) were reproduced or are being distributed under grant from the U.S. Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government;" and

(b) "If an education service provider uses funds under a program subjecte to Section 439 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232h) to pay for information, instructional materials or services provided by this project, the education service provider must comply with Part 98 of Title 34 of the Code of Federal Regulations (Student Rights in Research, Experimental Programs and Testing) which contains the regulations implementing that section of GEPA."

(Authority: 20 U.S.C. 3851)

§ 787.31 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in Section 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and 34 CFR 76.652 of EDGAR.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA;

(ii) The applicant applies for a Dissemination Process award;

(iii) The information, materials and services to be provided through the dissemination process would be used in elementary or secondary schools.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(c) *Participation.* An LEA or SEA that receives a Dissemination Process award designed to provide information, materials and services to elementary and secondary schools shall, based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit elementary and secondary schools have an opportunity to use the information, instructional materials and services.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

PART 788—NATIONAL DIFFUSION NETWORK: STATE FACILITATOR PROJECTS

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met by the Recipient of an Award?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 788.1 What is a State Facilitator Project?

A State Facilitator Project must disseminate a wide variety of exemplary education programs within the particular State served by each project.

(Authority: 20 U.S.C. 3851)

§ 788.2 Who is eligible for an award?

Any public or nonprofit private agency, organization, or institution located in the State to be served may apply for a State Facilitator award.

(Authority: 20 U.S.C. 3851)

§ 788.3 What regulations apply?

The following regulations apply to State Facilitator projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 788.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 788.10 What activities must an applicant propose to carry out if it receives an award?

A State Facilitator project must—

(a) Inform public and private education service providers about the availability of all exemplary education programs in the National Diffusion Network;

(b) Assist education service providers to select exemplary education programs to meet their needs;

(c) Negotiate adoption agreements with Developer Demonstrator and Dissemination Process grantees and education service providers;

(d) Arrange for Developer Demonstrator and Dissemination Process grantees to provide training and follow-up services when requested by education service providers;

(e) Arrange for the selection and training of Local Facilitators;

(f) Assist in the identification and preparation of Certified Trainers and Demonstration Sites;

(g) Maintain records during the grant period concerning the exemplary education programs adopted in the State, including demographic data and program retention rates;

(h) Monitor and evaluate the activities of the State Facilitator project;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary;

(j) Cooperate with Developer Demonstrator grantees, Dissemination Process grantees and the Private School Facilitator grantee to carry out the activities in this section; and

(k) Disseminate information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts, (such as federally and privately funded programs that identify outstanding educators, students, and schools).

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

Subpart C—How Does the Secretary Make an Award?

§ 788.20 How many awards does the Secretary make in each State?

The Secretary makes one award in each State.

(Authority: 20 U.S.C. 3851)

§ 788.21 How does the Secretary evaluate an application?

The Secretary evaluates an application according to the criteria in §§ 788.22 through 788.32.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.22 Selection criterion—plan of operation. (15 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including,—

(a) The quality of the design of the project (See § 788.10 for a description of the activities that a State Facilitator must propose.);

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(c) How well the objectives of the project relate to the purpose of the program;

(d) The quality of the applicant's plans to use its resources and personnel to achieve each objective;

(e) If the applicant is an LEA or SEA, the quality of the applicant's plans to provide an opportunity for participation of private schools in accordance with § 788.40.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.23 Selection criterion—quality of key personnel. (20 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraph (a) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to in paragraphs (a)(1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.24 Selection criterion—budget and cost effectiveness. (5 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project; and

(b) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.25 Selection criterion—evaluation plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(a) Are appropriate to the project; and

(b) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.26 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.27 Selection criterion—monitoring plan. (15 points)

The Secretary reviews each application to determine the extent to which the applicant clearly details plans to monitor and assist sites that adopt the programs, and provide follow-up services after training.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.28 Selection criterion—consultation during application. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in developing its application, has consulted with the SEA, LEAs, Institutions of Higher Education, private schools and other educational service providers in the State to be served.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.29 Selection criterion—consultation and participation during project. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in carrying out the project activities, provides for consultation with, and participation of the SEA, LEAs, Institutions of Higher Education, private schools and other education service providers in the State.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.30 Selection criterion—innovative dissemination strategies. (10 points)

The Secretary reviews each application to determine the extent to which the applicant proposes innovative dissemination strategies.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.31 Selection criterion—provision of information about other programs. (10 points)

The Secretary reviews each application to determine the extent to which the applicant has the capacity to provide information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts (such as federally and privately funded programs that identify outstanding educators, students, and schools), to educational personnel throughout the State.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.32 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 788.40 What are a recipient's responsibilities to students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in § 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and § 76.652 of EDGAR.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA.

(ii) The applicant applies for a State Facilitator award.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools in the State served by the project to determine appropriate strategies to ensure that children in those schools can benefit from the project.

(c) *Participation.* An LEA or SEA that receives a State Facilitator grant shall use the strategies developed under paragraph (b)(1) of this section to ensure

that teachers and administrators from nonprofit private elementary and secondary schools have an opportunity to participate.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

PART 789—NATIONAL DIFFUSION NETWORK: PRIVATE SCHOOL FACILITATOR PROJECT

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 789.1 What is a Private School Facilitator Project?

A Private School Facilitator project must disseminate exemplary education programs to private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.2 Who is eligible for an award?

Any public or nonprofit private agency, organization, or institution may apply for a Private School Facilitator grant to serve private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.3 What regulations apply?

The following regulations apply to the Private School Facilitator project:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 789.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 789.10 What activities must an applicant propose to carry out if it receives an award?

The Private School Facilitator project must—

(a) Inform private schools throughout the National about the availability of exemplary education programs in the National Diffusion Network;

(b) Assist private education service providers to select exemplary education programs to meet their needs;

(c) Negotiate adoption agreements with Developer Demonstrator and Dissemination Process grantees and private education service providers;

(d) Arrange for Developer Demonstrator and Dissemination Process grantees to provide information, training and follow-up services to staff members of private schools if requested;

(e) Arrange for the selection and training of local facilitators;

(f) Assist in the identification and training of Certified Trainers;

(g) Maintain records during the grant period concerning the exemplary education programs adopted by private schools, including demographic data and program retention rates;

(h) Monitor and evaluate the activities of the Private School Facilitator project;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary;

(j) Cooperate with Developer Demonstrator grantees, Dissemination Process grantees and State facilitator grantees in establishing linkages to private schools throughout the Nation; and

(k) Disseminate information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts (such as federally and privately funded programs that identify outstanding educators, students, and schools).

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850-0086)

Subpart C—How Does the Secretary Make an Award?

§ 789.20 How does the Secretary evaluate an application?

The Secretary evaluates an application for a Private School Facilitator award according to the criteria in §§ 789.21 through 789.30.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850-0086)

§ 789.21 Selection criterion—plan of operation. (15 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 789.10 for a description of each of the activities that the Private School Facilitator must propose.);

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(c) How well the objectives of the project relate to the purpose of the program;

(d) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(e) The extent to which the applicant clearly details plans to monitor and assist sites that adopt programs, and provide follow-up services after training.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850-0086)

§ 789.22 Selection criterion—quality of key personnel. (10 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine qualifications of personnel referred to under paragraphs (a)(1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.23 Selection criterion—budget and cost effectiveness. (10 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project and is cost effective; and

(b) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.24 Selection criterion—evaluation plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(a) The applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including evaluation of the impact of the adoptions in private schools; and

(b) The applicant will seek the assistance of national experts and professional associations concerned with private schools in designing and carrying out evaluation activities.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.25 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to detemine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.26 Selection criterion—consultation during application. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in developing its application, has consulted with diverse private school educators.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.27 Selection criterion—consultation and participation during project. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in carrying out project activities, provides for consultation with, and participation of diverse private school educators.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.28 Selection criterion—innovative dissemination strategies. (10 points)

The Secretary reviews each application to detemine the extent to which the applicant proposes innovative dissemination strategies.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.29 Selection criterion—previous experience. (20 points)

The Secretary reviews each application to determine the extent to which the applicant has had previous experience in successfully working with and providing services to many different types of private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.30 Selection criterion—provision of information about other programs. (10 points)

The Secretary reviews each application to determine the extent to which the applicant has the capacity to provide information about ERIC, Research and Development Centers and Regional Educational Laboratories, and schools, educators, and students recognized through federally and privately funded educational excellence recognition efforts, to educational personnel in private schools nationwide.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.31 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

Appendix—Analysis of Comments and Changes

Editorial Note—The following appendix will not appear in the Code of Federal Regulations.

Section 785.3 What types of projects does the Secretary support?

Comments: The Secretary received ninety-eight comments recommending that the Secretary's School Recognition Program should not be included in these regulations. Comments on this section were not critical of the School Recognition Program, but expressed the belief that it should not be funded through the National Diffusion Network.

Discussion: Although the Secretary sees a strong relationship between the NDN and the Secretary's School Recognition Program and believes that they will contribute more to school improvement efforts if coordinated, the Secretary has decided that regulations are not necessary to effect that coordination. Although the Secretary's School Recognition Program has been funded through the National Diffusion Network in the past, the Secretary does not plan to use NDN funds for this program in the future.

Changes: References to the Secretary's School Recognition Program have been deleted. However, the State Facilitators and the Private School Facilitator will be expected to disseminate information about the Secretary's School Recognition Program.

Section 785.5 What definitions apply?

Program Effectiveness Panel

Comments: Sixteen commenters expressed support for changing the name of the Joint Dissemination Review Panel to the Program Effectiveness Panel. Several commenters requested that the membership be more clearly described, and asked in what areas the members would be experts.

Discussion: The PEP membership was more clearly described in the preamble than in the definition in the regulations. It is the Secretary's intention that PEP members shall be primarily evaluation experts, and experts in other areas related to education programs.

Changes: The definition of the Program Effectiveness Panel has been revised to state that the members will be experts in evaluation and education.

Program Significance Panel

Comments: Seventy-one commenters expressed support for the inclusion of parents and other members of the general public in the review process.

Discussion: Possible Program Significance Panel members, including parents and members of the general

public, were listed in the preamble to the NPRM, but not in the definition of the PSP. It is the Secretary's intention that all of those groups listed be included in the Panel.

Changes: The definition of the Program Significance Panel has been revised to include examples of the membership, and to specify that persons such as parents and other members of the general public will be included.

Section 786.2 Who is eligible for an award?

Comments: The Secretary received one hundred and fifty-three comments against the limitation of funding for Developer Demonstrator projects to six years. Many commenters felt that the effectiveness of the program, and continued demand by education service providers, should be the determining factors concerning continued funding. Several others asked if any other program in the Department had this limit to eligibility. Others asked for some criteria for the circumstances that would allow exceptions.

Discussion: The Secretary believes that newer projects should receive preference over projects which have been funded for six or more years, so that the pool of projects available through the NDN will continually reflect changing national needs. The Secretary has decided that the procedures in the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(2) for establishing priorities will provide adequate flexibility to accomplish this objective. The announcement of each grant competition in the **Federal Register** will include specific information concerning how a preference for new projects will be applied for that competition.

Changes: The eligibility criterion concerning previous funding has been removed, and a preference for applicants that have been funded for fewer than six years has been added under § 786.3.

Section 786.3 What priorities may the Secretary establish?

Comment: A commenter requested that "physical education" be added to the list of priorities the Secretary may establish each year.

Discussion: The Secretary agrees that physical education is an important aspect of young people's development and should be included among the priorities the Secretary may select for funding each year.

Changes: The change has been made.

Section 786.11 How does the Program Significance Panel review a program, product or practice? and § 787.11 How does the Program Significance Panel review a Dissemination Process?

Comments: The Secretary received one hundred and forty-six comments recommending that the proposed Program Significance Panel not be added to the program review system. Some felt that it would interfere with the authority of local school districts to select curricular materials. Others felt it could become a means of censorship by the Federal Government, and others were concerned that it was the beginning of the establishment of a "national curriculum."

Several commenters asked about the logistics of the PSP review. They expressed concern about the cost to the applicant of submitting materials, and asked whether materials would be returned.

Discussion: The Secretary has carefully considered the concerns of those who submitted comments and is taking the following actions to address those concerns. First, the order of submission of materials to the Program Significance Panel and the Program Effectiveness Panel will be reversed. Only those programs that receive a score of at least 70 points from the Program Effectiveness Panel, including at least 40 points for the criterion *"Results,"* will be asked to submit student and teacher materials for review by the PSP. This will simplify the process and will eliminate the needless submission of materials to the PSP by program developers who have insufficient evaluation data to prove their effectiveness to the PEP. Second, the PSP will not act as a censor or otherwise interfere with the authority of local school districts to select curricular materials. The Secretary has amended the final regulations to require the PSP only to consider criteria related to need, content, and program design in determining whether or not a project is appropriate for dissemination through the NDN. The Secretary believes that these criteria will serve as adequate factors in ensuring that only appropriate materials receive Dissemination Review Approval.

The PSP will be made up of individuals knowledgeable about education, including parents, teachers, principals, curriculum and subject experts, other educational practitioners and members of the general public. The PSP will not make its determinations as to whether a program is appropriate for dissemination through the NDN on the basis of pedagogy, ideology, or politics. Rather, the PSP will make its determinations solely on the basis of the criteria stated in the final regulations.

Changes: A change has been made in the order in which the two panels will conduct their reviews. The Program Effectiveness Panel will first review the quantitative and qualitative evidence of effectiveness of programs, products, and practices according to the criteria in § 786.11. Programs that receive a score of at least 70 points, with at least 40 points for the criterion *"Results,"* will then submit instructional and classroom materials for review by the Program Significance Panel according to the criteria in § 786.12.

For Dissemination Process projects, the Program Effectiveness Panel will first examine the procedures and criteria for selecting information and materials to be disseminated according to the criteria in § 787.11. If a score of at least 70 points is given, with at least 20 points for the criterion *"Results,"* the materials will then be reviewed by the Program Significance Panel according to the criteria in § 787.12.

In addition, the criteria in § 786.12 and § 787.12 have been revised. In determining whether the programs are appropriate for dissemination, the PSP will consider only the criteria related to need, content and program design. Each project will be reviewed by at least five panel members, and a majority of these reviewers will be experts in the subject of the project.

Sections 786.29, 787.29, 788.32 and 789.31 What additional criteria exist for continuation awards?

Comments: Two parties recommended that items concerning program implementation and implementation assistance be added to the criteria for evaluating program effectiveness for continuation awards.

Discussion: Program effectiveness is determined by a review of a variety of measures of program accomplishments, including several items related to program implementation.

Changes: None.

Part 787 Dissemination Process Projects

Comments: The Secretary received one hundred and thirteen comments recommending the Dissemination Process projects not be established as a separate category of program. Some commenters were concerned that there would not be adequate assurance of the quality and effectiveness of the information and materials to be disseminated. Others were concerned about the size of the proposed grants to

organizations that are presumed to have an already high funding level.

Discussion: This is a pilot activity that the Secretary believes will enhance the NDN by providing additional programs and materials to assist schools in their school improvement efforts. Dissemination Processes must undergo the same scrutiny as Developer Demonstrators by both the PEP and the PSP to assure that they are effective and of high quality If Dissemination Processes prove to be effective, the Department will expand the activity. If Dissemination Processes are not effective, they will be dropped from the NDN.

Changes: None.

Section 788.10 What activities must an applicant propose to carry out if it receives an award?

Comments: The Secretary received ten comments concerning the requirement that State Facilitators provide information about certain other programs sponsored by the Department, including ERIC, Research and Development Centers and Regional Educational Laboratories and schools recognized through the Secretary's School Recognition Program. Some commenters felt that the products, materials and other activities included in these programs had not been validated nor proven to be transportable, and were therefore not appropriate for dissemination by the NDN. Others were concerned that State Facilitators would not have the resources to take on those additional responsibilities.

Discussion: The Secretary believes that the National Diffusion Network is an appropriate vehicle for the dissemination of information about other Department programs related to school improvement. However, State Facilitators and the Private School Facilitator will not be expected to make the dissemination of that information a major part of their activities, but will be expected to be able to refer interested persons in their States, or private school personnel, to sources of information.

Changes: No change has been made in the basic requirements of this section. However, a technical change has been made to replace "the Secretary's School Recognition Program" with broader language.

Part 789 Private School Facilitator

Comments: The Secretary received ninety-nine comments opposed to the establishment of a Private School Facilitator and ten comments in support of this new program. Many commenters expressed concern about the overlap of responsibilities with State Facilitators, and felt that the relationships between the two kinds of projects were unclear. Others felt that it would be logistically unfeasible for one grantee to provide the kinds of services State Facilitators provide on a nationwide scope. Those who supported the addition of the Private School Facilitator felt that it would greatly improve the access of private schools to participation in the National Diffusion Network. Some comments were based upon philosophical concerns about setting up separate facilitators: State Facilitators for public schools and a Private School Facilitator for private schools. Other comments were based on the belief that support for State Facilitators would be cut to provide funds for the Private School Facilitator.

Comments: The Secretary believes that a Private School Facilitator working with the State Facilitators will help to improve the services to both public and private schools as they generate more exemplary projects. The Secretary hopes that the details of the day-to-day working relationships among the various kinds of projects will be developed with input from project personnel.

Changes: None.

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Friday
August 14, 1987

Part XI

Department of Housing and Urban Development

Office of the Secretary

Comprehensive Homeless Assistance Plan; Requirements and Delegation of Authority; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-87-1716; FR-2386]

Comprehensive Homeless Assistance Plan

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This Notice establishes requirements for the Comprehensive Homeless Assistance Plan contained in Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act. (Pub. L. 100-77, approved July 22, 1987.) The Notice states that HUD may not make assistance available under any of Title IV's provisions to, or within the jurisdiction of, States, or certain larger metropolitan cities and urban counties, unless the jurisdiction has a HUD-approved Comprehensive Plan. The Notice specifies the jurisdictions that are subject to this provision, and describes the provision's effects on the applicants and recipients under each of Title IV's programs.

The Notice indicates that the Secretary of Education is required to distribute funds under the Statewide Literacy Initiatives contained in section 702 of the Act, on the basis of assessments of the homeless population made in State Plans. States must also describe in the Plan how they will coordinate projects conducted under the Department of Labor's Job Training for the Homeless authority contained in Subtitle C of Title VII of the Act, with other services for homeless individuals assisted under the Act.

The Notice also specifies the required Plan content, and procedures and timing for the submission of proposed Plans to HUD, HUD's review and approval of Plans, and State or local reviews and reports on their progress in carrying out the Plans. Finally, the Notice requires that applications for Title IV assistance include a certification that the activities proposed for assistance are consistent with the Plan.

EFFECTIVE DATE: August 14, 1987. Comprehensive Homeless Assistance Plans must be submitted to HUD no later than September 28, 1987.

FOR FURTHER INFORMATION CONTACT: For HUD provisions under Title IV of the Act: James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States: James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322; for Department of Education provisions under section 702 of the Act: Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, Room 620, Reporter's Building, 400 Maryland Avenue, SW., Washington, DC 20202-5609 (202) 732-2237; for the Department of Labor provisions under Subtitle C of Title VII of the Act: Patricia W. McNeil, Administrator, Office of Strategic Planning and Policy Development, Employment and Training Administration, Room N-5637, Frances Perkins Building, 200 Constitution Avenue, Washington, DC 20210 (202) 535-0659. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1987, the President signed into law the Stewart B. McKinney Homeless Assistance Act ("the Act"). (Pub. L. 100-77) Title IV of the Act contains a number of housing assistance provisions to be administered by HUD. Subtitle A establishes requirements for the Comprehensive Homeless Assistance Plan (Plan). Assistance under the other provisions of Title IV may not be made available to, or within the jurisdiction of, States and certain cities and counties that do not have a HUD-approved Plan. Individual applications for Title IV assistance must include a certification that the activities proposed for assistance are consistent with the approved Plan.

The Plan is also required in connection with programs administered by the Departments of Education and Labor under Title VII of the Act. Section 702 requires the Secretary of Education to distribute funds to States under the Statewide Literacy Initiatives program for adult homeless individuals, on the basis of assessments of the homeless population made in State Plans. Under section 732, States must describe in their Plans how they will coordinate job training demonstration projects for homeless individuals under Subtitle C of Title VII with other services for homeless individuals assisted under the Act.

Subtitle B reauthorizes with amendment the Emergency Shelter Grants program that was initially authorized in HUD's regular appropriation for fiscal year 1987.[1] The program authorizes HUD to make grants for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses, and for social service expenses in connection with emergency shelter for the homeless. HUD may make formula grants to States, and to metropolitan cities and urban counties that meet a minimum funding allocation threshold. The amount of these grants is based upon the jurisdiction's share of formula funding for the previous fiscal year under the Community Development Block Grant (CDBG) program authorized by title I of the Housing and Community Development Act of 1974 (the "1974 Act"). The Act also provides for a separate formula allocation for territories and possessions. HUD is authorized to reallocate funds that become available for obligation after initial allocation under the program, to States, units of general local government, and private nonprofit organizations.

The initial allocation to States on the basis of their CDBG formula participation must be distributed to units of general local government within the State. Any unit of general local government—those receiving formula or reallocated amounts from HUD or a distribution from the State—may distribute all or part of the amounts it receives to nonprofit organizations.

Subtitle C authorizes the Supportive Housing Demonstration program. This program has two components—a reauthorization (with amendment) of the Transitional Housing Demonstration program (also originally authorized in HUD's regular fiscal year 1987 appropriation),[2] and a new program of Permanent Housing for the Handicapped Homeless.

The Transitional Housing element is designed to provide housing and supportive services to facilitate the movement of homeless individuals to independent living within a reasonable period of time. The Permanent Housing component is designed to provide community-based, long-term housing

[1] Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

[2] Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in Part B of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

and supportive services for handicapped homeless persons.

HUD is authorized to make advances for the acquisition or substantial rehabilitation of existing structures, and grants for the moderate rehabilitation of existing structures, for use as Transitional and Permanent Housing. HUD is also authorized to provide assistance to help defray the costs of certain operating expenses (Transitional Housing only). Grantees for the Transitional Housing component are States, metropolitan cities, urban counties, Indian tribes, and private non-profits. Only States may apply for Permanent Housing assistance, but they must pass the assistance on to private nonprofits to carry out the assisted activities.

Subtitle D creates a new program of Supplemental Assistance for Facilities to Assist the Homeless. The program authorizes HUD to provide assistance to States, metropolitan cities, urban counties, Indian tribes, and private nonprofit organizations:

(1) To cover the costs in excess of assistance provided under the Emergency Shelter Grants or the Supportive Housing Demonstration program that are required (A) to meet the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or (B) to facilitate the transfer and use of public buildings to assist homeless individuals and families; or

(2) To provide comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals by assisting the purchase, lease, renovation, or conversion of facilities or the provision of supportive services for homeless individuals.

Subtitle E provides new funding authority for the Section 8 Moderate Rehabilitation program. The authority will be made available to public housing agencies (PHAs), and must be used in connection with the moderate rehabilitation of Single Room Occupancy (SRO) housing. Homeless individuals must be given a first priority for occupancy in assisted units.

A summary of Subtitles B–E of Title IV is included at the end of this Notice, as Appendix A. Specific requirements and procedures for these programs will be set forth in documents published in the **Federal Register** to implement each of them.

Subtitle A requires HUD to publish a notice in the **Federal Register** establishing such requirements as may be necessary to implement the Comprehensive Homeless Assistance Plan. This notice establishes these requirements. The administration of these requirements by HUD will be conducted by the Assistant Secretary for Community Planning and Development in consultation with the Assistant Secretary for Policy Development and Research and the Assistant Secretary for Housing-Federal Housing Commissioner.

Requirement for Plan

1. *Prohibition of Assistance.* The Act prohibits HUD from making assistance available under any of Title IV's provisions "to, or within the jurisdiction of," (1) a State or (2) a metropolitan city or urban county that is eligible for a formula grant under the Emergency Shelter Grants program contained in Subtitle B,[3] unless the jurisdiction has a HUD-approved Comprehensive Homeless Assistance Plan. (State officials should note that units of general local government that do not qualify for a Shelter Grant formula allocation and private non-profits within such jurisdictions cannot receive funds under title IV unless the State has an approved Plan.)

2. *Who must have a Plan.* Each of Title IV's grant programs defines "State" to mean the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

The Shelter Grants program uses the definition of "metropolitan city" and "urban county" contained in sections 102(a) (4) and (6), respectively, of title I of the Housing and Community Development Act of 1974 Act (HCD Act). Section 413(b) of the Act generally limits the eligibility of metropolitan cities and urban counties for a formula grant under the Shelter Grants authority to those whose allocations, based on their prior year's CDBG allocations, exceed .05 percent of the current year's Shelter Grants appropriation.

Each "State" and ESG formula city or county must have an approved Comprehensive Plan if it wishes to apply for funding under Subtitles B–D of the Act. This is ture whether the jurisdiction is receiving funds for its own use, or is required or permitted to pass the assistance through to other recipients.

As noted above, Title IV contains several instances in which the applicant and the ultimate recipient may be different. Thus, in the Emergency Shelter Grants program, States apply for assistance, but must distribute all amounts to units of general local government, and units of general local government—those that receive funding directly from the HUD or from the State—may distribute amounts to private nonprofit organizations. In the Permanent Housing element of the Supportive Housing Demonstration, States apply for assistance, even though nonprofits carry out the assisted activities. The Comprehensive Plan requirements apply to the *applicant* and *not* the ultimate *recipient* in these cases, since only the applicant has the right to seek funding under the statute and to enter into a grant relationship with HUD.

In addition, if the applicant must have an approved Plan to receive Title IV assistance, but it does not, it is not relevant that the actual assisted activities are carried out in a jurisdiction with a Plan. For example, a State seeking funding under the Permanent Housing component of the Supportive Housing Demonstration may not make up for its failure to have an approved Plan by applying for funding for a nonprofit that wishes to carry out an assisted project within the jurisdiction of an ESG formula grantee with an approved Plan.

The Department has included at the end of this Notice a list of the jurisdictions sdbject to the Plan (Appendix B). These are the jurisdictions that must have an approved Plan, if Title IV assistance is to be made available to them or within their jurisdiction.

3. *Other assistance recipients.* As noted above, Subtitle A also prohibits the award of Title IV funds "within the jurisdiction" of entities that are subject to the Plan's requirements, but that do not have an approved Plan. This could affect funding for the following entities that are eligible to apply for and receive Title IV funding directly from HUD:

—Private non-profit organizations, and units of general local government that do not qualify for a Shelter Grants formula amount, in the Shelter Grants program, the Transitional Housing element of Supportive Housing Demonstration program, and the program of Supplemental Assistance for Facilities to Assist the Homeless; and

—Public Housing Agencies (PHAs) seeking Section 8 Moderate Rehabilitation for SROs.

If PHAs and nonprofits apply for funding *outside* the jurisdiction of an ESG formula grantee, their eligibility for Title IV assistance turns on whether the

[3] For ease of reference, the cities and counties described in clause (2) will be referred to as "ESG formula grantees."

State in which they are seeking funding has an approved Plan. Similarly, units of general local government that do not qualify for a Shelter Grants formula allocation may receive funding—both from the State and from HUD—only if the State has an approved Plan.

For nonprofits (who may apply for reallocated funds under the Shelter Grants program), and for PHAs applying under the Section 8 SRO Moderate Rehabilitation authority, that are applying for funding to be used *within* the jurisdiction of an ESG formula grantee, eligibility for assistance turns on whether the city or county has an approved Plan. If the Plan has not been approved, these entities may not receive this assistance, even if the State in which the city or county is located has an approved Plan.

A nonprofit organization, applying for funding under the Transitional Housing element of the Supportive Housing Demonstration or the Supplemental Assistance for Facilities to Assist the Homeless programs, will be required to meet the Act's certification requirements in the following manner:

—A nonprofit seeking funding for a project within an ESG formula grantee's jurisdiction must submit a certification from the ESG formula grantee, stating that the proposed project is consistent with the ESG formula grantee's Plan.

—Where the ESG formula grantee in whose jurisdiction the nonprofit is seeking funding does not have an approved Plan, or where the nonprofit is seeking funding outside the jurisdiction of an ESG formula grantee, the required certification must be obtained from the State, provided the State has an approved Plan.

The funding eligibility of entities that receive amounts from other entities depends on whether the original applicant has an approved Plan. Thus, units of general local government that receive Shelter Grants amounts from States, and nonprofits that receive Permanent Housing assistance from States, may receive funding only if the State has an approved Plan. Nonprofits that receive Shelter Grants amounts from units of general local government may receive funding only if the original applicant—the State or an ESG formula grantee—has an approved Plan.

4. *Indian tribes.* Tribes are eligible applicants under the Transitional Housing component of the Supportive Housing Demonstration program and the program of Supplemental Assistance for Facilities to Assist the Homeless. For purposes of assistance under these programs, HUD will use the definition of Indian tribes for the CDBG program contained in section 102(a)(17) of the HCD Act: any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under chapter 67 of title 31, United States Code.

As noted above, the Plan's funding prohibition applies only to assistance provided to, or within the jurisdiction of, States or ESG formula grantees. Because of the unique, sovereign status of these tribes, the Department believes that for purposes of this Notice, they are properly considered outside the jurisdiction of these governments. Thus, Indian tribes may apply for and receive assistance within their jurisdictions without the submission and approval of a Comprehensive Plan, or the submission of a certification of consistency of proposed activities with the Plan.

Plan Content

The Comprehensive Homeless Assistance Plan must contain the following elements:

(1) A statement describing the need, or lack thereof, for assistance provided under each of the programs included in Subtitles B–E of Title IV of the Act: *i.e.*, the need for assistance provided by the Emergency Shelter Grants program, both the Transitional and Permanent Housing components of the Supportive Housing Demonstration programs, the Supplemental Assistance program, and the Single Room Occupancy Section 8 Moderate Rehabilitation authority;

(2) A brief inventory of facilities and services that assist the homeless population in the jurisdiction;

(3) A strategy (A) to match the needs of the homeless population with available services in the jurisdiction and (B) to recognize the special needs of the various types of homeless individuals, particularly families with children, the elderly, the mentally ill, and veterans;

(4) An explanation of how assistance under each of the authorities referred to above in Subtitles B–E of Title IV of the Act will complement and enhance the available services;

(5) In the case of the States,[4] an assessment of the need for literacy training and basic skills remediation for adult homeless individuals within the jurisdiction, conducted under Subtitle A of title VIII of the Act; and

(6) In the case of States,[5] a description of how the jurisdiction will coordinate job training demonstration projects for the homeless conducted under Subtitle C of Title VII of the Act with other services for homeless individuals assisted under the Act.

In preparing the required information, jurisdiction should be aware that failure to address each of elements (1)–(4) of the Plan (including the need for and effect of assistance under elements (1) and (4), above, for each of Title IV's programs) will result in Plan disapproval. In addition, failure to indicate a need for assistance under any of Subtitles B–E will result in disapproval of a subsequent application for assistance under any such Subtitle on grounds that the application is inconsistent with the Plan.

Elements (5) and (6) pertain to the authorities administered by the Departments of Education and Labor, respectively, under Title VII of the Act. These elements must be included in the Plan, but failure to include them will not be grounds for HUD disapproval of a Plan that is otherwise approvable. States should note, however, that failure to include these elements—while not affecting their eligibility for Title IV assistance—could affect their participation under the Title VII programs. Questions regarding elements (5) and (6) should be addressed to the individuals listed above as contact points for the Departments of Education and Labor, as appropriate.

In developing comprehensive plans, it should be noted that section 103 of the Act defines "homeless" or "homeless individual" to include:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not include a prison inmate.

[4] States are defined for purposes of the Department of Education's authority under section 702 of the Act as the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[5] States are defined for purposes of the Department of Labor's authority under Subtitle C of Title VII of the Act as the 50 States and the District of Columbia.

For the Permanent Housing part of the Supportive Housing Demonstration, the following definition of "handicapped homeless person" is used:

A handicapped individual who is a homeless individual within the meaning of section 103, is at risk of becoming a homeless individual, or is a handicapped individual who has been a resident of transitional housing carried out pursuant to provisions made effective by section 101(g) of Pub. L. 99–500 or 99–591 [the initial Transitional Housing Demonstration].

Section 401 of the Act requires Comprehensive Plans to cover the "jurisdiction" of States and ESG formula cities and counties, and requires the Plan to contain information for "that jurisdiction." Since the Act does not limit the term "jurisdiction", and cities and counties are located within the "jurisdiction" of the States, the Department believes that the Act requires the State Plan to address the Plan elements for all its jurisdictions, including ESG formula cities and counties.

This conclusion is necessary to prevent potential gaps in Comprehensive Plan coverage. Section 401 of the Act permits nonprofits seeking funding under Subtitles C and D of the Act to use the State Plan as their funding vehicle, if they wish to apply for assistance within an ESG formula city or county that does not have an approved Plan. If the State Plan did not address the Plan elements within the city or county, there would be no Plan covering the jurisdiction, and no way of assessing the effect of funding on the homeless needs and services of the jurisdiction. The Department believes that this circumstance is antithetical to the Act's clear intent of ensuring that activities assisted under Title IV are consistent with the information provided in approved Plans. Thus, State Plans must address the required Plan Content for all areas within the State, including ESG formula cities and counties.

Plan Submission

Comprehensive Homeless Assistance Plans must be forwarded to the responsible HUD Field Office, and be received or post-marked no later than [insert date 45 days after publication]. The Department believes that this 45-day Plan preparation period is responsive both to the need to allow jurisdictions adequate time to prepare their Plans, and to the congressional concern evidenced throughout Title IV that amounts appropriated be made available to assist the homeless at the earliest possible time.

Plan Review and Approval

HUD will process and review each Comprehensive Homeless Assistance Plan as expeditiously as possible, and will approve the Plan, unless HUD determines that it plainly does not satisfy the required Plan content, described above. HUD will provide written notification to each jurisdiction that submits a Plan of the Plan's approval, within 30 days after its receipt by HUD.

If HUD disapproves a Plan, HUD will notify the jurisdiction of the Plan's disapproval, within 15 days of the determination to disapprove. The notification will inform the jurisdiction of the reasons for disapproval, as well as the steps that need to be taken to make the Plan acceptable. If HUD fails to notify the jurisdiction that its Plan has been disapproved within the 15-day period, the Plan will be deemed approved. (Since the 15-day period for HUD to notify a jurisdiction of disapproval of its plan is triggered by HUD's decision to disapprove—an event that may occur early or late in the 30-day review period—a jurisdiction receiving no notice may assume that its plan has been approved 45 days after HUD's receipt of the jurisdiction's plan.)

HUD will permit amendments to, or the resubmission of, any Plan, including a Plan that is disapproved. The procedures and time periods set forth in this section for the review and approval or disapproval of the initial submission of Plans also will govern subsequent amendments to a Plan, or its resubmission.

It should be noted, however, that individual programs authorized by the Act may impose time limits for Plan approval that may affect jurisdictions' ability to amend or resubmit their Plans. Additional information on these requirements may be found in the **Federal Register** documents implementing each of the Act 's programs. The Department wishes, however, to call one such time period to the attention of States and ESG formula cities and counties receiving a funding allocation under the ESG program. Subsection 413(d) of the Act provides that if a city or a county eligible for a formula grant fails to obtain approval of its Comprehensive Homeless Assistance Plan under Subtitle A of Title IV within 90 days after amounts first become available for the program, the grant amount will be reallocated to the State in which the city or county is located. HUD must reallocate the following amounts to other States, cities, and counties that demonstrate extraordinary need or large numbers of homeless individuals (as determined by HUD):

(1) Any city or county formula amounts that cannot be reallocated to the State under the preceding sentence; and

(2) Any State formula amount, if the State fails to secure approval of its Comprehensive Plan within the 90-day period referred to above.

The 90-day clock would likely expire before the Department could complete its review and approval of a Comprehensive Plan. As explained in greater detail in the Notice to be published establishing the requirements for the use of ESG funds appropriated by the Supplemental Act, the Department will provide States and formula cities and counties 105 days from publication of this Notice to secure Plan approval. Failure to secure approval within this period will result in the reallocation of the amounts involved.

Finally, the Department believes that the following language in the Conference Report accompanying the Act is instructive:

> The conferees want to stress that the purpose of these plans is not to provide a source of delay or administrative burden; but to ensure that assistance under this emergency legislation is provided in a coherent and expeditious manner. (H. Rep. No. 174, 100th Cong., 1st Sess. 73(1987))

The Department intends to carry out its responsibilities with respect to the review and approval of Comprehensive Plans in a manner that is consistent with the Conferees' views.

Performance Reviews and Reports

Each jurisdiction that has an approved Comprehensive Plan must review annually the progress it has made in carrying out its Plan, and must report annually the results of its review to HUD. The first report is due not later than January 31, 1989, covering the period ending on December 31, 1988. HUD will review these reports, and make such recommendations as may be appropriate.

Further assistance under Title IV of the Act may not be made available to, or within the jurisdiction of, any State or any ESG formula grantee that fails to review and report its progress to HUD, as described above.

Assistance Applications

Any application for assistance under Title IV of the Act must contain, or be accompanied by, a certification by the public official responsible for submitting the Plan for the jurisdiction to be served

by the proposed activities, that the activities are consistent with the Plan.

Waivers

The Secretary of HUD may waive any requirement of this Notice that is not required by law, whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the purposes of Subtitle A of Title IV of the Act.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). When OMB has approved these requirements, HUD will announce control numbers in a Federal Register Notice.

The Catalog of Federal Domestic Assistance program numbers are 14.178 and 14.231.

Authority: Section 401(e) of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987; and sec. 7(d) of the Department of Housing and Urban Development Act, (42 U.S.C. 3535(d))).

Dated: August 11, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A—Summary of HUD Assistance Provisions in Title IV of the Stewart B. McKinney Homeless Assistance Act

Title IV of the Act reauthorizes (with amendment) the Department's two existing homeless assistance programs—the Emergency Shelter Grants and Transitional Housing Demonstration programs. It also creates two new authorities to be administered by HUD—a program of Permanent Housing for the Handicapped Homeless (included with the Transitional Housing authority in a new Supportive Housing Demonstration), and a program of Supplemental Assistance for Facilities to Assist the Homeless. The law also authorizes new funding for the Section 8 Moderate Rehabilitation program for single room occupancy (SRO) units. A brief summary of these features follows.

Subtitle B of title IV reauthorizes the existing Emergency Shelter Grants program. This program, originally enacted as Part C of the Homeless Housing Act of 1986, in HUD's fiscal year 1987 appropriation,[1] authorizes HUD to make grants to States, units of general local government, and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless,[2] and for the payment of certain operating and social service expenses in connection with emergency shelter for the homeless. The new law makes the following substantive changes to the program.

—Changes the minimum formula grant for metropolitan cities and urban counties from a flat $30,000 to .05 percent of the amounts appropriated for the program for any fiscal year. This threshold does not apply to any city that: (1) Is located in a State that does not have counties as local governments, (2) has a population greater than 40,000 but less than 50,000 and (3) was allocated in excess of $1 million in community development block grant funds in fiscal year 1987.

—Provides that if a city or a county eligible for a formula grant fails to obtain approval of its Comprehensive Homeless Assistance Plan under subtitle A of Title IV within 90 days after amounts first become available for the grant amount will be reallocated to the State in which the city or county is located. HUD must reallocate the following amounts to other States, cities, and counties that demonstrate extraordinary need or large numbers of homeless individuals (as determined by HUD):

1. Any city or county formula amounts that cannot be reallocated to the State under the preceding sentence; and

2. Any State formula amount, if the State fails to secure approval of its Comprehensive Plan within the 90-day period referred to above.

—Requires the Secretary to establish a separate allocation formula for assistance to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

—Waives the 15 percent limitation on the use of assistance for essential services," if the local government receiving the assistance demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.

—Deletes the requirement that program grantees submit a Homeless Assistance Plan as part of their application, and replaces it by a certification that the proposed activities are consistent with the Comprehensive Homeless Assistance Plan.

The law authorizes appropriations for the program of $100 million for fiscal year 1987 and $120 million for fiscal year 1988. The Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987) appropriated $50 million for the program for FY 1987.

Subtitle C of title IV authorizes a new Supportive Housing Demonstration program. The program has two components: transitional housing and permanent housing for handicapped homeless persons. The transitional housing element is based upon the Transitional Housing Demonstration program that was enacted as Part B of the 1986 Act in HUD's regular fiscal year 1987 appropriation.[1] The 1986 Demonstration is designed to develop innovative approaches to providing housing and supportive services to help facilitate the transition to independent living for homeless persons who are capable of making the transition within a reasonable period of time. It authorizes HUD to make assistance available to eligible governmental and private nonprofit entities in the forms of: (1) Interest-free advances to cover up to $200,000 of the costs of acquiring or rehabilitating (or both) existing structures for use in the provision of housing and supportive services for homeless persons; (2) funding of up to 75

[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

[2] Section 103 of the Act defines "homeless" or homeless individual" to include (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and (2) an individual who has a primary nighttime residence that is (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not include a prison inmate.

percent of the operating costs of the housing; and (3) technical assistance to recipients in carrying out activities under the Demonstration.

The major features of the Supportive Housing Demonstration program, as well as the major differences between the transitional housing element and the 1986 Act's Transitional Housing Demonstration program, follow:

—Consistent with the 1986 Act's Demonstration program, the new law defines "transitional housing" as a project that is intended to facilitate the movement of homeless individuals to independent living within a reasonable amount of time, as determined by the Secretary. "Permanent housing for handicapped homeless persons" is defined to mean a project that provides community-based, long-term housing and supportive services for not more than eight handicapped homeless persons.

—Applicants for transitional housing include States, metropolitan cities, urban counties, tribes, or private nonprofit organizations. (This is narrower than the 1986 Transitional Housing Demonstration applicants, which may be any "governmental entity.") For permanent housing for handicapped homeless persons, the applicant is the State in which the project is located, with the assisted activity carried out by nonprofit organizations selected by the State.

—Program participants include "homeless individuals" (as defined in footnote 2), and, in the program for permanent housing for handicapped homeless persons, those "at risk of becoming homeless," and handicapped homeless residents of transitional housing under the 1986 Demonstration program.

—The types of assistance under the program are (1) advances up to $200,000 of the aggregate cost of acquisition, substantial rehabilitation, or acquisition and rehabilitation of an assisted structure for use in the program; (2) grants for the moderate rehabilitation of existing structures; (3) annual payments of up to 75 percent of the operating costs of transitional housing only; and (4) technical assistance. (The 1986 Act's Transitional Housing Demonstration program specifies that advances are "non-interest bearing," and does not have a separate moderate rehabilitation category; all rehabilitation work is funded through an advance, and is subject to the $200,000 limit and the repayment provisions described below.)

—Any acquisition/rehabilitation advance must be repaid when the project is no longer used as supportive housing under the program. Recipients must repay the entire amount of the advance if the project is used as supportive housing for fewer than 10 years, with a 10 percent reduction for each year that the project is used under the program beyond 10 years. Repayment is not required if HUD determines that the project is no longer needed for use as supportive housing and approves the use of the project for the direct benefit of lower income persons. (Under the 1986 Act's Transitional Housing Demonstration, repayment of advances is required if the structure is not used as transitional housing or for an approved alternate charitable use before the end of the 10-year period, but there is no repayment liability after 10 years.)

—Upon the disposition of a project acquired or rehabilitated with assistance before the end of 20 years, the Secretary must take steps to prevent the recipient from unduly benefiting from the disposition. An exception is made for a disposition resulting in the use of the project for the direct benefit of lower income persons or where all of the proceeds are used to provide supportive housing. (No provision in the 1986 Demonstration program.)

—In the case of transitional housing, recipients are required to supplement the amount of any acquisition/rehabilitation advance or moderate rehabilitation grant with an equal amount of funds from other sources. Recipients may include the value of any donated material or building, and the value of any lease on a building. (The 1986) Demonstration program contains no specific matching provision, but HUD's guidelines for the program impose a similar dollar-for-dollar match on both acquisition/rehabilitation advances and operating assistance; HUD's guidelines only permit "in-kind" contributions of structures to count toward the matching requirement.) The permanent housing for handicapped homeless persons component requires a State applying for assistance to certify that it will supplement assistance under the program with at least an equal amount of State or local government funds. For both components of the program, no assistance (or any State or local government matching funds) may be used to replace other public funds for handicapped persons, homeless individuals, or handicapped homeless individuals.

—Recipients may use up to five percent of an advance or a grant for administrative purposes. (No provision in the 1986 Transitional Housing Demonstration program.)

—The law authorizes the appropriation of $80 million for fiscal year 1987 and $100 million for fiscal year 1988, of which at least $20 million each year must be allocated to transitional housing projects that serve homeless families with children and at least $15 million must be allocated to projects to provide permanent housing for handicapped homeless persons. The law also requires that priority be given to supportive housing for deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handcapped persons. The law provides a special funding priority for supportive housing for the deinstitutionalized homeless individuals and other homeless individuals with mental disabilities.

The Supplemental Appropriations Act, 1987, appropriated $80 million for the Supportive Housing Demonstration Program for FY 1987. The conference Report accompanying the law indicate that $15 million are for permanent housing, $20 million for transitional housing for families with children, and $30 million for transitional housing for deinstitutionalized homeless individuals and other individuals with mental disabilities. (H. Rep. No. 195, 100th Cong., 1st Sess. 107 (1987))

Subtitle D of title IV establishes a new program of Supplemental Assistance for Facilities to assist the Homeless. The program authorizes the Secretary to provide assistance to States, metropolitan cities, urban counties, tribes, or private nonprofit organizations:

(1) To cover the costs in excess of assistance provided under the Emergency Shelter Grants program or the Supportive Housing Demonstration program that are required to meet the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or to facilitate the transfer and use of public buildings to assist homeless individuals and families; or

(2) To provide comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals by assisting the purchase, lease, renovation, or conversion of facilities or the provision of supportive services for homeless individuals.

Assistance under the Supplemental Assistance for Facilities to Assist the Homeless program consists of non-interest bearing advances for the acquisition, lease, renovation, substantial rehabilitation, or conversion of facilities to assist the homeless, and grants for moderate rehabilitation and for other purposes. Assistance may only be made available if the applicant has made reasonable efforts to use all available local resources (including resources under Title IV of the Act), and these resources are insufficient or unavailable to carry out the purpose for which assistance is sought. No assistance may be used to supplant non-Federal resources provided for any project. Advances under the program are subject to repayment, and the program contains "undue enrichment" provisions comparable to those described above for the Supportive Housing Demonstration program.

Up to $10,000 of assistance for any project may be used for outpatient health services. HUD and HHS must establish guidelines for determining the appropriateness of the proposed services. HUD must consult with HHS regarding any application that includes such services. If HHS determines that the services do not meet the guidelines, that portion of the application may not be approved.

The law authorizes the appropriation of $25 million for each of fiscal years 1987 and 1988 to carry out the program. HUD would be required, to the maximum extent practicable, to reserve not less than one-half of all funds for the support of facilities designed primarily for homeless elderly individuals and homeless families with children. A portion of this set-aside must be used for child care facilities. HUD is also required, to the extent practicable, to distribute funds available to carry out the program equitably across geographic areas. The Supplemental Appropriations Act, 1987, provided $15 million for the program for FY 1987.

Subtitle E of title IV authorizes an additional $35 million in budget authority for each of fiscal years 1987 and 1988 for housing assistance payments for SRO units under the Section 8 Moderate Rehabilitation program. These amounts must be allocated on the basis of national competition to applicants that best demonstrate a need for the assistance and the ability to undertake and carry out an assisted program. The total cost of rehabilitation that could be compensated for in a HAP contract could not exceed $14,000 per unit, plus the cost of specified fire and safety improvements. The Secretary could increase the $14,000 limit in areas of high construction costs or stringent fire or building codes. Annual contributions contracts with public housing authorities must run for 10 years, with an additional 10 years at the option of HUD. The first priority for occupancy of housing rehabilitated under this authority must be given to homeless individuals. The Supplemental Appropriations Act, 1987, provided the amount authorized for FY 1987.

Appendix B—Jurisdictions Subject to the Plan

1. All States and the Commonwealth of Puerto Rico

II. Territories:
- Virgin Islands
- Guam
- American Samoa
- Northern Mariana Islands
- Trust Territory of the Pacific Islands (Palau)

III. ESG Formula Metropolitan Cities and Urban Counties:

State and Community

Alabama: Birmingham, Huntsville, Mobile, Montgomery, and Jefferson County.

Alaska: Anchorage.

Arizona: Mesa, Phoenix, Tucson, Maricopa County, Pina County.

Arkansas: Little Rock.

California: Anaheim, Berkeley, Compton, El Monte, Fresno, Glendale, Inglewood, Long Beach, Los Angeles, Oakland, Oxnard, Pasadena, Pomona, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Stockton, Alameda County, Contra Costa County, Fresno County, Kern County, Los Angeles County, Marin County, Orange County, Riverside County, Sacramento County, San Bernardino County, San Diego County, San Joaquin County, San Mateo County, Santa Clara County, Sonoma County, and Ventura County.

Colorado: Colorado Springs, Denver, and Adams County.

Connecticut: Bridgeport, Hartford, New Britain, New Haven, and Waterbury.

Delaware: Wilmington, and New Castle County.

District of Columbia: Washington.

Florida: Ft Lauderdale, Hialeah, Jacksonville, Miami, Miami Beach, Orlando, St. Petersburg, Tallahassee, Tampa, Brevard County, Broward County, Dade County, Hillsborough County, Orange County, Palm Beach County, Pasco County, Pinellas County, Polk County, Seminole County, and Volusia County.

Georgia: Albany, Atlanta, Augusta, Columbus, Macon, Savannah, Cobb County, De Kalb County, and Fulton County.

Hawaii: Honolulu.

Illinois: Chicago, Cicero, East St. Louis, Evanston, Oak Park, Peoria, Rockford, Cook County, DuPage County, Lake County, Madison County, St. Clair County, and Will County.

Indiana: East Chicago, Evansville, Fort Wayne, Gary, Hammond, Indianapolis, South Bend, Terre Haute, and Lake County.

Iowa: Des Moines, and Sioux City.

Kansas: Kansas City, Topeka, and Wichita.

Kentucky: Covington, Lexington-Fayette, Louisville, and Jefferson County.

Louisiana: Baton Rouge, New Orleans, Shreveport, and Jefferson Parish.

Maine: Portland.

Maryland: Baltimore, Anne Arundel County, Baltimore County, Montgomery County, and Prince Georges County.

Massachusetts: Boston, Cambridge, Fall River, Lawrence, Lowell, Lynn, Medford, New Bedford, Newton, Quincy, Somerville, Springfield, and Worcester.

Michigan: Dearborn, Detroit, Flint, Grand Rapids, Kalamazoo, Lansing, Pontiac, Saginaw, Genesee County, Oakland County, and Wayne County.

Minnesota: Duluth, Minneapolis, St. Paul, and Hennepin County.

Mississippi: Jackson.

Missouri: Kansas City, St. Joseph, St. Louis, and St. Louis County.

Nebraska: Omaha.

Nevada: Las Vegas and Clark County.

New Hampshire: Manchester.

New Jersey: Atlantic City, Bayonne, Camden, East Orange, Elizabeth, Jersey City, Newark, Paterson, Trenton, Bergen County, Burlington County, Camden County, Essex County, Gloucester County, Hudson County, Middlesex County, Monmouth County, Morris County, Ocean County, and Union County.

New Mexico: Albuquerque.

New York: Albany, Babylon Town, Binghamton, Buffalo, Islip Town, Mount Vernon, New York, Niagara Falls, Rochester, Schenectady, Syracuse, Tonawanda Town, Troy, Utica, Yonkers, Erie County, Monroe County, Nassau County, Onondaga County, Orange County, Rockland County, Suffolk County, and Westchester County.

North Carolina: Charlotte, Greensboro, Raleigh, and Winston Salem.

Ohio: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Lakewood, Springfield, Toledo, Youngstown, Cuyahoga County, Franklin County, Hamilton County, and Montgomery County.

Oklahoma: Oklahoma City and Tulsa.

Oregon: Portland, Clackamas County, Multnomah County, and Washington County.

Pennsylvania: Allentown, Altoona, Chester, Erie, Harrisburg, Johnstown, Lancaster, Philadelphia, Pittsburgh, Reading, Scranton, Upper Darby Township, Wilkes-Barre, York, Allegheny County, Beaver County, Berks County, Bucks County, Chester County, Delaware County, Lancaster County, Luzerne County, Montgomery County, Washington County, Westmoreland County, and York County.

Rhode Island: Pawtucket, Providence, and Woonsocket.

South Carolina: Greenville County.

Tennessee: Chattanooga, Knoxville, Memphis, and Nashville-Davidson.

Texas: Amarillo, Austin, Beaumont, Brownsville, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Laredo, Lubbock, McAllen, San Antonio, Waco, Bexar County, Harris County, and Tarrant County.

Utah: Provo, Salt Lake City, and Salt Lake County.

Virginia: Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Virginia Beach, Arlington County, and Fairfax County.

Washington: Seattle, Spokane, Tacoma, Clark County, King County, Pierce County, and Snohomish County.

West Virginia: Charleston, and Huntington.

Wisconsin: Madison, Milwaukee, and Racine.

Puerto Rico: Toa Baja Municipio, Aguadilla, Arecibo, Bayamaon Municipio, Caguas Municipio, Carolina Municipio, Guaynado Municipio, Humacao Municipio, Mayaguez Municipio, Ponce Municipio, San Juan Municipio, and Trujillo Alto Mun.

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BILLING CODE 4210-32-M

[Docket No. D-87-856; FR-2386]

Delegation of Authority for the Comprehensive Homeless Assistance Plan

AGENCY: Office of the Secretary, HUD.

ACTION. Notice of Delegation of Authority.

SUMMARY: The Comprehensive Homeless Assistance Plan was established by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). This Notice delegates to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, the power and authority of the Secretary of Housing and Urban Development with respect to the Plan, subject to specified exceptions.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Don Patch, Director, Office of Block Grant Assistance, Room 7280, 451 7th Street, SW., Washington, DC 20410, (202) 755-6587 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice states the scope of authority given to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development to administer the Comprehensive Homeless Assistance Plan contained in section 401 of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) ("the Act"). This provision prohibits the Secretary of Housing and Urban Development ("the Secretary") from making assistance available under any of Title IV's authorities to, or within the jurisdiction of, (1) a State or (2) a metropolitan city or urban county that is eligible for a formula grant under the Emergency Shelter Grants program contained in Subtitle B of Title IV, unless the jurisdiction has a Secretary-approved Comprehensive Homeless Assistance Plan.

The Plan is also used by the Secretary of Education to distribute funds under the Statewide Literacy Initiative contained in section 702 of the Act, and must contain a description of how States will coordinate projects under the Department of Labor's Job Training for the Homeless authority contained in Subsection C of Title VII of the Act, with other services for homeless individuals assisted under the Act. This Notice only covers the Secretary of Housing and Urban Development's responsibilities under the Plan, and does not affect the responsibilies of the Secretary of Education or Labor under Title VII of the Act.

All of the Secretary's authority with respect to the Plan is delegated, except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules, with respect to the Plan.

A Notice establishing HUD's requirements for the Plan are published elsewhere in today's issue of the **Federal Register.**

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Comprehensive Homeless Assistance Plan, as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987), except as indicated in Section B, below. This includes the authority to issue rules, regulations, notices, and other **Federal Register** documents, and the authority to waive rules, with respect to the Plan.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the power to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized, individually, to redelegate to employees of the Department of Housing and Urban Development any of the power and authority delegated under Section A, and not excepted under Section B of this delegation, except that they are not authorized to redelegate the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules, with respect to the Plan.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Date: August 11, 1987.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 87-18591 Filed 8-13-87; 8:45 am]

BILLING CODE 4210-32-M

federal register

Friday
August 14, 1987

Part XII

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration

Scientific and Technical Guidelines for Federal Drug Testing Programs; Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies; Notice of Proposed Guidelines

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Scientific and Technical Guidelines for Federal Drug Testing Programs; Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of proposed guidelines.

SUMMARY: The Department of Health and Human Services invites comments on proposed Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies.

DATES: Interested persons are invited to submit comments on or before October 13, 1987.

ADDRESSES: Written comments should be addressed to the Office of Workplace Initiatives, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10A–53, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Nancy Rittman (301) 443–6780.

SUPPLEMENTARY INFORMATION: This document sets forth the Department of Health and Human Services (DHHS) proposed "Scientific and Technical Guidelines for Drug Testing Programs" and "Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" as directed in the President's Executive Order No. 12564 dated September 15, 1986, and section 503 of Pub. L. 100–71, the "Supplemental Appropriations Act for 1987," dated July 11, 1987.

Public Law 100–71 requires DHHS to publish these proposed guidelines and standards in the **Federal Register** and allow interested persons not less than 60 days to submit written comments on them. Following review and consideration of written comments DHHS will publish the final guidelines and standards in the **Federal Register** and they shall become effective upon publication.

Public Law 100–71 requires that DHHS publish guidance in the **Federal Register** to accomplish the following: (1) Establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing; (2) specify the drugs for which Federal employees may be tested; and (3) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order 12564.

The scientific and technical guidelines which follow satisfy the first two of these requirements of Pub. L. 100–71 by establishing comprehensive standards for all aspects of laboratory drug testing and specifying the drugs for which Federal employees may be tested. The third requirement of Pub. L. 100–71 is met by the Secretary's proposed "Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" which immediately follow the guidelines.

These guidelines are essentially the same as the guidelines dated February 13, 1987 and issued by the Secretary on February 19, 1987, under Executive Order 12564, with minor changes to be consistent with the certification standards which follow and to prepare the guidelines for publication in the **Federal Register**. Part II of the February 13, 1987 guidelines which sets forth model language for agency contracts to obtain laboratory urinalysis services has been deleted in its entirety. Since this part of the guidelines did not reflect mandatory standards to be imposed on agencies, DHHS decided to delete it as it is redundant and possibly confusing.

Once the guidelines and certification standards are finalized and published in the **Federal Register**, following consideration of public comment made in response to this notice, the Secretary may make additional changes to the guidelines and standards to reflect improvement in the available science and technology without further opportunity for notice and comment. These changes will be published as a notice in the **Federal Register**.

While the certification system proposed by this notice is in development, Federal agencies may use agency or contract laboratories that have been certified for urinalysis testing by the Department of Defense (DOD). The DOD certification process is extremely strict and sophisticated and, during the interim period while the DHHS certification process becomes operational, DHHS believes that DOD certification will be more than adequate to ensure the full reliability and accuracy of drug tests and the reporting of test results. This is consistent with the provisions in the Scientific and Technical Guidelines for Drug Testing Programs dated February 13, 1987, and given statutory recognition by Pub. L. 100–71, that allows use of the DOD laboratories "prior to the existence of ADAMHA/NIDA-recognized accreditation and proficiency testing programs."

Information Collection and Recordkeeping Requirements

The proposed certification standards include a number of information collection and recordkeeping requirements which would be imposed on laboratories wishing to become certified to perform drug testing on Federal employees. These include the documentation requirements of section V and the information required to be submitted by the laboratory during its inspection under Appendix B. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this notice to the Office of Management and Budget (OMB) for its review of these information collection and recordkeeping requirements. Other organizations and individuals desiring to submit comments on these requirements should submit them to the DHHS office designated for this purpose whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washingotn, DC 20503, Attention: Desk Officer for HHS.

Dated: August 4, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 10, 1987.

Otis R. Bowen,

Secretary.

Scientific and Technical Guidelines for Drug Testing Programs

August 3, 1987.

Contents

Scientific and Technical Requirements

The Drugs

The President's Executive Order defines "illegal drugs" as those included in Schedule I or II of the Controlled Substances Act (CSA), unless the use is authorized by a legal prescription or other exemption as permitted under appropriate laws. These schedules cover hundreds of drugs, but it is obviously not practical to test for all of them.

Agency preemployment and random drug testing programs shall at a minimum test for *marijuana* and *cocaine*, and in addition agencies may test for opiates, amphetamines, and phencyclidine (PCP). When conducting reasonable suspicion testing, an agency may test for any drug identified in Schedule I or II of the Controlled Substances Act. The above provisions are not intended to limit agencies specifically authorized by law to include additional categories of drugs in the drug testing of their own employees or employees in their regulated industries.

This document presents specific information on the drugs most likely to be included in agency drug testing programs (i.e., marijuana, cocaine, opiates, amphetamines, and PCP). Agencies shall petition the Secretary of Health and Human Services or his designee (hereinafter referred to as "the Secretary") for approval to include any additional drugs (or classes of drugs) in its testing protocols.

Specimen Collection Procedures

Collection Site

A designated collection site is a place where individuals present themselves for the purpose of providing urine specimens to be analyzed for drugs of abuse. The site shall possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation (shipping) of urine specimens to a drug testing laboratory.

Collection Procedures

Procedures shall provide for the collection site to be secure. A collection site facility dedicated solely to urine collection shall be secure at all times. In cases where a facility cannot be dedicated solely for the purpose of drug testing, the portion of the facility being used for testing shall be secured during drug testing operations. Chain of custody forms shall be properly executed by authorized collection site personnel upon receipt of specimens. The handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through the use of chain of custody procedures. No unauthorized personnel shall be permitted in any part of the collection site when urine specimens are collected or stored.

Procedures for providing urine specimens shall comply with the provisions of these guidelines which allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Agencies shall take precautions to ensure that a urine specimen has not been authorized or diluted during the collection procedure and that all information on the urine bottle and in the record book can be identified as belonging to a given individual

To ensure that unadulterated specimens are obtained, the following procedures specify the minimum precautions that shall be taken during the collection of urine specimens:

1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in the toilet tanks, wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall not be any other source of water (e.g., shower, sink, etc.) in the enclosure where urination occurs.

2. Upon arrival at the collection site, the collection site person shall request the individual to present some type of photo identification. If the individual does not have proper identification, this shall be noted on the chain of custody form. If the individual fails to appear at the assigned time, collection site personnel shall contact appropriate authority to obtain guidance on action to be taken.

3. The collection site person shall ask the individual to remove any unnecessary outer garments (e.g., coat, jacket) that might conceal items or substances that could be used to tamper with or adulterate his/her urine specimen. Also, all personal belongings (e.g. purse, briefcase) shall remain with the outer garments; the individual may, however, retain his/her wallet. The collection site person shall note any unusual behavior or appearance.

4. The individual shall be instructed to wash and dry his/her hands prior to urination.

5. After washing hands, the individual shall remain in the presence of the collection site person and not have access to water fountains, faucets, soap dispensers, or cleaning agents or any other materials which could be used to adulterate the specimen.

6. The individuual may provide his/her specimen in the privacy of a stall, or otherwise partitioned area that allows for individual privacy. The collection site person shall note any unusual behavior by the individual.

7. In the exceptional event where an agency designated collection site is not accessible and there is a requirement for immediate specimen collection (e.g., accident investigation), a public restroom may be used according to the following procedures:

A same-sex collection site person shall accompany the individual into the public restroom which shall be made secure during the collection procedure. Toilet bluing shall be placed into the bowl. The collection site person shall remain in the restroom, but outside the stall, until the specimen is collected. In order to deter specimen dilution, the individual shall be asked not to flush the toilet until the specimen has been handed over to the collection site person. The individual shall be allowed to flush the toilet and shall then participate with the collection site person in completing the chain of custody procedures.

8. Upon receiving the specimen from the individual, the collection site person will determine that it contains at least 60 milliliters of urine. If there is not sufficient urine in the container, additional urine shall be collected. The individual may be given reasonable amounts of liquid (e.g., a glass of water). If an individual fails, for any reason, to provide the necessary specimen, collection site personnel shall contact appropriate authority to obtain guidance on action to be taken.

9. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his/her hands.

10 *Immediately* after collection, collection site personnel shall measure the temperature of the specimen and conduct an inspection to determine the specimen's color, and signs of contaminants. Any unusual findings resulting from the inspection shall be included on the chain of custody form. The time from urination to delivery of the sample for temperature measurement is critical and in no case shall exceed four (4) minutes. If the temperature of the specimen is outside the range of 32.5–37.7°C/90.5–99.8°F this

gives rise to reasonable suspicion of adulteration/substitution, and another specimen shall be collected under direct observation and both specimens forwarded to the laboratory. Any specimen suspected to be adulterated shall always be forwarded for testing. When reasonable suspicion is established, the second specimen shall be obtained under direct observation.

11. Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is transferred to a second container, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle. The collection site person will place the identification label securely on the bottle.

12. The identification label shall contain the date, individual's specimen number, and any other identifying information provided/required by the Agency. The individual shall initial the label on the specimen bottle.

13. The collection site person will enter the identifying information in a ledger. Both the collection site person and the individual shall sign the ledger next to the identifying information.

14. The individual shall be asked to read and sign a certification statement regarding his/her urine specimen.

15. The collection site person shall complete the appropriate chain of custody form.

16. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately secured during temporary storage.

Note: While any part of the chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person shall leave his/her work station momentarily, the specimen and custody form shall be taken with him/her or shall be secured. After the collection site person returns to the work station the custody process will continue. If the site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he/she leaves the site.

Collection Control

Collection site personnel shall always attempt to have the container or specimen bottle within sight before and after the individual has urinated. The containers shall be tightly capped, properly sealed, and labeled. A chain of custody form approved by the agency shall be utilized for maintaining control and accountability from point of collection to final disposition of specimens. With each transfer of possession, the chain of custody form shall be dated, signed by the individual releasing the specimen, signed by the individual accepting the specimen, and the purpose for transferring possession noted. Every effort shall be made to minimize the number of persons handling specimens.

Transportation To Laboratory

After collection of urine specimens, collection site personnel shall arrange to ship the specimens to the drug testing laboratory. The specimens shall be placed in appropriate containers (specimen boxes or padded mailers) that are securely sealed to eliminate the possibility of tampering. Collection site personnel shall sign and date across the tape sealing the container and ensure that the chain of custody documentation is attached to each sealed container. An outer mailing wrapper is placed around each sealed container. Specimens may be delivered to the drug testing laboratory using either the United States Postal Service, commercial air freight, air express, or may be hand carried. It is not necessary to send specimens by registered mail.

Laboratory Analysis Procedures

Definitions

Intralaboratory Chain of Custody

Procedures used by the laboratory to maintain control and accountability from the receipt of urine specimens until testing is completed, results are reported, and while specimens are in storage.

Initial Test

A sensitive, rapid, and inexpensive immunoassay screen to eliminate "true negative" specimens from further consideration.

Confirmatory Test

A second analytical procedure used to identify the presence of a specific drug or metabolite in a urine specimen. The confirmatory test shall be different in technique and chemical principle from that of the initial test procedure to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine (PCP)).

Aliquot

A portion of a specimen used for testing. An appropriate amount is transferred into a labeled test tube.

Receiving/Preparation

The laboratory shall be secure at all times; no unauthorized personnel shall be permitted. Upon receipt of specimens, accession personnel shall inspect packages for evidence of possible tampering and compare information on specimen bottles with that on chain of custody forms. Any discrepancies shall be properly noted and described. Any direct evidence of tampering shall be reported immediately to the agency, and shall also be noted on the chain of custody form which shall accompany all specimens during laboratory possession.

Specimen bottles and original chain of custody forms will normally be retained within the accession area until all analyses have been completed. Aliquots and intralaboratory chain of custody forms shall be used by laboratory personnel for conducting the initial and confirmatory tests.

Short-Term Refrigerated Storage

Specimens that do not receive an initial testing within two (2) days of arrival at the laboratory shall be placed in secure, temporary refrigeration units. Temperatures shall not exceed six (6) degrees centigrade. Emergency power equipment shall be available in case of prolonged power failure.

Specimen Processing

Drug testing laboratories will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory testing, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both internal and external blind proficiency test samples shall appear as ordinary samples to laboratory personnel.

Initial Test

The initial testing shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative or positive for these five drugs or classes of drugs:

	Initial test level (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiates	300
Phencyclidine	25
Amphetamines	1000

These test levels are subject to change by HHS as advances in technology or other considerations warrant identification of these substances at other concentrations. *Alternate initial test methods and testing levels shall be submitted for written approval to the Secretary.*

Confirmatory Test

All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques. Quantitative GC/MC confirmation procedures at the following cutoff values shall be used for the following drugs:

	Confirmatory test level (ng/ml)
Marijuana metabolites [1]	20
Cocaine metabolites [2]	150
Opiates	300
Phencyclidine	25
Amphetamines	300

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.

These test levels are subject to change by HHS as advances in technology or other considerations warrant identification of these substances at other concentrations.

Confirmation methods and levels for other drugs tested shall be submitted by the agency to the Secretary.

Chain of Custody

Proper chain of custody controls shall always be enforced during all testing and specimen handling. Only authorized personnel may handle specimens to be tested and they shall sign chain of custody forms to document when specimens are in their possession. Authorized technicians shall sign the chain of custody forms and be responsible for each urine specimen to be tested. The laboratory shall include sufficient safeguards to ensure that unauthorized personnel are prevented from gaining access to the laboratory.

Reporting Results

Test results shall be reported to the agency's designated Medical Review Officer within an average of five (5) working days of receipt of the specimen. The report shall contain the specimen number assigned by the submitting agency, the drug testing laboratory specimen identification number, and results of the drug tests. All specimens negative on the initial test or negative on the confirmatory test *shall be reported as negative.* Only specimens confirmed positive shall be reported positive for a specific drug. Results may be transmitted to the Medical Review Officer (see pg. xx) by various electronic means (e.g., teleprinters, facsimile, or computer) in a manner consistent with the Privacy Act. It is not permitted to provide results verbally by telephone. A certified copy of the original chain of custody form, signed by the laboratory director of laboratory certifying official, shall only be sent to the Medical Review Officer. Copies of all analytical results shall be available from the laboratory when requested by appropriate authority.

In addition, the laboratory shall provide the Medical Review Officer with a monthly statistical summary of urinalysis testing of Federal employees without any personal identifying information. Screening and confirmation data shall be included from results reported within that period. This summary normally shall be forwarded by registered mail within two (2) weeks (14 calendar days) after the end of the month, covered by the summary and shall contain the following information:

Initial Testing

(a) Number of specimens received.
(b) Number reported out.
(c) Number of specimens screened positive for:

Marijuana metabolites
Opiates (morphine/codeine)
Amphetamines
Any other drugs requested
Cocaine metabolites
Phencyclidine

Confirmation Testing

(a) Number of specimens received.
(b) Number of specimens confirmed positive for:

Marijuana metabolite
Morphine and/or codeine
Amphetamine
Any other drugs requested
Cocaine metabolites
Phencyclidine
Methamphetamine

All records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of two (2) years.

Long-Term Storage

Specimens confirmed positive shall be retained and placed in properly secured long-term frozen storage for at least 365 days. Within this 365-day period an agency may request the laboratory to retain the specimen for an additional period of time. This ensures that the urine specimen will be available for a possible retest during any administrative or disciplinary proceeding. If the laboratory does not received a request to retain the specimen during the initial 365-day period, the specimen may be discarded.

Retesting Specimens

Should specimen reanalysis be required, the quantitation of a drug or metabolite in a specimen is not required to be subject to the same testing level criteria that were used during the original analysis. Some analytes deteriorate or are lost during freezing and/or storage.

Security

The laboratory facilities shall use appropriate security measures to ensure limited and/or controlled access.

Subcontracting

The drug testing laboratory shall perform all work with its own personnel and equipment, unless otherwise authorized by the agency.

Laboratory Facilities

Laboratories shall comply with applicable provisions of any State licensure requirements. Certified laboratories shall have the facility and capability, at the same laboratory, of performing screening and confirmation tests for each drug or metabolite for which service is offered.

Laboratory Personnel

The scientific director of the drug testing laboratory shall be qualified to assume professional, organizational, educational, and administrative responsibility for the laboratory and shall be involved in the day-to-day management of the laboratory. The scientific director shall meet three criteria. He or she shall: (1) Be (a) certified as a Laboratory Director by the State in forensic or clinical laboratory toxicology, or (b) hold a Ph.D. in one of the natural sciences, or (c) have training and experience equivalent to the Ph.D., such as a scientific degree followed by extensive research experience in biology, chemistry and pharmacology or toxicology; (2) have extensive experience in analytical toxicology (the analysis of biological materials for drugs

of abuse)—at least two years postdoctoral experience or at least six years experience beyond any other degree and (3) appropriate training and/or experience in forensic applications of analytical toxicology (court testimony, research and publications in analytic toxicology of drugs of abuse, etc.). The director is responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the urine drug testing laboratory.

A key individual in the laboratory is the certifying scientist; (who may be the laboratory scientific director); this individual reviews the standards, control specimens, and quality control data together with the screening and confirmation test results. After having assured that all results are acceptable, this individual certifies the test result. The certifying scientist shall have training in the sciences, specific training in the theory and practice of the procedures used, including the recognition of aberrant results and quality control procedures.

Supervisors of analysts shall possess a B.S. degree in chemistry or at least the education and experience comparable to a Medical Technologist certified by the American Society of Clinical Pathologists, MT(ASCP), or its equivalent. These individuals also shall have training in the theory and practice of the procedures used, and understanding of quality control concepts. Periodic verification of their skills shall be documented. Other technicians or nontechnical staff shall possess the necessary training and skills for the task assigned. Inservice continuing education programs to meet the needs of all laboratory personnel is required. Personnel files shall include: Résumé of training and experience; certification or license, if any; references; job descriptions; health records; records of performance evaluation and advancement; incident reports; and results of tests for color blindness.

Quality Assurance and Quality Control

Urine drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process:

Specimen acquisition, chain of custody, security, and reporting of results, in addition to the screening and confirmation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process.

a. Requirement of Internal Laboratory Quality Control

Each analytical run of specimens to be screened shall include: control urine specimens containing no drug; specimens fortified with known standards; and positive controls with the drug or metabolite at or near the threshold (cutoff). Implementation of procedures shall be documented to ensure that carryover does not contaminate the testing of a subject's specimen. A minimum of 10 percent of all test samples shall be quality control (QC) specimens. The known standards shall be the first specimens processed in each run. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Internal proficiency test samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory personnel. Each run shall include at least two (2) blind control samples (one positive and one negative) per 200 specimens. Equivalent standards, positive and negative controls shall be analyzed in parallel with confirmation tests.

b. Agency External Laboratory Quality Control Procedures

Participation in other proficiency testing surveys, by which the laboratory's performance is compared with peers and reference laboratories, is encouraged. *Participation in a ADAMHA/National Institute on Drug Abuse (NIDA)-recognized certification program for laboratories engaged in urine drug testing is mandatory.*

During the initial 90-day period of any new drug testing program a minimum of 1000 samples of which at least 800 are blank (i.e., certified to contain no drug) shall be submitted to the contract laboratory as external blind proficiency test specimens. Subsequent to the initial 90-day period, a minimum of 250 specimens per quarter shall be submitted to the contract laboratory as external blind proficiency test specimens. Any unsatisfactory proficiency testing result shall be investigated by the agency and corrective actions shall be taken. A report of the investigative findings, together with subsequent corrective actions, should be recorded, dated, signed by the responsible supervisor and laboratory director, and sent to the agency contracting officer. Should a false-positive error occur on a blind proficiency test specimen and the error is determined to be:

(1) An administrative error (clerical, sample mix-up, etc.), the reviewing official has the option of recommending corrective action to minimize the occurrence of the particular error in the future and reviewing a reanalysis of previously run specimens if there is reason to believe that the error could have been systematic.

(2) A technical or methodological error, the laboratory shall submit all QC data from the batch of specimens which included the test specimen with the erroneous analysis. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time of final resolution of the error back to the time of the preceding cycle of (correctly run) Proficiency Test samples (this retesting to be documented by a signed statement by the Laboratory Director). The reviewing official has the option to recommend (1) no further action other than the above (in case of less serious error with associated corrective action which reasonably assures the unlikelihood of reoccurrence) or (2) suspension of the contract.

c. Interim External Laboratory Quality Control Procedures

Prior to the existence of the ADAMHA/NIDA-recognized certification program, agencies shall ensure laboratory proficiency by one of the following methods:

1. Agencies may use agency or contract laboratories that have been certified for urinalysis testing by the Department of Defense.

2. Agencies may develop interim self-certification procedures by establishing preaward inspections and proficiency testing plans approved by HHS.

Documentation

Documentation of all aspects of the testing process shall be available. This documentation will be maintained for at least two (2) years and will include: personnel files on analysts, supervisors, directors, and all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; all test data; reports; performance records on proficiency testing; performance on certification inspections; and hard copies of computer-generated data.

Reports

All test results, including screening, confirmation, and quality control data, shall be reviewed by the certifying scientist or laboratory director before a test result is certified as accurate. The report shall identify the drugs/

metabolites tested for, whether positive or negative, and the threshold concentration for each.

Inspections

The agency shall reserve the right to inspect the laboratory at any time. Contracts with laboratories, as well as for collection site services, shall permit unannounced inspections. Preaward inspections and evaluation of the procedural aspects of the program shall be accomplished prior to the award of any contract.

Judicial Proceedings

The laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against a Federal employee that is based on positive urinalysis result reported by its laboratory.

Reporting and Review of Results

As essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations *shall* be involved in the review process. This review will be performed by the Medical Review Officer (MRO) prior to the transmission of results to agency administrative officials.

The MRO may be an agency or contract employee who is a licensed physician with knowledge of substance abuse disorders. The role of the MRO is to review and interpret positive test results obtained through the agency's testing program. In the conduct of this responsibility, the MRO should undertake the examination of alternate medical explanations for a positive test result. This action could include conducting employee medical interviews, review of employee medical history, or the review of any other relevant biomedical factors. The MRO is required to review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. After the MRO has reviewed the pertinent information and the laboratory assessment is verified, the case will be referred to the agency Employee Assistance Program Administrator and to the management official empowered to recommend or take administrative action. Should any question arise as to the veracity of a positive test result, the MRO is authorized to order a reanalysis of the original sample. If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO may deem that the result is consistent with legal drug use, and take no further action. Additionally, the MRO, based on review of inspection reports, QC data, multiple samples, and other pertinent results, may deem the result scientifically insufficient for further action and declare the individual as negative. The contract laboratory shall be able to provide information to assist in this review process by employing or having available a forensic toxicologist or someone with equivalent forensic experience in urine drug testing who can be called on when specific consultation is required by the agency.

[Note.—Before the MRO certifies a confirmed positive result for *opiates*, he/she shall verify that there is clinical evidence (in addition to the urine test) of illegal use of any opium, opiate, or opium derivative listed in Schedule I or II. This requirement does not apply if the agency's GC/MS confirmation testing for opiates verifies the presence of 6-0-monoacetylmorphine.]

Protection of Employee Records

Any laboratory contract shall provide that the contractor's records are subject to the Privacy Act, 5 U.S.C. 552a and the patient access and confidentiality provisions of section 503 of Pub. L. 100–71. The agency shall establish a Privacy Act System of Records (or modify an existing system), or use any applicable Government-wide system of records, to cover both the agency's and the contractor's records of employee urinalysis results. The contract and the Privacy Act System shall have specific provisions requiring that employee records are maintained and used with the highest regard for employee privacy.

Future Revisions

In order to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results, the Secretary may make changes to these guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the **Federal Register.**

Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

Introduction

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the varied forums in which their results can be used. Accordingly, these standards establish minimum standards to certify laboratories engaged in urine drug testing for legal, regulatory, safety, employment and other, non-medical purposes. Certification, even at the highest level, does not guarantee unequivocal accuracy of each result reported by a certified laboratory. Therefore, results from certified laboratories must be interpreted with a complete understanding of the total collection, analysis and reporting process before a final conclusion is made.

I. Goals and Objectives of Certification

Urine drug testing is an important tool to identify drug users in a variety of settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations sufficiently low to include occasional, recent users as well as addicts using drugs on a chronic basis.

Urine is the body fluid most often tested because it can be readily obtained by relatively non-invasive means. However, the presence of a drug in a urine specimen is normally used to simply indicate the subject's prior use of the drug, and provides little insight as to whether the subject was under the influence of the drug at a specific time. Even so, the consequence of a positive urine test for an illegal drug can carry severe penalties. Even when punitive actions do not take place, the suggestion that drug abuse has occurred can be devastating to the life of the subject. For these reasons, urine drug test results must be as error-free as possible and defensible in the event that they are challenged during a civil or criminal proceeding.

Reliable discrimination between the presence, or absence, of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the subjects being tested. Thus, it is in the public interest to set standards which urine drug testing laboratories must meet in order to achieve maximum acceptability of test results. Evaluation of these laboratories will be done by an organization recognized by the National Institute on Drug Abuse. In part, this evaluation will include periodic, on-site inspections. The possible impact of a positive test result on an individual's livelihood, freedom or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the

specimen must be treated as evidence and all aspects of the testing procedure must be documented and preserved for possible court testimony. Laboratories engaged in urine drug testing should acquire the services or advice of a qualified forensic toxicologist, or individual with equivalent qualifications (of experience, training, etc.) to address the specific needs of the laboratory including the demands of chain of custody of specimens, security, proper documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court and expert witness testimony.

II. Laboratory Facilities

In general, laboratories shall conform to the requirements concerning evironment, space, utilities, safety, and storage outlined in Appendix B.

Certified laboratories must have the capability, at the same laboratory site, of performing screening and confirmation tests for each drug or metabolite for which service is offered. Screening tests are presumptive tests of acceptable sensitivity, designed to eliminate negative specimens from further consideration. Confirmatory tests are procedures conducted independently of the screening test that utilize appropriate methodology based on different chemical and physical principles from those used in screening procedures. It is essential to confirm all positive screening test results prior to reporting them.

The laboratory must be secure not only in the traditional sense of resisting breaking and entering, but also in the sense of limiting access to areas where specimens are being processed and records are stored. Access to these secure areas in limited to specifically authorized individuals whose authorization is documented. Visitors, maintenance and service personnel must be escorted at all times. Documentation of individuals accessing these areas, dates and time of entry and purpose of entry, must be maintained.

Receipts are given when specimens are delivered by courier. This is the beginning of internal chain of custody document(s) which permit the time, date and purpose to be documented each time the specimen is handled or transferred and identify every individual in the chain. Finally, all positive specimens are retained in original containers in secure storage at freezing temperatures (−20°C or less) for at least twelve months. The laboratory must be prepared to maintain storage on any specimen under legal challenge for an indefinite period.

III. Personnel

The scientific director of the drug testing laboratory will be qualified to assume professional, organizational, educational and administrative responsibility for the laboratory and is involved in the day to day management of the laboratory.

This director is an individual with documented scientific qualifications in analytical forensic toxicology. Acceptable qualifications include certification as a Laboratory Director by the State in forensic or clinical laboratory toxicology or a Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology. This certification or academic training must be followed by extensive experience in analytical forensic toxicology (the analysis of biological material for drugs of abuse) and appropriate training and/or experience in forensic applications of analytical toxicology (court testimony, research and publications in analytical toxicology of drugs of abuse, etc.).[1]

The doctoral degree requirement may be waived provided that the individual holds the position of laboratory scientific director at the time of publication of these standards and possesses a graduate degree in the natural sciences or other closely related discipline followed by extensive experience (6 yrs. postgraduate) in analytical forensic toxicology.

The director is responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the urine drug testing laboratory.

A key individual in the laboratory is the certifying scientist (who may be the Laboratory Scientific Director). This individual reviews the standards, blanks and quality control data together with the screening and confirmation test results. After having assured that all results are acceptable, this individual certifies the test result. This individual must have sound training in the sciences, specific training in the theory and practice of the procedures used including the recognition of aberrant results, and familiarity with quality control procedures.

Supervisors of analysts must possess at least a B.S. degree in chemistry or education and experience comparable to a medical technologist certified by the American Society of Clinical Pathologists, MT(ASCP), or its equivalent. These, too, must have training in the theory and practice of the procedures used, and understanding of quality control concepts. Periodic verification of their skills must be documented. Other technicians or non-technical staff must possess the necessary training and skills for the task assigned. In-service continuing education programs to meet the needs of all laboratory personnel are desirable. Personnel files must include: resume of training and experience, certification or license if any, references, job descriptions, health records, records of performance evaluation and incident reports, as well as results of tests for color blindness where appropriate.

IV. Quality Assurance and Quality Control

Urine drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process: specimen acquisition, chain of custody, security, and reporting of results, in addition to validation of analytical procedures. Quality control procedures must be designed, implemented and reviewed to monitor the conduct of each step of the process. Application and documentation of the process shall be conducted as described in Appendix B.

Each analytical run of specimens to be screened must include: control urine specimens containing no drug; specimens fortified with known standards; and positive controls with the drug or metabolite at or near the threshold (cutoff). In addition, internal proficiency test specimens, blind to the analyst, shall be tested periodically. Similar controls must be analyzed in parallel with confirmation tests. Implementation of procedures to ensure that carry-over does not contaminate the testing of a subject's specimen must be documented.

Participation in proficiency testing surveys by which the laboratory performance is compared with peers and reference laboratories is encouraged. Participation in a NIDA-operated or recognized proficiency testing program is one of the requirements of continued certification (See Appendix A). Acceptable performance in two cycles of this proficiency test program is one of the criteria which must be met before a laboratory becomes eligible for certification.

If any proficiency test results are unsatisfactory according to pre-established criteria, the cause of the unsatisfactory result must be

[1] This training and experience is comparable to that of a person certified by the American Board of Forensic Toxicology or the American Board of Clinical Chemistry in Toxicological Chemistry.

investigated and corrected. A report of the investigation fingings, together with subsequent corrective actions, will be recorded, dated and signed by the responsible supervisor and laboratory director. Unsatisfactory performance on NIDA recognized proficiency test samples may be sufficient cause to lead to loss of certification by the laboratory.

Many laboratories have applied computer control to various aspects of laboratory operations. In addition, robotics and automation are leading to less human intervention into testing processes. These applications present new variables to monitor in order to detect errors, loss of data and maintenance of documentation. All laboratory systems including data processing and automation systems must be validated and tested periodically to provide documented evidence of proper function. Specific requirements will be developed to deal with these issues as they arise.

V. Documentation

Documentation of all aspects of the testing must be available. This documentation will be maintained for at least two years, and will include: personnel files on analysts, supervisors, directors and all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on proficiency testing; performance on certification inspections and hard copies of computer-generated data. The laboratory must be prepared to maintain documents for any specimen under legal challenge for an indefinite period.

VI. Reports

All test results, including screening, confirmation and quality control data must be reviewed by a qualified, responsible scientist before being certified as accurate. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the threshold (or cut-off) concentration for each.

VII. Certification

The Secretary or his or her designee (hereinafter referred to as "the Secretary") may certify any laboratory that meets these standards to conduct urinalysis for drugs of abuse. In addition, the Secretary may consider any laboratory that is certified by a DHHS-recognized certification program which is established in compliance with these standards to be certified to conduct urinalysis for drugs of abuse. In determining whether to certify a laboratory or to accept the certification of a DHHS-recognized certification program, the Secretary shall consider the following criteria:

(1) The adequacy of the laboratory facilities;

(2) The expertise and experience of the laboratory personnel;

(3) The excellence of the laboratory's quality control program;

(4) The performance of the laboratory on any proficiency tests;

(5) The performance of the laboratory on any laboratory inspections; and

(6) Any other factor affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

VIII. Revocation

The Secretary shall revoke certification of any laboratory certified under these provisions or accept the revocation of a recognized certification program, if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results. The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests (for example, a single false positive error in reporting the results of an employee's drug test);

(2) Unsatisfactory participation in proficiency evaluations or laboratory inspections;

(3) A material violation of a certification standard or contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or

(5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

The period and terms of revocation shall be determined by the Secretary, and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

IX. Suspension

Whenever the Secretary has reason to believe that revocation may be required and that in order to protect the interests of the United States and its employees immediate action is necessary, the Secretary may suspend a laboratory's certification to conduct urinalysis for drugs of abuse for Federal agencies. The suspension of certification by a DHHS-recognized certification program may also be accepted by the Secretary. The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

X. Notice; Opportunity for Review

(a) *Written Notice.* When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by personal service or registered or certified mail, return receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and,

(3) The period of suspension or proposed revocation.

(b) *Opportunity for Review.* The written notice shall also state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date of mailing or service of the notice. The review shall be by a person or persons designated by the Secretary and shall be based on written submissions by the laboratory and DHHS and, at the Secretary's discretion, may include an opportunity for an oral presentation. Formal rules of evidence and procedures applicable to proceedings in a court of law will not be applied. The decision of the reviewing official shall be final.

(c) *Effective Date.* A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

XI. Recertification

Following the termination or expiration of any suspension or revocation, a laboratory may apply for recertification. Upon the submission of evidence satisfactory to the Secretary that the laboratory is in compliance with these standards or any DHHS-recognized certification program and any other conditions imposed as part of the suspension or revocation, the Secretary may re-certify the laboratory

or accept the recertification of the laboratory by the recognized certification program.

XII. Future Revisions

In order to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results, the Secretary may make changes in these standards to reflect improvements in the available science and technology. These changes will be published in final as a notice in the Federal Register.

Appendix A—Proficiency Test Program

The proficiency testing (PT) program is a part (in conjunction with laboratory inspection) of the initial evaluation of a laboratory seeking certification and of the continuing assessment of laboratory performance necessary to maintain this certification.

Initial participation in 3 cycles of testing will be required as part of certification process. These initial 3 cycles (and those required for recertification) can be compressed into a 3-month period (one per month).

After certification, laboratories will be challenged bimonthly with one set of 10 specimens—a total of 6 cycles per year.

All procedures associated with the handling and testing of the proficiency test specimens after receipt by the laboratory must be carried out in a manner identical to that applied to normal laboratory specimens. Laboratory personnel should not be aware that these specimens are part of a performance test to the extent possible.

Any certified laboratory may also be subjected to blind proficiency testing. Performance on blind testing specimens at the same level as for the open (non-blind) PT will be required.

Laboratories will be required to report as follows:

(Drug or metabolite) None detected at a concentration of ____ng/mL.

Or:

(Drug or metabolite) greater than ____ng/mL-Positive.

Confirmed by (method) at ____ng/mL.

Test Specimen Composition

The following are examples of drugs and metabolites and threshold concentration levels (lowest possible level of spiked specimen) which would be appropriate for PT specimens. These concentration ranges have been chosen to allow detection of the analyte by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of casual drug users. For some drug analytes, the specimen composition will consist of the parent drug as well as major metabolites as noted in the second column below. In some cases, more than one drug class may be included in one specimen container but generally no more than two drugs will be present in any one specimen to more reasonably represent the type of specimen which a laboratory normally encounters. Within a particular PT cycle, the actual composition of kits going to different laboratories will vary but within any annual period, all labs participating will have analyzed the same total set of specimens.

It is presumed that these concentrations and drug types will be changed periodically due to factors such as changes in detection technology and patterns of drug abuse.

Drug class and specimen composition	Concentration (ng/mL)
Marijuana: THC metabolite (delta-9-THC-9-carboxylic acid).	125–150.
Cocaine:	
Cocaine	400–450.
Benzoylecgonine	400–450.
Ecgonine methyl ester	180–200.
Opiates:	
Morphine	100–120.
Morphine-3-glucuronide	380–420.
Codeine	500–550.
Amphetamines:	
Amphetamine	1250–1400.
Methamphetamine	1500–1700.
Phencyclidine: Phencyclidine	100–125.
Blank	Less than 2 ng/ml of any of the target drugs.

Evaluation-pt

1. For all drugs for which the laboratory offers service, no false drug identifications are acceptable. A false positive result under some circumstances may result in suspension or revocation of certification.

The most serious false positives are those by drug class such as THC in a blank or cocaine in a specimen known to contain only opiates. While clearly false positives also, misidentifications within a class are less serious errors but still ones which are unacceptable in a appropriately controlled laboratory.

Procedure for dealing with a false positive report from a laboratory:

A. Immediate notice to laboratory and to NIDA.

B. Allow the laboratory 5 working days to respond to the error. This response should include the submission of all QC data from the batch of specimens in which the error occurred, unless the error is to be explained as an administrative error. In this case the QC data need not be provided.

C. Allow 5 working days for review of the response. The response will be reviewed by a Reviewing Official which will have the authority to decide whether the laboratory explanation can be accepted as an error which was beyond its control (such as a clerical error on the part of the inspection organization where the laboratory can document that the analysis which it submitted was not the one attributed to it). If the error is determined to be attributable to the laboratory and that it is:

(1) An administrative error (clerical, sample mix-up, etc.), the Reviewing Official will have the option of recommending corrective action to minimize the occurrence of the particular error in the future and if necessary to review and reanalyze previously run specimens if there is reason to believe that the error could have been systematic.

(2) A technical or methodological error, the laboratory must submit all QC data from the batch of specimens which included the test specimen with the erroneous analysis. In addition, the laboratory will be required to retest specimens analyzed positive by the laboratory from the time of final resolution of the error back to the time of the last satisfactory Proficiency Test cycle (this retest to be documented by a signed statement by the Laboratory Director). Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include all drugs for which service is offered.

If any result on a retest sample must be corrected because the criteria for a positive is not satisfied, immediate notification of the client who sent the specimen for testing is required. The Reviewing Official will have the option to recommend (1) no further action other than the above (in the case of less serious error with associated corrective action which reasonably assures the unlikelihood of reoccurrence) or (2) suspension or revocation and recertification for all drugs or for only the drug or drug class in which the error occurred.

D. During the time required to resolve the error, the laboratory would remain on the NIDA registry but with a designation that a false positive result is pending resolution. If the Reviewing Official recommends that the laboratory's certification be suspended or revoked, this will then become the official status of the laboratory until the suspension or recertification process is complete.

2. At least 90% of all drugs for which service is claimed must be detected.

3. Participant performance will be evaluated for all samples for which drugs were spiked at concentrations above the level for reporting unless the overall participant response indicates

that less than 80% of the participants were able to detect a drug.

4. A laboratory must participate satisfactorily in 3 monthly cycles of open surveys before they can be considered for certification.

5. Failure to participate in a survey (except in instances where testing of client specimens was suspended) or to participate satisfactorily may result in suspension or revocation of certification.

6. Failure to participate satisfactorily during a blind proficiency testing survey may result in suspension or revocation of certification.

7. Quantitative results reported on confirmation tests must fall within two standard deviations or 20% of the calculated group mean (whichever is larger) resulting from all participating laboratories testing a given kit.

8. Inadequate performance, as determined by the Secretary, on the criteria in items 2, 6, and 7 and the laboratory inspection may result in the failure of the laboratory to achieve certification, or lead to the suspension or revocation of a certification which has already been granted.

Appendix B—Laboratory Inspection

The following list includes certain items of inspection preceded by an asterisk(*). These are considered critical and compliance with these items must generally be documented prior to the physical inspection. Inspection teams will consist of three qualified individuals, at least two of whom have participated in a NIDA recognized training course for laboratory inspectors. Inspections will document the overall quality of the laboratory setting for the purposes of certification. In addition, the inspection reports will provide recommendations to the laboratory to correct deficiencies noted during the inspection.

1.0 *Extent of Service*							
*1.1 Does laboratory perform screening and confirmatory testing on all samples reported positive?.					N/A	YES	NO
*1.2 Does laboratory perform screening and confirmation tests that are based on different scientific principles?.					N/A	YES	NO
1.3 Does the laboratory test for the following drugs and what methods are used? (circle drugs and screening and confirmation methods)							
Amphetamines	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
Barbiturates	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
Cocaine	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
Opiates	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
Phencyclidine	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
THC	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
1.4 Does the laboratory confirm all drugs by an appropriate mass spectrometric method?					N/A	Yes	No
1.5 If not, does the laboratory test for the appropriate parent drug or metabolite?					N/A	Yes	No
Amphetamine					N/A	Yes	No
Barbiturate					N/A	Yes	No
Cocaine					N/A	Yes	No
Opiates					N/A	Yes	No
PCP					N/A	Yes	No
THC					N/A	Yes	No
1.6 Does the laboratory use quantitative cutoff values on the confirmation test for each drug tested?					N/A	Yes	No
2.0 *Proficiency Testing*							
The laboratory must participate in a NIDA recognized proficiency testing (PT) and interlaboratory comparison program. The size of the laboratory operation does not effect the need to participate in such a program.							
*2.1 Is the laboratory enrolled in a NIDA recognized PT survey (interlaboratory comparison) program?					N/A	Yes	No
Note.—It is strongly recommended that the current Survey Manual be readily available to the bench technologists in the section.							
2.2 Is there evidence of active review by the Scientific Director of the survey (interlaboratory comparison) results?					N/A	Yes	No
2.3 Is there evidence of evaluation and, if indicated, corrective action in response to "unacceptable" results on the survey?					N/A	Yes	No
3.0 *Quality Control*							
Supervision of Quality Control: The Quality Control Program must be under the direct surveillance of the Quality Control Supervisor or their designated assistants and reviewed weekly by the Scientific Director.							
3.1 Is there evidence of active review of records of controls, instrument function and maintenance of each routine procedure on all shifts?					N/A	Yes	No
* 3.2 Is there documentation of corrective action taken when controls, etc. exceed defined tolerance limits?					N/A	Yes	No
3.3 Is there a written system documented and operating to routinely detect clerical errors and analytical errors prior to results being reported?					N/A	Yes	No
* 3.4 Are all results of samples reviewed by a Certifying Scientist prior to release of the results?					N/A	Yes	No

4.0 *Procedure Manual*			
* 4.1 Is there a procedure manual?	N/A	YES	NO
Note.—The use of manufacturer's package inserts or instrument manuals as procedures is discouraged. Such inserts or manuals provide valuable information and may be used as reference material for procedures, but should not be used to replace the formal procedures in the manual.			
* 4.2 Is it complete (i.e., includes all tests offered by the section)?	N/A	YES	NO
4.3 Is it available at the bench or in the work area?	N/A	YES	NO
Note.—Working card files are acceptable for quick reference at the work bench, provided that a. A complete manual is available for reference. b. The working cards correspond to the manual.			
4.4 Is each procedure reviewed annually, dated, signed, or initialed by the Scientific Director or a qualified person designated by the Director?	N/A	YES	NO
4.5 Are all changes dated and initialed by the Scientific Director or other appropriate person?	N/A	YES	NO
4.4 Are copies of all procedures and the dates on which they were in effect maintained for reference?	N/A	YES	NO
4.5 Does each procedure include (where appropriate):	N/A	YES	NO
4.51 Principles of each test?	N/A	YES	NO
4.52 Preparation of reagents, standards, and controls?	N/A	YES	NO
4.53 Directions for calibration?	N/A	YES	NO
4.54 Derivation of results (i.e., direct readout, calibration curve, calculation from a standard, definitions for semi-quantitative readout?)	N/A	YES	NO
4.55 Linearity of method, and course of action when results exceed method linearity?	N/A	YES	NO
4.56 Sensitivity of method?	N/A	YES	NO
4.57 Cutoff value and how to report results when results are below cut-off value?	N/A	YES	NO
4.58 Controls and criteria for unacceptable results?	N/A	YES	NO
4.59 Notes, special requirements, safety precautions, etc?	N/A	YES	NO
4.60 References?	N/A	YES	NO
4.61 Index?	N/A	YES	NO
5.0 *Sample Receiving, Preparation, and Storage*			
Review the method(s) used to identify and process the samples through the receiving, preparation, and storage processes.			
5.1 Are procedures adequate to verify sample identity, integrity and maintain chain-of-custody requirements?	N/A	YES	NO
5.2 Is the condition of package and/or individual bottle seals documented?	N/A	YES	NO
5.3 Are there written criteria for identifying unacceptable, diluted or adulterated urine samples?	N/A	YES	NO
*5.4 Is the integrity of the original samples maintained (i.e., is any portion of unused urine from an aliquot ever returned to the original bottle)?	N/A	YES	NO
5.5 Does the chain-or-custody procedure account for all individuals who handle the sample?	N/A	YES	NO
*5.6 Are samples maintained in a limited access, security area at all times?	N/A	YES	NO
5.7 Is access to this area restricted to only personnel assigned to specimen preparation and other appropriate supervisory and quality control personnel?	N/A	YES	NO
5.8 Where necessary, is aliquoting of the samples done quantitatively?	N/A	YES	NO
5.9 Does aliquoting procedure prevent any possible cross contamination of the samples?	N/A	YES	NO
*5.10 Are positive samples retained in a frozen state in their original containers for a minimum of six months?	N/A	YES	NO
5.11 Are positive samples available for retesting for at least six months after testing?	N/A	YES	NO
6.0 *Records*			
6.1 Review all technical, legal, and administrative records for both legal and scientific validity.			
6.2 Does the laboratory properly complete appropriate sections of external chain-of-custody documents?	N/A	YES	No
6.3 Does the laboratory generate and properly complete internal chain-of custody documents to legally account for the samples and aliquots (as appropriate)?	N/A	YES	NO
(Note.—External chain-of-custody document may be used as the internal chain-of-custody.)			
6.4 Do the hard copies of all initial and confirmatory tests contain the following?			
6.5 Results of standards of calibrators?	N/A	YES	NO
6.6 Results of controls?	N/A	YES	NO
6.7 Laboratory identification of samples tested?	N/A	YES	NO
6.8 Identity of individuals performing test results?	N/A	YES	NO
6.9 Identity of individuals reviewing the test results?	N/A	YES	NO
6.10 Evidence of review of the Certifying Scientist?	N/A	YES	NO

6.11 Evidence of comparison of initial and confirmatory testing to ensure consistent results?	N/A.	YES	NO
6.12 Are technical records sufficiently complete to permit valid scientific review of the data?	N/A	YES	NO
6.12 Are records of all proficiency testing complete?	N/A	YES	NO
6.13 Is there evidence of review by the Scientific Director and evidence of appropriate corrective action taken if required?	N/A	YES	NO
6.14 Are records of the internal quality control program complete?	N/A	YES	NO
6.15 Is there evidence of active daily review of the quality control records by the quality control supervisor?	N/A	YES	NO
6.16 Is there evidence of active weekly review of the quality control records by the Scientific Director	N/A	YES	NO
6.17 Are records of the qualification and certification of laboratory personnel properly maintained?	N/A	YES	NO
6.18 Are all necessary records available for use in legal proceedings?	N/A	YES	NO
7.0 *Personnel:*			
The laboratory must be staffed by appropriately qualified and trained personnel under the direction of the Scientific Director. Records of the qualifications and training should be kept and be available for review.			
*7.1 Qualifications of the Laboratory Director:			
7.11 Is the Director (or Scientific Director) certified by the American Board of Forensic Toxicology or the American Board of Clinical Chemistry in Toxicological Chemistry or have comparable scientific qualifications?	N/A	YES	NO
7.11a. Scientific Training:			
PhD in Pharmacology?	N/A	YES	NO
PhD in Toxicology?	N/A	YES	NO
PhD in Analytical Chemistry?	N/A	YES	NO
Other?	N/A	YES	NO
Masters Degree in one of the above with extensive experience beyond the MS?	N/A	YES	NO
7.11b. Experience in forensic applications of analytical toxicology (court testimony, research and publications in analytical toxicology of drugs of abuse, etc.)?	N/A	YES	NO
7.12 Are these degrees and experience documented??	N/A	YES	NO
7.13 Experience in analytical toxicology:			
Two years?	N/A	YES	NO
Five or more years experience?	N/A	YES	NO
7.14 Does the director hold State certification in forensic toxicology?	N/A	YES	NO
7.2 Is the director (or Scientific Director) a full time employee of the laboratory?	N/A	YES	NO
7.3 If part-time, does he/she spend appropriate time at the laboratory?	N/A	YES	NO
7.4 Are there sufficient supervisory staff for the number of samples analyzed by the laboratory?	N/A	YES	NO
7.5 Are their qualifications and experience appropriate?	N/A	YES	NO
7.51 Are these documented?	N/A	YES	NO
7.6 Is there sufficient technical staff to complete the analysis accurately?	N/A	YES	NO
7.61 Is their training and experience documented?	N/A	YES	NO
7.7 Are there a sufficient number of certifying officials?	N/A	YES	NO
7.71 Is their training and experience documented?	N/A	YES	NO
8.0 *Reporting:*			
*8.1 Are there written protocols for the reporting of results?	N/A	YES	NO
*8.2 Do the results indicate:			
(a) Date of receipt?	N/A	YES	NO
(b) Drugs analyzed?	N/A	YES	NO
(c) Threshold concentration?	N/A	YES	NO
(d) Positive and negative results?	N/A	YES	NO
(e) Identitying of certifying official?	N/A	YES	NO
8.3 Are unconfirmed positives reported as negative?	N/A	YES	NO
8.4 Are there written protocols or the reporting of results by telephone?	N/A	YES	NO
8.5 Are there written protocols for the electronic reporting of results?	N/A	YES	NO
8.6 Are results reported in a timely manner?	N/A	YES	NO
9.0 *Reagents, Controls, and Standards:*			
Reagents—The verification of reagents is required and must be documented. Several methods are acceptable such as direct analysis with reference materials, parallel testing of the old vs. new reagents, and checking against routine controls. The intent of the questions are for new reagents to be checked by an appropriate method and results recorded.			
9.1 Are reagents verified and history documented?	N/A	YES	NO
9.2 Are results of reagent checks recorded?	N/A	YES	NO

9.3 Are reagents properly labeled and dated on receipt, preparation and/or when placed in service?	N/A	YES	NO
9.4 When appropriate, are expiration dates indicated on reagent containers?	N/A	YES	NO
9.5 Inspect reagents in use and on the shelves. Are outdated reagents discarded and replaced routinely?	N/A	YES	NO

Note: Certain expensive reagents may warrant use after the labeled expiration date. In such cases, the laboratory must have clearly defined written policy specifying such reagents, circumstances under which extended use may exist, special control procedures to be implemented and specific persons authorizing such.

9.5 Are new reagents checked against old reagents or other reference material prior to being placed in service?.	N/A	YES	NO

10.0 Controls and Standards:

10.1 Are pure drug standards used?	N/A	YES	NO
10.2 Is a record of purity of drug standards maintained?	N/A	YES	NO
10.3 If the laboratory uses drugs covered by the Controlled Substances Act, does it maintain an appropriate DEA license?	N/A	YES	NO
10.4 Are all standards properly labeled as to content and concentration?	N/A	YES	NO
10.5 Do labels on standards including dates received, prepared or opened, when placed in service, and expiration date (when appropriate)?	N/A	YES	NO
10.6 Are controls used for all tests?	N/A	YES	NO
10.7 Are tolerance limits defined for control procedures?	N/A	YES	NO
10.8 Are open quality control samples used during each analysis?	N/A	YES	NO
10.9 Are blind quality control samples used in all analyses?	N/A	YES	NO
10.10 Is there a written policy to indicate corrective action if an analysis is out of control?	N/A	YES	NO
10.11 Are results of controls recorded in a convenient manner and analyzed routinely to detect instrument or process failure?	N/A	YES	NO

11.0 *Instruments and Equipment:*

Glassware—Answer the following questions only if reusable glassware is used.

11.1 Is the glassware rinsed with purified water before drying?	N/A	YES	NO
11.2 Is washed glassware checked for contamination?	N/A	YES	NO

Volumetric Glassware:

11.3 Are damaged pipets (broken tips, blurred or lost markings) discarded?	N/A	YES	NO
11.4 Are volumetric pipets and measuring devices of certified accuracy (Class A) or are they checked by gravimetric, colormetric, or some other verification procedures?	N/A	YES	NO

Automatic Pipets—Fixed volume adjustable and/or micropipets. Automatic pipets and diluting devices of all types must be checked for accuracy and reproducibility before being placed in service and periodically thereafter.

11.5 Are pipets checked for accuracy of calibration before being placed in service (gravimetric, colormetric, or other verification procedure)?	N/A	YES	NO
11.6 Are pipets checked for accuracy and reproducibility at specified intervals (gravimetric, colormetric, or other verification procedure)?	N/A	YES	NO

Instrument Maintenance:

11.7 Are there written standard procedures for set-up and normal operation of instruments?	N/A	YES	NO
11.8 Is there a schedule or system for the regular checking of the critical operating characteristics for all instruments in use?	N/A	YES	NO
11.9 Are instructions for instrument check systems written?	N/A	YES	NO
11.10 Are function checks documented in a convent manner to detect trends of malfunctions?	N/A	YES	NO
11.11 Are tolerance limits for acceptable function written for specific instruments whenever appropriate?	N/A	YES	NO
11.12 Are instructions provided for major troubleshooting and repair of instruments?	N/A	YES	NO
11.13 Are instrument maintenance, service, and repair records (or copies) immediately available to and usable by the technical staff operating the equipment?	N/A	YES	NO

Temperature Dependent Equipment:

11.14 Are temperatures checked and recorded daily (or when used) for the following items of equipment?	N/A	YES	NO

If "No" check the item corresponding to the deficient area—

Water baths ____
Dry baths (heating blocks) ____
Incubators and ovens (where control is necessary for a procedure) ____
Refrigerators and freezers ____

Centrifuges:			
11.15 Are all centrifuges clean and properly maintained?	N/A	YES	NO
11.16 Is there a written protocol for maintenance of all centrifuges?	N/A	YES	NO
11.17 Are the operating speeds of all centrifuges checked periodically as required for intended service?	N/A	YES	NO
Analytical Balances:			
11.18 Are balances mounted on a vibration free stand?	N/A	YES	NO
11.19 Are balances clean, serviced, and checked periodically by qualified service personnel?	N/A	YES	NO
11.20 Are standard weights (NBS Class S or equivalent) available for checking accuracy?	N/A	YES	NO
11.21 Are weights well maintained (clean, in a covered container, not corroded)?	N/A	YES	NO
Immunoassay Equipment:			
11.22 Are gamma counters and/or scintillation counters calibrated periodically (at least once a year)?	N/A	YES	NO
11.23 Are records of this calibration recorded?	N/A	YES	NO
11.24 Are personnel trained in the use of radioisotopes?	N/A	YES	NO
11.25 Are spectrophotometers calibrated appropriately (if necessary)?	N/A	YES	NO
Thin Layer Chromatography:			
11.26 Are standards included on each TLC plate?	N/A	YES	NO
11.27 Are controls and blanks extracted and run through the entire procedure for each run?	N/A	YES	NO
11.28 Are solvents prepared fresh each day?	N/A	YES	NO
11.29 Are the results of TLC recorded appropriately for later reference?	N/A	YES	NO
11.30 Are written procedures available to designate a positive and to determine the threshold concentration?	N/A	YES	NO
High Performance Liquid Chromatography:			
11.31 Are procedures written for calibration, operation, and maintenance?	N/A	YES	NO
11.32 Are unextracted standards run with each batch of samples?	N/A	YES	NO
11.33 Are controls and blanks extracted with batch of samples?	N/A	YES	NO
11.34 Are internal standards used where appropriate?	N/A	YES	NO
11.35 Is there evidence that linearity of the method has been checked?	N/A	YES	NO
11.36 Is there evidence that the limit of detection and the limit of quantitation have been determined for each procedure?	N/A	YES	NO
11.37 Are new columns verified for performance before being used?	N/A	YES	NO
11.38 Are written procedures available to designate a positive and to determine threshold concentration?	N/A	YES	NO
Gas Chromatography:			
11.39 Are procedures written for calibration, operation, and maintenance	N/A	YES	NO
11.40 Are unextracted standards run with each batch of samples?	N/A	YES	NO
11.41 Are controls and blanks extracted and analyzed with each batch of samples?	N/A	YES	NO
11.42 Are internal standards used when appropriate?	N/A	YES	NO
11.43 Is there evidence that linearity of the method has been checked?	N/A	YES	NO
11.44 Is there evidence that the limit of detection and limit of quantitation have been determined for each procedure?	N/A	YES	NO
11.45 Are new columns verified for performance before being used?	N/A	YES	NO
11.46 Is routine maintenance performed on each day of use or more frequently if required (for example septum changes, column changes, etc.)?	N/A	YES	NO
11.47 Is column maintenance performance as required (cutting off capillary columns, repacking glass wool, etc.)?	N/A	YES	NO
11.48 Are there written procedures for determining sensitivity and signal/noise ratio of nitrogen/phosphorous and election capture detectors?	N/A	YES	NO
11.49 Are there written procedures available to designate a positive and to determine threshold concentration?	N/A	YES	NO
Gas Chromatography Mass Spectrometry:			
11.50 Are the mass spectrometers tuned daily?	N/A	YES	NO
11.51 If an Autotune program is used, are records maintained?	N/A	YES	NO

11.52	Are corrective actions posted in the case of a failure to tune?	N/A	YES	NO
11.53	Are the mass spectrometers maintained at regular intervals?	N/A	YES	NO
11.54	Are procedures available for checking for air leaks?	N/A	YES	NO
11.55	If so, are these appropriate?	N/A	YES	NO
11.56	Are records of ion ratios maintained?	N/A	YES	NO
11.57	Is corrective action taken if the ion ratios change from a pre-determined instrument range?	N/A	YES	NO
11.58	Are ion ratio ranges determined for each instrument and for each assy?	N/A	YES	NO
11.59	If ion ranges are used, are procedures available for designating a positive?	N/A	YES	NO
11.60	Are procedures written for operation, calibration, and maintenance?	N/A	YES	NO

* Specify.

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S.J. Res. 121/Pub. L. 100-87

Designating August 11, 1987, as "National Neighborhood Crime Watch day." (Aug. 11, 1987; 101 Stat. 664; 1 page) Price: $1.00